

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

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

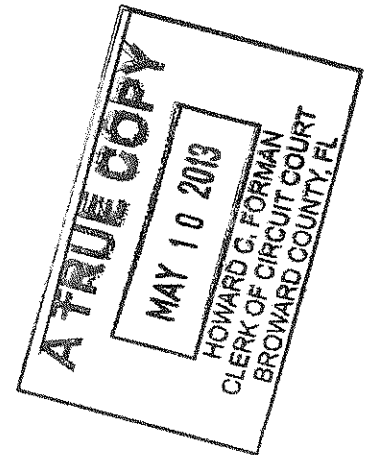
MATTHEW CARONE, as Trustee for the Carone Marital Trust # 2 UTD 1/26/00, Carone Gallery, Inc. Pension Trust, Carone Family Trust, Carone Martial Trust #1 UTD 1/26/00 and Matthew D. Carone Revocable Trust, JAMES JORDAN, as Trustee for the James A. Jordan Living Trust, ELAINE ZIFFER as individual and FESTUS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

Plaintiffs,

v.

MICHAEL D. SULLIVAN

Defendant



**OPPOSITION RESPONSE AND INCORPORATED MEMORANDUM OF LAW  
TO 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**

Steven Jacob, ("Jacob") as a 40% partner in interest of the S&P General Partnership ("S&P") hereby opposes the Conservator's Motion To Retain and Compensate Berger Singerman LLP, as Special Litigation Counsel In The Janet A. Hooker, Et al. Matter and Approving the Contingency Fee Compensation Agreement and states as follows:

The four plaintiffs, (“Stacy Foundation”) defendant and the partners of S&P and P&S (collectively “the partnerships”) have all been victimized by Bernard L. Madoff’s unprecedented \$65 billion dollar Ponzi scheme.

#### STATEMENT OF FACTS

1. All moneys of the partnerships have been accounted for and there is no money missing.
2. All books and records of the partnership that are in existence have been in the possession and control of the Stacy Foundation since October 2011, except for two years that were provided in August of 2012. All books and records are currently in possession and control of the conservator.
3. The partnerships are not insolvent. Nor have they filed or ever filed for bankruptcy.
4. The Partnerships are not Ponzi schemes.
5. The Partnerships invested in a Ponzi scheme.
6. The Madoff Trustee, Irving Picard and the SEC have reviewed all the records of the partnerships and approved the claims of the partnerships. They have spent hundreds of thousands of dollars and concluded there are no problems.
7. The only business that remains for the partnership is to distribute the funds received from the Madoff Trustee to its partners.
8. The Conservator has submitted a proposed budget of almost \$400,000.00 in fees for less than one year work for a company with no current business.
9. Berger Singerman has submitted bills in the approximate amount of \$175,000.00.

10. Berger Singerman is requesting an additional amount of \$50,000.00 in this motion and in contradiction to the consent order conservators counsel is requesting that he pay Berger Singerman the \$50,000.000 without bills or court approval.

11. It is clear from the transcripts of the hearings (Attached hereto as Exhibit A) held on December 18, 2012, and December 21, 2012, before this Court and the Consent Order filed January 17, 2013, that the Conservator was appointed with limited authority.

12. Contrary to the Courts instructions regarding the Conservator on December 21, 2012,

“The idea is not to try to persuade him. I mean I don’t want you to try to one up each other on the number of persons and the amount of time spent to condition him on one side – if there are camps – on one side or the other on an issue. Let’s try to avoid that, please.”

Berger Singerman billed seven hours to the partnerships for phone conversations, memos, and face to face meetings **PRIOR** to the conservator’s appointment by the Court on January 17, 2013. In contrast, attorney Chad Pugatch, charged .40 hours for a call to ask if the conservator could serve, and reporting back to Michael Sullivan and Rob Reynolds.

13. On December 18, 2012, seven days after Bernard Madoff confessed to authorities, Michael Sullivan engage attorney Chad Pugatch, to protect the interest of the partners in the partnerships and assist in obtaining the maximum recovery back to the partnerships from Madoff. In late 2009, Helen Chaitman, a renowned attorney for the victims of Madoff was also engaged.

### ARGUMENT

To allow the partners to be further victimized by the Stacy Foundation and their former counsel Berger Singerman (“BS”) results in manifest injustice to partners in the partnerships. The Stacy Foundation consist of four (4) minority partners, who have hijacked and terrorized the partnership, and have caused and continue to cause significant

damages to the approximately 190 remaining partners in the partnerships. The Stacy Foundation in concert with its counsel BS have raised many unsupported false allegations, improperly noticed a meeting of the partnership and incorrectly calculated the partnership vote, all in attempt to use partnership funds to fund their own agenda over the rights of the other partners. In fact, contrary to what has been alleged to this Court and continues to be alleged, all the books and records have been made available to the Festus and Helen Stacy Foundation and any other partner since the beginning. The Festus and Helen Stacey Foundation have had actual possession of the books and records since October of 2011. According to the BS bills, already in evidence before this Court, BS was engaged to research and file the above Janet Hooker matter in May and June of 2012. If the case had so much merit, why was it not filed?

BS has billed numerous hours related to this law suit and was ready to file it in June of 2012. Now they want to be paid for additional costs plus a contingency fee for work already done. The conservator would know this as it's reflected in BS bills that are already in evidence before this Court. Jacob made attempts at a good faith conference and there was no response from the Conservator's Counsel. The Conservator has provided no cost benefit analysis or upside to proceeding with this case. There has been no communication of how this could benefit the partners or the partnership. The only ones it appears to benefit is BS, the conservator and his attorney. There is also no mention of the down side to this lawsuit to the partnership and specifically each individual partner. The partnerships are general partnerships and all partners are jointly and severably liable. Should just one defendant file a counter claim every partner will suffer. If a defendant counter claims will that be covered under BS contingency

agreement, or can the Court and the partners expect to see BS back at the well for more fees. The only group that could possibly benefit from this litigation will be BS, the conservator and his counsel. The conservator has already presented a budget of almost \$400,000, for less than a year work for a partnership that has no ongoing business other than to distribute money to the partners. Absent a unanimous vote from all partners it seems unconscionable to submit the partners to liabilities that could potentially take away all the assets that were acquired prior to the conservator taking over. The Conservators job is to preserve the assets for the partners not gamble them away on the allegation and whim of BS and the Stacy Foundation. Certainly, if the Stacy Foundation or any of the partners want to litigate for their benefit, they can do so with their own money. As this Court has already touched on this issue in the transcripts of December 18, 2012, page 43 and 44.

“The partnership I invested in could not bring a suit, but I can bring a suit on my own behalf because I was injured by this misconduct.”

The Hooker Case can easily be separated from the partnership and returned to the partners who wish to pursue it. This will save TIME AND MONEY and not expose the partnership and partner's assets.

Even if BS was not causing undue influence on the conservator and his counsel, BS represented the Stacy Foundation and there is no doubt the BS Law Firm would have a conflict of interest. There was no way to resolve the net winner matter/net loser matter without an Interpleader. This is the only legal matter the partnerships should be involved in. The conservator fails to state under what statute or rules of conduct is it now permissible for BS to represent net loser's against net winners within the partnership.

The Conservator is to act independently. He cannot do so if he must choose a side of one partner against the other.


**RELIEF REQUESTED**

Jacob respectfully requests that this Court:

1. Deny the Motion to Appoint Special Council in the Janet A. Hooker Charitable Trust, ET. AL. Matter and not subject the partnerships nor the partners to the liabilities associated with prolonged litigation.
2. Separate the Litigation from the General Partnership and Allow any partner that wishes to pursue it to do so outside the Partnership.

May 10, 2013

Respectfully Submitted

  
\_\_\_\_\_  
Steven Jacob  
Partner of S&P

Copies Furnished To:

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# Exhibit

# A

1 IN THE CIRCUIT COURT OF THE  
2 SEVENTEENTH JUDICIAL  
3 CIRCUIT, IN AND FOR BROWARD  
4 COUNTY, FLORIDA

5 CASE NO. 12-24051(07)

6 MATTHEW CARONE, as Trustee for the  
7 Carone Marital Trust #2 UTD 1/26/00,  
8 Carone Gallery, Inc. Pension Trust,  
9 Carone Family Trust, Carone Marital  
10 Trust #1 UTD 1/26/00 and Matthew D.  
11 Carone Revocable Trust, JAMES  
12 JORDAN, as Trustee for the James A.  
13 Jordan Living Trust, ELAINE ZIFFER, an  
14 individual, and FESTUS AND HELEN  
15 STACY FOUNDATION, INC., a Florida  
16 corporation,  
17 Plaintiffs,  
18 vs.  
19 MICHAEL D. SULLIVAN, individually,  
20 Defendant.

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HEARING BEFORE THE HONORABLE JEFFREY E. STREITFELD

Friday, December 21st, 2012  
1:50 p.m. - 2:35 p.m.

201 Southeast Sixth Street  
Courtroom 970  
Fort Lauderdale, Florida 33301

Susan D. Fox, Florida Professional Reporter  
Notary Public, State of Florida



1 APPEARANCES:

2 ON BEHALF OF THE PLAINTIFFS:

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6 ON BEHALF OF THE DEFENDANTS:

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12 ON BEHALF OF P&S AND S&P:

13 BECKER & POLIAKOFF, P.A.

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Fort Lauderdale, Florida 33312

1           (Thereupon, the following proceedings  
2       were had.)

3           THE COURT:   Okay.

4           MR. REYNOLDS:   Your Honor, I  
5       apologize.   I think we've worked out the  
6       last issue.

7           THE COURT:   You're apologizing for  
8       that?

9           MR. REYNOLDS:   Well, just for being  
10      tardy because we were out in the hallway.

11          THE COURT:   Well, under the  
12      circumstances that's okay.

13          MR. REYNOLDS:   Thank you.   I'll keep  
14      track of that next time when maybe -- I'm  
15      just kidding.

16          THE COURT:   And then it works out for  
17      them.

18          MR. REYNOLDS:   Robert Reynolds,  
19      Slatkin & Reynolds, on behalf of the  
20      various partners that were present.

21          THE COURT:   Okay.

22          MR. REYNOLDS:   A couple are present  
23      today.   A couple couldn't be here again.

24                I think we've worked everything out.

25                Knock on wood.

1 THE COURT: All right. That's fine.

2 Who is going to tell me about it?

3 MR. REYNOLDS: Mr. Samuels, do you  
4 want to start?

5 MR. SAMUELS: Sure.

6 MR. REYNOLDS: And I'll, if he says  
7 something I don't agree with, Judge, if  
8 it's okay, I'll stand up and --

9 THE COURT: Okay.

10 Get yourself a glass of water. It's  
11 all I can offer you.

12 MR. REYNOLDS: Thank you. I will do  
13 that.

14 MR. SAMUELS: Thank you, Your Honor.

15 Pursuant to your instruction to us  
16 we've been working diligently to try to  
17 reach a resolution as to the future  
18 management of these partnerships, and we  
19 have agreed that Phil von Kahle -- can  
20 you spell that?

21 MR. REYNOLDS: von Kahle --  
22 K-a-h-l-e.

23 MR. SAMUELS: K-a-h-l-e, was  
24 suggested to me by them this morning, and  
25 I discussed it with my clients, and he is

1 acceptable to us.

2 One person, you know, as opposed to  
3 three might be a good idea as well. There  
4 was some discussion at the last hearing of  
5 one versus three, and we are all satisfied  
6 that he can be a receiver. If the Court  
7 or anyone would prefer that he be called a  
8 conservator, I don't think it matters,  
9 provided his powers are generally the  
10 same, and we would envision his powers to  
11 be the equivalent of the powers of a  
12 managing general partner under the amended  
13 restated partnership agreement governing  
14 both entities.

15 There are a couple of things that we  
16 would like in the order, one thing in  
17 particular that we agreed to, and that is  
18 that there be an instruction to Mr. von  
19 Kahle that he sit at one time with  
20 Mr. Jacob, that he sit with Mr. Sullivan  
21 and he sit with Ms. Smith, the three  
22 people remaining who were at one point in  
23 time managing general partners of the  
24 various entities to gather information  
25 from them that may assist him in carrying

1 out his receivership slash conservatorship  
2 and that he otherwise will gather facts.

3 It will be up to him to determine  
4 whether or not to pursue the lawsuits that  
5 exist when he makes his investigation. It  
6 will be up to him in terms of the -- well,  
7 in terms of the distribution of the funds,  
8 I supposed if there is a -- there is a dec  
9 action pending right now in terms of how  
10 the money would be distributed, whether it  
11 be distributed on one basis or another,  
12 and that can be the basis of determining  
13 how the funds are ultimately distributed  
14 that are to come in from New York, some of  
15 which are in Ms. Chaitman's possession,  
16 and that the receiver slash conservator  
17 have immediately access to all of the  
18 books and records and funds and properties  
19 of the partnerships, and that he  
20 otherwise, you know, preserve and protect  
21 and if he deems necessary, enhance the  
22 assets of the partnerships.

23 I think you had a comment you wanted  
24 to make about it?

25 THE COURT: Let me ask you for

1 clarification with regard to the  
2 declaratory relief on how the funds  
3 received will be carved and distributed.  
4 That would still be for the Court.

5 MR. SAMUELS: That would still be for  
6 the Court.

7 THE COURT: So, when do you think you  
8 will be prepared to go forward on that  
9 issue?

10 MR. SAMUELS: I can't -- that  
11 shouldn't take that long. That's just  
12 really a legal determination.

13 THE COURT: You all haven't addressed  
14 that yet?

15 MR. PUGATCH: Your Honor?

16 MR. SAMUELS: That's not been  
17 addressed fully yet.

18 MR. PUGATCH: Your Honor, if I may?  
19 Chad Pugatch on that one, because I've  
20 been the most involved from the beginning  
21 of this.

22 I think the anticipation was that the  
23 Court -- and we -- no one wants that  
24 responsibility without a court order that  
25 would resolve it. If it can't be done by

1       agreement, then obviously you need to take  
2       evidence on that and there would be legal  
3       issues that would have to be briefed to  
4       you.

5               THE COURT:   When?

6               MR. PUGATCH:  To answer when that  
7       could be done, I think Mr. von Kahle has  
8       to be involved in that process, so --

9               THE COURT:  I don't see why.  I mean,  
10      only marginal.  He's -- he's -- he has no  
11      stake in it.

12              MR. SAMUELS:  The -- the --

13              THE COURT:  I mean, to me, he was  
14      there to do two things; to obviate the  
15      necessity of addressing elections any  
16      further, addressing whether either or both  
17      of the elections that have taken place  
18      were validly conducted, and the results  
19      therefore are also valid results.

20              This would moot out all of it,  
21      correct, Mr. Samuels?

22              MR. SAMUELS:  My view is, it would  
23      moot that out, yes.

24              THE COURT:  Mr. Reynolds, do you  
25      agree?

1 MR. REYNOLDS: As long, Judge, as  
 2 by -- here's what the problem, one of the  
 3 problems that's going to come up, Judge.  
 4 I assume that Ms. Smith is going to ask to  
 5 be paid for her time so far. We don't  
 6 want her election to serve as some sort of  
 7 obstacle if our client or Mr. von Kahle  
 8 wish to object to her fees for any reason.  
 9 So, what we had discussed was agreeing  
 10 that the elections are contested, but just  
 11 setting the issue aside, leave it at  
 12 status quo, sort of --

13 THE COURT: That's fine.

14 MR. REYNOLDS: Okay.

15 THE COURT: That's -- it makes them  
 16 moot, because at this point all of the  
 17 parties to this litigation, which  
 18 apparently is all interested parties at  
 19 this time unless someone should come  
 20 forward and suggest by motion that that's  
 21 not the case and seek relief from the  
 22 court order, that you all at this point  
 23 have put aside and therefore mooted the  
 24 necessity of any further judicial  
 25 involvement in the integrity of either of



1       those elections.  You've agreed that this  
2       gentleman, Mr. von Kahle, will act as a --  
3       right now I prefer to call him a  
4       conservator.

5               MR. REYNOLDS:  Certainly.

6               THE COURT:  There is a negative  
7       connotation to the word "receiver,"  
8       particularly since you have agreed that we  
9       really need to look more toward the  
10      authority granted to this person and  
11      you're saying to me that you've agreed  
12      that he shall have all of the powers and  
13      duties granted to a general partner, a  
14      managing partner of both of these  
15      entities.

16              Okay.  What else is there?

17              MR. REYNOLDS:  So long, Judge, as  
18      nobody can use the election results to  
19      their advantage either way.  We're just  
20      saying --

21              THE COURT:  Well, it's without  
22      prejudice.  It's without prejudice from  
23      the position in the underlying litigation  
24      that anyone may assert, correct?

25              MR. REYNOLDS:  That's your word.

1 MR. SAMUELS: That's fair.

2 MR. REYNOLDS: That's your word,  
3 Judge.

4 Again, my clients' concern was, they  
5 didn't want Ms. Smith to come in and say,  
6 I was elected general partner. You can't  
7 contest the elections now, so you have to  
8 pay me.

9 THE COURT: Well, that's --

10 MR. REYNOLDS: We don't want --

11 THE COURT: It's without prejudice.

12 MR. REYNOLDS: Yes, sir.

13 THE COURT: Okay.

14 Now, I mean, ultimately, the issue  
15 will be whether the work she did was for  
16 the benefit of the partnership, and if so,  
17 what reasonably she should be paid for  
18 that work?

19 MR. REYNOLDS: I agree, Judge, and  
20 ultimately I believe that's the Court's  
21 decision to make if someone did choose to  
22 object to her fees depending on how --

23 THE COURT: We're all on the same  
24 page.

25 MR. REYNOLDS: Yes, sir.

1 Thank you.

2 THE COURT: Okay.

3 Now, so that I go back to this  
4 question, which is the one you -- because  
5 I -- and I am trying to determine that.  
6 Are you trying to get this accomplished in  
7 the first quarter of 2013, the dec  
8 action?

9 MR. SAMUELS: I think that --

10 THE COURT: The second quarter of  
11 2013?

12 MR. SAMUELS: I think as soon as  
13 practicable. And the reason why I think  
14 the receiver slash conservator, without  
15 calling him a conservator, might need to  
16 be involved is because the partnerships  
17 are the named Plaintiffs in those cases,  
18 so these by necessity are going to have  
19 some involvement. It could be just  
20 limited. All he might do is say, Judge,  
21 here I am, tell me what to do, but he's  
22 going to have at least some tutelage, you  
23 know, some tutelar involvement.

24 THE COURT: Right.

25 MR. SAMUELS: That's all.

1 THE COURT: Minimally involved.

2 MR. SAMUELS: Right.

3 THE COURT: Not on merits.

4 MR. SAMUELS: Okay.

5 MR. PUGATCH: And, Judge, if I may?

6 The point I was trying to make before  
7 included the fact that each one of the  
8 partners -- these are, and it's kind of  
9 unusual for this kind of business entity,  
10 but these are general partnerships, and  
11 therefore, all of the general partners of  
12 both partnerships were served with the dec  
13 action, and they at least need to have the  
14 opportunity after notice to file  
15 appearances and participate.

16 THE COURT: What is the status of  
17 service of process on that?

18 MR. PUGATCH: That, I don't know,  
19 because Ms. Rotbart was the one that was  
20 handling that. She's not here today, so  
21 I'm not sure whether -- what the status is  
22 of service, but that was my only concern  
23 in terms of timing was to make sure that  
24 we give due process and therefore once a  
25 ruling is made, nobody can come back later

1 and say, I didn't know. I didn't have an  
2 opportunity.

3 THE COURT: All right.

4 Let's return to the settlement then.

5 Is anything further on what you've  
6 agreed to?

7 MR. SAMUELS: No.

8 THE COURT: Really, at this point,  
9 the person is to take control of the funds  
10 and the books and records of the company,  
11 and there's really nothing else to be done  
12 until analyzing what else Mr. von Kahle  
13 thinks needs to be done and then to get  
14 permission of the Court to do it.

15 I assume he'll be consulting with the  
16 parties, and if there is no dispute I'll  
17 get an agreed order, and if there is a  
18 dispute I'll be notified, and I'll give  
19 you priority in here as quickly as I  
20 possible can, which will usually be  
21 immediately.

22 MR. SAMUELS: And we do think it's in  
23 everybody's best interest to move the dec  
24 action quickly so that there can be a  
25 determination in terms of what to do with

1 the proceeds. It's just a matter of  
2 jumping through hoops and getting it to  
3 the Court's attention.

4 THE COURT: Anything further on what  
5 you are announcing is agreed?

6 MR. REYNOLDS: Your Honor, Mr. Moss  
7 is the largest partner of the P&S  
8 partnership. He had asked to be added to  
9 the list of people that Mr. von Kahle be  
10 directed to speak with directly. I don't  
11 think that's a problem.

12 MR. SAMUELS: That's fine. I suspect  
13 he'd want to do that too.

14 MR. REYNOLDS: I think so as well.

15 MR. SAMUELS: And Mr. Stapleton would  
16 want to be chatted with as well.

17 THE COURT: Well, let's leave it this  
18 way. Within reason, anyone that the  
19 parties believe would be in the best  
20 interest of the responsibility of the  
21 conservator of the Court to interview or  
22 consult with would be encouraged to do so,  
23 and he'll exercise his own discretion in  
24 that respect. I'm not going to tell him  
25 who he should talk to and who he

1       shouldn't.

2               MR. REYNOLDS: Well, I think, Judge,  
3       some -- I can tell you from my clients'  
4       side there are a couple of people that  
5       want to make sure that he speaks with  
6       them. Look, I think he's going to do it  
7       anyway.

8               THE COURT: All right.

9               We have to be careful now.

10              MR. REYNOLDS: Yes, sir.

11              THE COURT: Because you're going to  
12       run up the meter.

13              MR. REYNOLDS: Good point as well.

14              THE COURT: The idea is not to try to  
15       persuade him. I mean, I don't want you to  
16       try to one up each other on the number of  
17       persons and the amount of time spent to  
18       condition him on one side -- if there are  
19       camps -- on one side or the other on an  
20       issue. Let's try to avoid that, please.

21              MR. SAMUELS: As far as I'm  
22       concerned, he's a conservator and he's  
23       going to have to use his discretion --

24              THE COURT: Correct.

25              MR. SAMUELS: -- in terms of what to

1 do.

2 THE COURT: Correct.

3 Correct.

4 Well, okay.

5 Well, here's what I want to do then,  
6 because I think the case demands it and  
7 you've agreed it's required, is to -- I  
8 need a status report on the dec action  
9 with regard to service of process and when  
10 you believe that we can conduct a case  
11 management conference and when you believe  
12 you can be ready for trial. Because in  
13 part I hope to basically convert what  
14 we're doing today into a mini-case  
15 management conference to put a structure  
16 in place on setting a date for the dec  
17 action and all of the typical deadlines  
18 that flow from that, when you can complete  
19 discovery. Although I don't know how much  
20 of this is really evidence-based as  
21 opposed to pure looking at the documents  
22 and the law.

23 MR. SAMUELS: I can't speak for  
24 everybody, obviously, and I'm just  
25 speaking from my own professional



1 judgment. It appears to me that you look  
2 at the documents and apply the law.

3 MR. PUGATCH: I would tend to agree  
4 with that, Judge. There are recognized  
5 different theories of how you approach  
6 distribution.

7 THE COURT: We've got time. I've got  
8 time in February. March looks not great,  
9 not great, but possible.

10 February, I mean, because I just  
11 conducted my calendar call for the first  
12 quarter of the next year. It's going to  
13 be hitting the ground running for sure,  
14 but I do -- in February it looks like I've  
15 got some flexibility.

16 So, as you're moving forward, right  
17 now March would be looking difficult.  
18 Probably we would be looking at April if  
19 you can't get it done by February.

20 MR. REYNOLDS: And, Judge, just so I  
21 can be clear on the record, I was only  
22 retained for the limited purpose of the  
23 issues that are before the Court today. I  
24 don't know that I'm going to be continuing  
25 representing the various partners that I

1 represent as we go forward.

2 So, Your Honor, if I'm not back, it's  
3 not because I don't want to see Your Honor  
4 or anybody else in the courtroom, but I  
5 may not be here because there may be some  
6 issues between the people that I represent  
7 that may prohibit me ethically from being  
8 able to represent all of them or any of  
9 them.

10 THE COURT: All right. Thanks for  
11 letting me know that.

12 MR. REYNOLDS: Certainly.

13 THE COURT: All right.

14 For now, anything else, Mr. Samuels?

15 MR. SAMUELS: There are two other  
16 cases as you are aware of, and we've been  
17 given permission to transfer them over. I  
18 don't know where they are in the process.  
19 It may have started today or not. But we  
20 envision those cases to be on your lap  
21 formally.

22 We're going to have to file a motion  
23 with -- Judge O'Connor has got one of  
24 them, I'm not sure who else -- and just  
25 get them moved here, whatever that process

1 is.

2 There's been no service made, and  
3 those cases are going to be in the hands  
4 of --

5 THE COURT: Well, what I'd like you  
6 to do --

7 MR. SAMUELS: -- a conservator.

8 THE COURT: -- is as soon as you walk  
9 out this door, go see Susie. Tell her  
10 what they are. She'll prepare the  
11 transfer stuff --

12 MR. SAMUELS: Okay.

13 THE COURT: -- and work with the  
14 judges who have them to get them --

15 MR. SAMUELS: Oh, good.

16 THE COURT: -- up to Judge Tuter to  
17 have him transfer them to me.

18 MR. SAMUELS: If we can avoid a  
19 hearing, that would be wonderful. So,  
20 we'll talk to Susie.

21 THE COURT: I assume there's no  
22 objection?

23 MR. SAMUELS: It doesn't look that  
24 way.

25 THE COURT: All right.

1 Well, if there is anyone who is  
2 representing a party in one of those cases  
3 who is not here, I'm going to ask that you  
4 consult with them.

5 MR. SAMUELS: Okay.

6 I believe one of the cases is ripe  
7 for that, and one of the other cases is  
8 going to need some further discussion.

9 THE COURT: All right.

10 Very good.

11 Very good.

12 Anything else then, Mr. Samuels?

13 MR. SAMUELS: No.

14 THE COURT: Mr. Reynolds?

15 MR. REYNOLDS: I don't think so.

16 Are we good?

17 I think we're good, Judge.

18 THE COURT: Okay.

19 Mr. Pugatch?

20 MR. PUGATCH: Nothing here.

21 Thank you, Judge.

22 THE COURT: Well, thanks for your  
23 hard work. I know this was not the  
24 easiest to address. Thank you for getting  
25 it done.

1           You have a good holiday.

2           MR. SAMUELS: Thank you. You too,  
3 Judge.

4           MR. REYNOLDS: Thank you, Judge.

5           MR. PUGATCH: Same to you, Judge.

6           (The proceedings were concluded at  
7 2:35 o'clock, p.m.)

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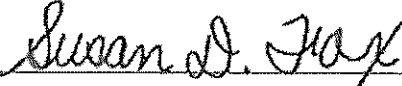
THE STATE OF FLORIDA       )  
COUNTY OF BROWARD       )

I, Susan D. Fox, Florida Professional  
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Notary Public - State of Florida  
My Commission EE090684  
My Commission expires 5/15/2015

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

CASE NO. 12-24051(07)

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,  
vs.  
MICHAEL D. SULLIVAN, individually,  
Defendant.

HEARING BEFORE THE HONORABLE JEFFREY E. STREITFELD

Tuesday, December 18th, 2012  
10:10 a.m. - 11:43 a.m.

201 Southeast Sixth Street  
Courtroom 970  
Fort Lauderdale, Florida 33301

Susan D. Fox, Florida Professional Reporter  
Notary Public, State of Florida

1 APPEARANCES:

2 ON BEHALF OF THE PLAINTIFFS:  
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21 ALSO PRESENT:

22 BRETT STAPLETON  
23 STEVE JACOB  
24 BURT MOSS  
25 SCOTT HOLLOWAY  
MATTHEW CARONE  
ELAINE ZIFFER



1           (Therefore, the following proceedings  
2       were had.)

3           THE COURT: Good morning, everybody.  
4           Announce your appearances for me,  
5       please.

6           MR. SAMUELS: Leonard Samuels of  
7       Berger Singerman on behalf of the  
8       Plaintiffs.

9           THE COURT: With who?

10          MR. WEBER: Steven Weber on behalf of  
11       the Plaintiffs.

12          MR. SAMUELS: And with me is Brett  
13       Stapleton.

14          THE COURT: Thank you.

15          MR. REYNOLDS: Good morning, Your  
16       Honor.

17          Robert Reynolds, Slatkin & Reynolds.  
18       I represent a number of the partners in  
19       this case. They were all named as  
20       Defendants in the interpleader action that  
21       was initially filed in the Palm Beach  
22       Circuit Court. It was then transferred  
23       down here.

24          With me at Counsel's table is Steve  
25       Jacob and Burt Moss. They both represent

1       entities that are partners in these  
2       various partnerships.

3               THE COURT:   Okay.

4               MR. REYNOLDS:  Scott Holloway is in  
5       the courtroom as well, Judge.  He's  
6       another of the -- Mr. Holloway is in the  
7       tan suit here, Your Honor.

8               THE COURT:   Okay.

9               MR. REYNOLDS:  He's another  
10      representative of some of the various  
11      partnerships.

12              Instead of going through the names,  
13      when I put them on the witness stand,  
14      assuming we get that far today, I'll ask  
15      them to identify all of the entities that  
16      they are here representing.

17              THE COURT:   Okay.

18              MR. PUGATCH:  Good morning, Your  
19      Honor.  Chad Pugatch representing  
20      Mr. Sullivan.

21              Originally, when this lawsuit was  
22      originally filed, we entered into the  
23      agreed order.  I'm not sure at this point  
24      if that's the focal point of what's going  
25      on or that he's the real party at interest

1 as to this motion, but I'm here because  
2 I'm still counsel of record.

3 THE COURT: Thank you, sir.

4 MR. ROSEN: Good morning, Your Honor.

5 Gary Rosen and Helen Chaitman of  
6 Becker & Poliakoff on behalf of P&S, S&P.

7 THE COURT: Okay.

8 MS. DEUTSCH ROTBART: And, Your  
9 Honor, Erika Deutsch Rotbart, who was  
10 hired by Becker & Poliakoff to represent  
11 P&S, S&P in the matter for disposition of  
12 the assets.

13 THE COURT: Okay.

14 All right. Mr. Samuels.

15 MR. SAMUELS: Yes, Your Honor.

16 If I may, I forgot to introduce two  
17 other folks who are here, Matthew Carone  
18 and Elaine Ziffer, who also are the  
19 Plaintiffs.

20 THE COURT: Thank you, sir.

21 The ball is in your court,  
22 Mr. Samuels.

23 MR. SAMUELS: Thank you, Your Honor.

24 We have a motion to appoint a  
25 receiver brought on behalf of certain

1       partners of the S&P partnership and the  
2       P&S partnership.

3           By way of brief background,  
4       investments were made in these  
5       partnerships from 1992 through December of  
6       2008 when Madoff was uncovered. The  
7       partners had tried to get documents after  
8       that. They tried to meet with  
9       Mr. Sullivan, the then general managing  
10      partner, to no avail.

11           The documents were since obtained,  
12      and Maggie Smith, who is now the managing  
13      general partner of the partnerships  
14      pursuant to this Court's order of August  
15      29th, 2010, has had an opportunity to  
16      review the documents now, and she is going  
17      to testify in support of the motion to  
18      appoint a receivership.

19           What you're going to learn is that  
20      Mr. Sullivan, while he was a managing  
21      general partner, provided payments to  
22      Avellino & Bienis. Avellino & Bienis were  
23      precluded by the Securities --

24           THE COURT: Well, hold on.

25           MR. SAMUELS: -- and Exchange --

1 THE COURT: Hold on a minute.

2 This is not a whether or not you have  
3 stated a cause of action against  
4 Mr. Sullivan --

5 MR. SAMUELS: Right.

6 THE COURT: -- for breaching his  
7 duties. That's not what we're here about.

8 You're asking that I appoint a  
9 receiver. The primary response was, what  
10 do you need a receiver for? They're not  
11 operating.

12 The only thing that the partnerships  
13 are doing is waiting for a decision by a  
14 court on how the funds are going to be  
15 distributed. You don't need to pay a  
16 receiver to do that. You need a  
17 conservator, maybe. And the law firm has  
18 said, we're holding the money. We'll do  
19 whatever the Court says. So, why do we  
20 need a receiver?

21 MR. SAMUELS: Your Honor, I will  
22 explain to you why we need a receiver.

23 First of all, by putting Maggie Smith  
24 on to show not necessarily against  
25 Mr. Sullivan, but to --

1           THE COURT: So that we have an  
2           understanding, I'm only going to receive  
3           evidence on matters that are disputed.  
4           You already are going to try to have me  
5           hear two hours worth of testimony, much of  
6           which will probably be totally  
7           unnecessary.

8           I need to find out what's disputed.  
9           So, is this partnership, other than  
10          holding funds and waiting to hopefully  
11          receive more funds and a determination of  
12          how the funds are going to be distributed,  
13          is this partnership operating?

14          MR. SAMUELS: Your Honor, the  
15          partnership is operating in the sense that  
16          Ms. Smith has gone through all the records  
17          to determine what has transpired.

18          Ms. Smith has since authorized the  
19          filing of two lawsuits on December 10th,  
20          which would be the day before the statute  
21          of limitations arguably ran to bring  
22          claims in connection with the Madoff scam.

23          I would like to put Ms. Smith on  
24          briefly to establish that this was nothing  
25          more than a Ponzi scheme, a fraudulent

1 operation, and that a receiver is needed.

2 THE COURT: Has the suit been filed?

3 The suit's been filed?

4 MR. SAMUELS: Yes.

5 THE COURT: Okay.

6 MR. SAMUELS: They were filed to  
7 preserve rights in accordance with the  
8 statute of limitations, which had  
9 Ms. Smith not been in there, all of those  
10 claims would have gone. In fact, claims  
11 were brought against Mr. Jacob and  
12 Mr. Sullivan --

13 THE COURT: Stop.

14 MR. SAMUELS: -- after a review of  
15 the books.

16 Yes.

17 THE COURT: Relax, Mr. Samuels.

18 Take it easy.

19 MR. SAMUELS: Okay.

20 THE COURT: Those suits have been  
21 filed, so I don't need to necessarily  
22 appoint a receiver and generate  
23 litigation.

24 Where were those suits filed?

25 MR. SAMUELS: Broward County.

1           THE COURT:   Okay.   In what division  
2           are they in?   This one?

3           MR. SAMUELS:   We intend -- we filed  
4           them with a civil cover sheet for the  
5           complex business unit, but for some reason  
6           they were not appropriately --

7           THE COURT:   That happens.

8           MR. SAMUELS:   -- submitted to this  
9           division, so we'll be filing a motion to  
10          bring them here.

11          But when you --

12          THE COURT:   Well, what --

13          MR. SAMUELS:   I'll listen.

14          THE COURT:   Take it easy.

15          If the cases are mine, I can do with  
16          them what I think should be done.

17          One of the primary disputes in here  
18          is whether those suits were authorized or  
19          not, but it would appear to me, whether  
20          you're a net winner or a net loser, all of  
21          the partners would have an interest in the  
22          suit, but if there's a dispute over  
23          whether the suit should have been filed or  
24          whether it should be pursued or who should  
25          handle it and what budget should be set



1       aside for it, we can deal with that.

2           A receiver is, forgetting about the  
3       fact that it's grasping -- it's when you  
4       have an operating entity. You have -- it  
5       employs people. It's doing business. It  
6       either wants to continue to try to do  
7       business, or at least it has to wind down  
8       its business in an orderly fashion. So  
9       far, from what I see, that's not what this  
10      is about.

11           This is not -- this is -- this is, to  
12      my understanding, not a partnership that's  
13      continuing to invest money. It has to  
14      make sure that the investments that it has  
15      invested in are properly managed, they  
16      sell what it needs to sell, to buy what it  
17      should buy for the interests of the  
18      investors. That's not what's happened, is  
19      it?

20           MR. SAMUELS: No.

21           THE COURT: Okay.

22           MR. SAMUELS: That's not what's  
23      happened.

24           THE COURT: So, other than this  
25      litigation, what other business are these

1 partnerships operating?

2 MR. SAMUELS: They have to wind down  
3 and distribute funds appropriately.

4 Ms. -- well, let me talk about the  
5 litigation and why it's important to have  
6 a receiver.

7 Ms. Smith is the managing general  
8 partner. That has been contested. They  
9 have now tried to have another vote to  
10 bring in their own person, which is a  
11 whole separate issue.

12 So, there's a huge dispute --

13 THE COURT: A not insignificant  
14 issue.

15 MR. SAMUELS: Correct.

16 So, there is a huge dispute right now  
17 among various people in the partnership in  
18 terms of what should happen and how it  
19 should happen. It's a deadlock.

20 So, two things I'd like to point out  
21 to you. We've provided cases that when  
22 there's a deadlocked situation --

23 THE COURT: I didn't --

24 MR. SAMUELS: -- a receiver--

25 THE COURT: I have no evidence that

1       there's a deadlock. In fact, I don't even  
2       recall that being --

3               MR. SAMUELS: Well --

4               THE COURT: -- suggested.

5               MR. SAMUELS: Well, when I talk about  
6       a deadlock, Your Honor, you can look here  
7       and see what has transpired. We have some  
8       partners on one side, other partners on  
9       another side.

10              Let me tell you what else we have.  
11       We have a vote and a court order which has  
12       not been challenged, authorizing Maggie  
13       Smith to be the managing general partner.

14              They held a vote yesterday as to one  
15       of the partnerships, kicking her out and  
16       putting in Mr. Jacobs.

17              THE COURT: Stop.

18              MR. SAMUELS: So, there --

19              THE COURT: Stop.

20              How much coffee did you have?

21              One cup too many.

22              MR. SAMUELS: Actually, I don't --

23              THE COURT: You really --

24              MR. SAMUELS: -- drink coffee. I  
25       know it's hard to believe.

1 THE COURT: Well, that's a good  
2 thing. You're really ratcheted up.

3 Okay. Is it fair to say that this is  
4 basically a dispute between the net  
5 winners and the net losers? Is this what  
6 I have here?

7 MR. SAMUELS: No. There are -- no.  
8 I don't think that's what you have.

9 THE COURT: Okay. Well --

10 MR. SAMUELS: I think what you have  
11 are people who are allied with  
12 Mr. Sullivan and Mr. Jacobs who, we can  
13 present evidence, were doing nothing more  
14 than running a Ponzi scheme.

15 New investor money was coming in. It  
16 was not going to Madoff. Instead, it was  
17 going to pay other investors. There are  
18 management fees that were taken not in  
19 accordance with the agreement the way it  
20 was supposed to be done at -- willy-  
21 nilly. That makes no sense.

22 Ms. Smith has spent a lot of time  
23 going through all of this to understand  
24 this. So, this is the problem we have  
25 with the litigation. Okay?

1           Ms. Smith will testify she has  
2           already had people contact her about  
3           reaching settlements to bring money into  
4           the partnership, none of which will  
5           happen, absent Ms. Smith. So, we can go  
6           on and talk about votes and challenges and  
7           have hearing after hearing after hearing  
8           while everything sits, or we can appoint a  
9           receiver to appropriately wind this down,  
10          because there is clearly a deadlock.

11           What we have here with Mr. Jacob and  
12          Mr. Sullivan is, they were running the  
13          Ponzi scheme and they just -- they want us  
14          out because what we're going to do is  
15          uncover all of that.

16           THE COURT: What's the difference  
17          between a receiver and a conservator,  
18          Mr. Samuels?

19           MR. SAMUELS: Your Honor, I'm not  
20          entirely sure, to be candid with you.

21           I do know that I have experience with  
22          a receiver who is court supervised, which  
23          is why we thought this would be a good  
24          idea --

25           THE COURT: Okay. Stop.

1 MR. SAMUELS: -- because there's --

2 THE COURT: Stop.

3 MR. SAMUELS: Yes.

4 THE COURT: Don't go beyond my  
5 question. You're doing a lot of that.

6 The reason I ask that is, if  
7 ultimately what you're saying is, a person  
8 needs to be appointed because there are  
9 disputes between the partners, not only  
10 with regard to how the funds should be  
11 distributed ,but whether or not it's in  
12 the best interest of the partnerships to  
13 maintain the litigation that's been filed,  
14 and potentially investigate other  
15 litigation that might not otherwise be  
16 time barred. That's not necessarily what  
17 a receiver does. Regardless of how you  
18 label the person, that person would only  
19 do what I authorize that person to do and  
20 only spend the money that I say that  
21 person can spend. So, we're really --  
22 we're talking semantics.

23 Your position is, I should appoint  
24 someone because there is an internal  
25 dispute between these partnerships not

1       only with regard to the distribution of  
2       funds, but apparently primarily right now,  
3       whether that litigation should ever have  
4       been filed, whether it was properly  
5       authorized to be filed and whether it  
6       should continue to proceed, and if so, how  
7       much money should be spent. Is that  
8       correct?

9               MR. SAMUELS: Yes.

10              THE COURT: All of that?

11              MR. SAMUELS: All of that is a  
12       correct statement.

13              THE COURT: All right.

14              So, what I -- what I want to --  
15       because, you see, I know you really can't  
16       wait to put on evidence, but I don't know  
17       that I need to hear any evidence. I don't  
18       know how much there really is to fight,  
19       because I don't know whether either  
20       Mr. Reynolds or Mr. Pugatch or Mr. Rosen  
21       or Ms. Rotbart are going to be able to  
22       tell me that fundamentally, you know what,  
23       Judge? You're probably going to have to  
24       appoint somebody, because we have an  
25       internal dispute, and it's not going to be

1 resolved without spending a heck of a lot  
2 of money. This needs to be under the  
3 Court's control right away.

4 You're having competing meetings.  
5 You had a competing lawsuit. So far  
6 you've gotten both in front of me. Now  
7 I'm going to have at least a couple more.  
8 Thank you. I have job security. I  
9 appreciate it.

10 MR. SAMUELS: Your Honor, what --

11 THE COURT: Mr. Reynolds? Do you  
12 agree that someone should be appointed?  
13 Otherwise you're going to be spending a  
14 lot of partnership money, by the way,  
15 which would be the ultimate irony.

16 Mr. Reynolds? Do you need to talk to  
17 somebody before you respond to me? I'll  
18 give you the time.

19 MR. REYNOLDS: We've had this  
20 discussion already, Your Honor.

21 THE COURT: Okay.

22 MR. REYNOLDS: Here is -- if I may  
23 speak for a moment? I don't want to take  
24 Mr. Samuels's time, but I'd be happy to --

25 THE COURT: Well, I just turned to



1           you.

2           MR. REYNOLDS: Thank you, Your Honor.

3           THE COURT: You have my permission.

4           MR. REYNOLDS: Judge, we did have a  
5           separate meeting yesterday only for the  
6           S&P partnership. Fifty-four percent of  
7           the partners voted, and I have all of the  
8           proxies. I have all of the notices to  
9           call a meeting. I mean, I should say,  
10          Mr. Jacob did not have them with him  
11          yesterday. He's made enough copies where  
12          I can pass them out.

13          THE COURT: This is not really a  
14          response to my question.

15          MR. REYNOLDS: Right. Well --

16          THE COURT: This is like an opening  
17          statement that you're preparing for me.

18          MR. REYNOLDS: Well, now I'm getting  
19          to the response.

20          If that much -- if a majority of the  
21          partnership doesn't want a receiver,  
22          doesn't want Ms. Smith, then I don't know  
23          that there is a management dispute.

24          Having said that, I recognize Your  
25          Honor's question. There's a pile of

1 money. Nobody is ever going to agree on  
2 how that money should be distributed.  
3 There will probably never be a consensus,  
4 I should say, as to how that money will be  
5 distributed. I can't deny that.

6 So, based on that and based on where  
7 I think Your Honor is going, maybe  
8 somebody should be appointed for the  
9 limited purpose, Judge, of just  
10 determining what to do with the money.

11 THE COURT: What about the --

12 MR. REYNOLDS: Not to run out and  
13 turn this into a litigation fund, not to  
14 pay lawyers. They didn't point out  
15 Mr. Black sitting in the crowd, and there  
16 are three Berger Singerman lawyers here  
17 today, Judge. We don't want that.

18 THE COURT: That's one of the things  
19 I love about this division. It's like an  
20 attorney's annuity.

21 MR. REYNOLDS: And we're trying, Your  
22 Honor -- that's why Mr. Moss is willing to  
23 get on the stand, by the way, Judge. He  
24 had hired his own lawyer who already  
25 investigated the claims against Avellino &

1        Bienis. His lawyer told him, don't waste  
2        your time. So, there obviously are  
3        problems we think with all of that stuff.  
4        So, I probably talked myself into the  
5        corner, Judge.

6            They -- maybe somebody should be  
7        appointed. My clients don't think it's  
8        necessary based on what happened yesterday  
9        and that a majority of the partners voted.  
10       But do I recognize, Judge? They're just  
11       going to call another meeting and vote  
12       somebody else in, and they'll try and go  
13       out and garner their own votes. I don't  
14       know that they can do it. But if we're  
15       just going to go back and forth, I don't  
16       think that it's necessary, Judge, based on  
17       what happened yesterday that, at least for  
18       the S&P partnership, fifty-four percent of  
19       the partners, a majority at interest which  
20       the partnership agreement calls for,  
21       ratified the suggestion that Ms. Smith was  
22       never properly voted in and that  
23       Mr. Jacobs should be the managing partner.

24            But I see Your Honor looking down,  
25        and I can see Your Honor is thinking what

1 I sort of presume might happen today.

2 THE COURT: Both camps have  
3 sufficient ammunition to at least  
4 complicate that issue for a long time and  
5 spend a lot of time fighting about it in  
6 and out of court. You would be constant  
7 visitors.

8 MR. REYNOLDS: I certainly can't  
9 dispute that, Your Honor.

10 THE COURT: You know, we'd  
11 probably -- you could probably apply for  
12 your own parking space here.

13 So, you know, what's the point  
14 exactly?

15 I mean, the idea of the division like  
16 this -- that's why we created this  
17 division five years, almost six years ago  
18 now. We created this division to prevent  
19 that where possible, to take control of  
20 the situation and to keep it on track and  
21 not let it go crazy, which it would in a  
22 general division.

23 MR. SAMUELS: And --

24 MR. REYNOLDS: And, seeing -- I'm  
25 sorry, Mr. Samuels. I don't want to --

1       you're still looking at -- the Court's  
2       still looking at me, Your Honor, so I was  
3       just --

4             THE COURT:   It this better?

5             MR. SAMUELS:  If you looked at me,  
6       I'm ready to talk so --

7             THE COURT:  I don't know why you're  
8       still standing there.  That's up to you.

9             MR. REYNOLDS:  If Your Honor -- if  
10      Your Honor is already inclined to go that  
11      route --

12            THE COURT:  Well, no.  I'm just  
13      learning about this.

14            MR. REYNOLDS:  Yes, sir.

15            THE COURT:  We've had one hearing.  
16      I've done a little reading.  That's it.

17            MR. REYNOLDS:  Well, Your Honor has  
18      heard sort of the --

19            THE COURT:  And I'm going to turn to  
20      the folks behind you in a minute.  They  
21      don't have to get nervous.

22            MR. REYNOLDS:  Yes, Your Honor.

23            What I was going to say is, if Your  
24      Honor is going to go that route, we have  
25      issues with Ms. Smith being the receiver

1 in question.

2 We would ask Your Honor --

3 THE COURT: Well, that's the next  
4 thing.

5 MR. REYNOLDS: That would -- and we  
6 would ask Your Honor to appoint somebody  
7 completely independent.

8 Judge, I've been a lawyer long enough  
9 to see where the Court is telegraphing.  
10 Again, we don't think a receiver is  
11 necessary. We think that we can come up  
12 with a plan or that Mr. Jacob can come up  
13 with a plan, but --

14 THE COURT: See, that receiver --  
15 that -- there's something about a label.  
16 That has a very negative connotation, and  
17 that's why I threw out a different label.  
18 It's just someone who the Court appoints  
19 hopefully that you will either agree to  
20 someone or you will give me options and  
21 we'll talk about those options; who can be  
22 objective, who will follow my orders.

23 We have a couple of different areas  
24 we need to address. One, we have to  
25 address the issue of elections and

1 meetings, which hopefully we can do  
2 without an unnecessary expenditure of time  
3 and money and, secondly, whether those  
4 lawsuits should or should not be pursued.

5 My job will be to determine whether  
6 or not there is a sufficient basis to go  
7 forward and whether the partnership assets  
8 should be utilized to do that.

9 Then you have someone objectively  
10 looking at it, no one with an ax to grind  
11 either way, either someone allegedly  
12 aligned with someone who might be targeted  
13 by the litigation, it might either be or  
14 already be a Defendant or might soon be a  
15 Defendant, or someone who is saying, well,  
16 look, I'm a net loser and I don't like the  
17 situation I'm in, and I think I've been  
18 wronged, and I want that ferreted out.

19 So, the best way to control all of  
20 that as far as time and money is to keep  
21 it here. Keep it here. And that's all --  
22 as it is, when I first saw you all, you  
23 had different lawyers and you were  
24 litigating in three venues; New York, Palm  
25 Beach County and Broward County. That

1 doesn't work.

2 MR. REYNOLDS: I think, Judge, based  
3 on the fact that yesterday there was a --  
4 and Mr. Jacob is shaking his head -- there  
5 was a duly-noticed meeting yesterday.  
6 Everybody had the right to attend, and  
7 more than half of the partners, a majority  
8 as the partnership agreement calls, voted  
9 Mr. Jacob --

10 THE COURT: And I'm not ignoring  
11 that, and I'm not saying that that might  
12 ultimately be approved by me, but right  
13 now they are already contesting it.

14 They filed a motion and gave it to me  
15 yesterday -- could it be heard today?  
16 No -- targeting Mr. Sullivan for contempt  
17 with regard to his alleged involvement  
18 with that meeting which was inconsistent  
19 with what he agreed to and what was part  
20 or the court order which, you know, I  
21 can't ignore that either now, can I?  
22 Because if I agree, if I find based upon  
23 the evidence that that did happen, well,  
24 that might affect the integrity of the  
25 meeting, might it not? Because I'm not



1 going to -- I'm not -- agreed or not, it's  
2 an order.

3 I sign an order; it's obeyed. It's  
4 sort of fundamental. So, if I find that  
5 someone violated that order and that  
6 resulted in the meeting outcome, that  
7 meeting may be history, right?

8 MR. REYNOLDS: Certainly.

9 THE COURT: If?

10 MR. SAMUELS: Yes.

11 MR. REYNOLDS: Possibly.

12 MR. SAMUELS: Your Honor, a couple of  
13 points. One is, we were able to locate a  
14 case showing that a receivership is  
15 appropriate to, in this case, preserve a  
16 single asset pursuant to the winding up of  
17 its affairs, so receiverships can happen  
18 in the winding up of affairs, and that  
19 would be --

20 THE COURT: You've got this big "R"  
21 on your chest, don't you?

22 MR. SAMUELS: I do.

23 THE COURT: If you would change it to  
24 a "C", then --

25 MR. SAMUELS: And let me -- let me

1 tell you why, and I admittedly did not  
2 know the distinction completely and so I'm  
3 not really prepared to address that, but I  
4 do think a receiver is appropriate for  
5 winding down the affairs.

6 What has been uncovered here -- and  
7 we may or may not have an opportunity to  
8 put evidence in -- is really shocking, and  
9 Ms. Smith's been --

10 THE COURT: This is -- no. Sorry.

11 Have a seat, Mr. Samuels.

12 MR. SAMUELS: Yes.

13 THE COURT: I still need to hear from  
14 Mr. Pugatch and Mr. Rosen on this issue.

15 MR. PUGATCH: Thank you, Your Honor.

16 THE COURT: Because if the consensus,  
17 grudgingly, is going to be, yup, we're  
18 going to have to have somebody appointed,  
19 I'm going to give you all a chance to tell  
20 me who you think it might be.

21 MR. SAMUELS: And, Your Honor, may I  
22 just make one other point --

23 THE COURT: Sure.

24 MR. SAMUELS: -- in terms of this?

25 There has been pointing about Berger

1       Singerman lawyers and this and that.  
2       Mr. Black is here because he did run the  
3       vote. To the extent the Court ever wanted  
4       to hear anything about it, he would just  
5       be here. I -- that's not -- that's  
6       probably beyond what we want to get into.

7             Berger Singerman has not been paid by  
8       the partnership. Not a single penny out  
9       of partnership funds. So, the accusations  
10      that we have three lawyers here, four  
11      lawyers here, everything else, I just  
12      want --

13            THE COURT: So, this is --

14            MR. SAMUELS: -- to put that on the  
15      record.

16            THE COURT: -- your application for  
17      pro bono counsel of Broward County for the  
18      year? What a guy.

19            MR. SAMUELS: I didn't exactly say  
20      that, but --

21            THE COURT: Oh. Well, I  
22      misunderstood.

23            MR. SAMUELS: -- as of now, we've not  
24      been paid any partnership funds, and I  
25      just want that to be on the record.

1           The other thing I'd say about  
2           Ms. Smith; same for Ms. Smith. Ms. Smith  
3           has put in so much time into uncovering  
4           what's happened here. She's been a  
5           receiver appointed by Your Honor on two  
6           different occasions. Glatz Ratner is  
7           incredibly competent and experienced in  
8           doing this, and she's uncovered a lot that  
9           could assist the Court in managing this,  
10          whether as a receiver or a conservator.  
11          But a conservator to me tells me that  
12          they're just going to sit back and watch  
13          things happen, where we need someone to  
14          really act proactively, potentially to  
15          preserve the assets and increase the  
16          assets potentially.

17                THE COURT: Okay. I want you to  
18                understand something. This will be aired  
19                out, but it has to be done in an orderly  
20                fashion.

21                I've got a lot of time in the first  
22                week in January. A lot. I've got plenty  
23                of time in January, I'm sure, because I  
24                have a three-month trial docket, and do  
25                you know how many people who are on a

1 three-month docket that begins in January,  
2 February and March are going to be ready  
3 in January?

4 MR. SAMUELS: Okay.

5 THE COURT: I mean, I could make a  
6 lot of offers that some people might not  
7 refuse. They would still refuse it if  
8 it's the first couple of weeks in January.

9 MR. SAMUELS: Okay.

10 THE COURT: So, we will do that, but  
11 there has to be some organization and some  
12 structure to make this barely livable to  
13 anybody.

14 Okay. Now, Mr. Pugatch, what is your  
15 position on the propriety under the  
16 circumstances? Am I appointing someone  
17 regardless of the label to be my arm to  
18 assist me in determining what should be  
19 done in maintaining control of the  
20 situation?

21 MR. PUGATCH: Yes, Judge.

22 I would say on behalf of Mr. Sullivan  
23 in his capacity as the former managing  
24 partner, because I'm here in that capacity  
25 and with regard to this order, that the

1 whole reason Mr. Sullivan consented to  
2 this order was to save the partnerships  
3 money.

4 He did not want to see the  
5 partnership funds dissipated in  
6 litigation. He didn't say, if you think I  
7 did something wrong don't sue me, but the  
8 question is whether the partnership should  
9 be doing this and spending money that  
10 would otherwise be divided among the  
11 partners when you have some partners that  
12 favor this procedure? Some don't.

13 I don't think it's strictly along net  
14 winner/net loser lines, but that's  
15 certainly part of it.

16 In addition, you have since the  
17 appointment of Ms. Smith, claw back demand  
18 letters being made against net winners,  
19 some of whom haven't been partners for  
20 years. I don't know with my understanding  
21 of insolvency law that the managing  
22 partner of the partnerships has standing  
23 to bring claw back litigation, but  
24 partnership resources are being used to  
25 pursue that. I see this going nowhere but

1 bad and more money being spent unless  
2 somebody steps in and takes control.

3 I have every confidence in the Court  
4 taking control of this and sorting it out  
5 piece by piece in the right manner. If  
6 the Court feels that a conservator would  
7 assist in that process, than I don't think  
8 it's the worst thing in the world,  
9 although I think that the partnership  
10 rights need to be respected as to S&P, and  
11 you have not said anything to the  
12 contrary.

13 They don't have the vote as to P&S,  
14 so P&S is out there kind of still  
15 floundering under these issues.

16 I will say also, Judge, I understand  
17 Mr. Sullivan agreed to an order. It's  
18 your order. He would not dispute that at  
19 all.

20 I will tell you after reading that  
21 motion yesterday and the affidavit, I saw  
22 it at about eight o'clock this morning,  
23 and reading the order, I don't think that  
24 he's done anything to violate that order,  
25 and we're happy to air that out in front

1 of you so that you're satisfied in that  
2 regard.

3 That order never precluded there  
4 being a new election, and specifically in  
5 that order it said that Ms. Smith would  
6 serve --

7 THE COURT: Well, you don't have to  
8 do that. It's an accusation.

9 If I made decisions based upon  
10 accusations, I should be impeached.

11 MR. PUGATCH: Judge? And I've known  
12 you long enough and been in front of you  
13 to know that you don't do things that way.

14 THE COURT: No.

15 MR. PUGATCH: And we have every  
16 confidence in your resolving this in a  
17 fair manner and doing the right thing.

18 I only point out that, again, more  
19 partnership resources being expended on  
20 things that don't really further the  
21 ultimate goal that Ms. Chaitman and her  
22 firm worked very hard on and I worked very  
23 hard on for years, which is to make sure  
24 that these partnerships had the maximum  
25 recovery coming back from Madoff, and that



1       the maximum amount of that got back to the  
2       partners where it belongs.

3             The formula for doing that a court  
4       has to decide. No party here wants to  
5       take that responsibility.

6             THE COURT: You know, really, what I  
7       have seen here in the last four or five  
8       years is people -- everybody is a loser,  
9       whether it's the bank, the investors. And  
10      they've spent a lot of time and money -- a  
11      lot of time and money fighting over who  
12      should bear the proportionate share of the  
13      lost money.

14            Well, here, that's the irony. You're  
15      spending money fighting over money you  
16      actually got back. That makes no sense at  
17      all. I mean, it makes no sense at all.

18            And this claw back issue -- I just  
19      got back from D.C. It was the annual  
20      meeting of the -- it's the national group  
21      of business court judges, and that was a  
22      big word, that "C" word, that claw back  
23      word. They were kicking that around,  
24      because it's -- it's -- there's a lot of  
25      cutting edge stuff going on right now

1       because of the massive losses sustained  
2       across the globe, and that's an issue  
3       that's -- thank you for bringing this to  
4       me. I really appreciate it.

5             Okay. Mr. Rosen, what's your  
6       position?

7             MR. ROSEN: Your Honor, we don't have  
8       a deadlock here; we have a contest. We  
9       have two elections that have now taken  
10      place as recently as yesterday, and  
11      they're both contested.

12            In our view, a receiver -- certainly  
13      not a receiver, and we don't believe a  
14      conservator is necessary. We don't  
15      believe anyone other than this Court is  
16      really necessary in order to do the labor  
17      that's required in order to ferret out the  
18      truth of what's going on here and how this  
19      should move forward.

20            We need -- the partnerships need a  
21      managing partner endowed with this Court's  
22      perimeter and authority without further  
23      contest to go forward with such litigation  
24      as that managing partner deems  
25      appropriate, or to not go forward with

1        litigation in order to marshal the assets  
2        and take such steps as are necessary in  
3        order to distribute the funds, advisedly,  
4        with the Court's guidance with respect to  
5        how those funds should be distributed  
6        between net winners, net losers or anybody  
7        else.

8                THE COURT: Well, what about -- I  
9        understand the merit of that position on  
10       the money, but what about the lawsuits  
11       that were filed and whether they should be  
12       pursued or not and whether any others  
13       should be filed?

14               MR. ROSEN: That's the job of a  
15       managing partner, Your Honor, and once a  
16       managing partner is determined with this  
17       Court's stamp of approval on that managing  
18       partner, then it is that person's  
19       fiduciary responsibility to make those  
20       decisions, difficult or not, with respect  
21       to how the assets of the partnerships  
22       should be preserved or causes of action  
23       should be pursued on behalf of the  
24       partnerships. That is that person's job.

25               Once that person stands in front of

1       the Court as the person with authority to  
2       represent the partnerships' interests and  
3       pursue those claims, then we'll know that  
4       the dust has cleared and those claims are  
5       being pursued. But until we have that  
6       person in place, then the decisions can't  
7       be made.

8               We don't believe that either a  
9       receiver or a conservator is really  
10      necessary in order to make those  
11      decisions. We need someone with  
12      authority.

13             THE COURT: Well, how would I achieve  
14      that then?

15             MR. ROSEN: Well, no doubt, there  
16      needs to be a hearing before Your Honor  
17      perhaps as early as January, where issues  
18      -- there are really two choices here;  
19      either, A, the elections -- well, three;  
20      the initial election appointing Ms. Smith  
21      is contested and Ms. Smith is reaffirmed  
22      as the proper managing partner or she is  
23      not; B, the election that was held  
24      yesterday under contest stands as a new  
25      election and that election is determined

1 to be proper, authorized, duly noticed,  
2 and we now have a new managing partner for  
3 the S&P partnership or, C; a new election  
4 is held under this Court's guidance,  
5 perhaps under the auspices of a general  
6 master, but we don't believe necessarily  
7 under a conservator or a receiver.

8 THE COURT: You can only have the two  
9 on the test.

10 MR. ROSEN: A G.M., and in that event  
11 a new election is held to determine it  
12 once and for all.

13 THE COURT: What about the other  
14 partnership?

15 MR. ROSEN: There has been no  
16 challenge to -- there has been a challenge  
17 to Ms. Smith with respect to P&S. There's  
18 been no new election with respect to P&S,  
19 so if in fact the election that puts  
20 Ms. Smith in the position of managing  
21 partner with respect to P&S is  
22 successfully challenged, then there needs  
23 to be a new managing partner determined.

24 THE COURT: All right.

25 So, now that you've all said that,

1       how does that sound now that that all came  
2       out? Does that sound --

3               MR. ROSEN: It's messy. It's  
4       absolutely messy. There's no question  
5       about it.

6               Anything that we do, Your Honor --  
7       let's face it, anything that we do -- and  
8       certainly appointing a receiver is going  
9       to be messy because a receiver is going to  
10      be -- well, we know what a receivership is  
11      going to beget, and I don't think most  
12      people in this courtroom want to see the  
13      mess that's going to follow from the  
14      appointment of a receiver and all of the  
15      perhaps unnecessary activity incurring the  
16      fees and the maelstrom that will result  
17      from the appointment of a receiver.

18              THE COURT: Thank you.

19              I'm not a big fan of receiverships at  
20      all. I've done experiments. In fact,  
21      even when November 1st, 2009 rolled around  
22      and I was in the middle of a tobacco trial  
23      and the Rothstein firm filed its motion to  
24      appoint a receiver, my initial reaction  
25      one day was, no, I'm going to give maybe

1       Stu Rosenfeld a chance to run the firm.

2           The following day I said, nope,  
3       that's not a good choice, and I appointed  
4       Herb Stettin instead, and he's still doing  
5       a lot of work there, three years later in  
6       a different capacity. He's a trustee  
7       instead of a receiver. So, that's one of  
8       the few times I can think of when I  
9       appointed one.

10           I see two areas of concern that  
11       unless I can control it I think it will go  
12       out of control. And I appreciate your  
13       point of view, but even you acknowledge,  
14       you know, this doesn't sound great now  
15       that I've said it, because it's going to  
16       be -- there are layers of activity that  
17       will involve lots of lawyers, and you're  
18       going to end up fighting about it and  
19       coming in and talking to me about it.

20           I'll have lost control of it. I'll  
21       have -- I'll have to try to get my arms  
22       around it again. Right now I have it.

23           We can put a structure in place on  
24       how we're going to address this issue of  
25       meetings. I may just -- I may just order

1       that new meetings be held clean under the  
2       Court's control. I may. I'm saying  
3       "may," and independently conduct a hearing  
4       where partners are permitted to attend or  
5       their lawyers are permitted to attend to  
6       air out whether or not it makes sense for  
7       the partnership to continue to spend money  
8       on these lawsuits that were filed.

9               So, everybody's got some level of  
10       comfort that there's a structure in place,  
11       number one, that we're not running in  
12       separate directions and, number two, that  
13       there's some objectivity overseeing this  
14       so that the varying views are being aired,  
15       but there's some control over it.

16              There is no perfect solution to the  
17       problem, but so far I -- I'm still --  
18       that's where I'm inclined to go with this.

19              MR. SAMUELS: Yes, Your Honor.  
20       That's the reason why we filed a motion to  
21       appoint a receiver, because we believe the  
22       votes are good. We recognize they've been  
23       contested. We could be here forever doing  
24       that.

25              In the meantime, the statute of



1 limitations was running, so we had no  
2 alternative but to file suits to preserve  
3 rights of the partnership, which we did,  
4 which would not have been done without  
5 Ms. Smith.

6 Make no mistake about it. This is --  
7 this is --

8 THE COURT: So we have an  
9 understanding --

10 MR. SAMUELS: Yes.

11 THE COURT: -- because I've  
12 already -- I already have this.

13 I mean, I think Rothstein would have  
14 relayed this stuff by way of example.  
15 It's going to be here after I'm gone.  
16 I've got two more years and I'm done. I  
17 have two more years of my term and I'm  
18 done, so that stuff will continue.

19 But what we have here is, even though  
20 we've had people who have invested in a  
21 partnership, where that partnership, which  
22 is stuff that George Levin ran, by way of  
23 example. They really couldn't pursue  
24 because they had their own problems, so  
25 people within that are -- the partnership

1 I invested in could not bring a suit, but  
2 I can bring a suit on my own behalf  
3 because I was injured by this misconduct.

4 So, if, in this litigation, if I  
5 determine ultimately, you know what? If  
6 I'm not persuaded that the partnership by  
7 merit and by vote wants to pursue this and  
8 individual partners would be able to step  
9 in and there might be an argument on the  
10 statute of limitations of whether those  
11 claims are barred or not, at least the  
12 lawsuits are there. You've filed them.  
13 So, the question now is, who? Who -- who  
14 should act? That's what you all should be  
15 talking about now.

16 You obviously want Ms. Smith. They  
17 obviously don't want Ms. Smith. So, is  
18 this a conversation you can have now?

19 I'd like to do as much as we can this  
20 morning. We've still got an hour and some  
21 time.

22 MR. REYNOLDS: Your Honor? If I may

23 --

24 MR. SAMUELS: I don't see us coming  
25 to an agreement, but I'd be happy to --

1 THE COURT: Well, don't be so  
2 skeptical.

3 MR. SAMUELS: Okay.

4 THE COURT: You sound like John  
5 Boehner.

6 MR. SAMUELS: We'll see what happens.

7 THE COURT: Okay. Really.

8 MR. REYNOLDS: Your Honor, we're  
9 happy to try to talk. I have a long line  
10 of the question of the -- who should be  
11 appointed as receiver.

12 I want to include in that discussion  
13 our view of the world, which is that none  
14 of the lawyers in this room should  
15 represent that receiver either. We  
16 need -- if we're getting a clean receiver,  
17 we're getting clean lawyers who are going  
18 to bring in an independent view.

19 I think they have a conflict from  
20 representing all of the individual  
21 partners that they did.

22 I think I have a conflict from  
23 representing the individual partners that  
24 I did. Mr. Pugatch and I discussed it  
25 yesterday. I don't think he's interested,

1       and I don't know that the Becker &  
2       Poliakoff firm would be interested in  
3       being involved either at this point if  
4       it's something that's going to be this  
5       messy and there's going to be a lot of  
6       this. So, if that's the way the Court's  
7       going to go, I'm going to raise that point  
8       now that I do not want any of the law  
9       firms involved now, because I think their  
10      views of the world are already tainted.  
11      It would be better if we're going to go  
12      the independent route, which we're happy  
13      to discuss if that's sort of where I think  
14      this is going. Then I think that receiver  
15      needs independent counsel as well.

16           MR. SAMUELS: Judge, where this Court  
17      seems to be headed is to the appointment  
18      of a receiver. It should be up to the  
19      receiver in terms of who the receiver is  
20      to determine who would be the counsel of  
21      their choice.

22           THE COURT: Well, that's ultimately  
23      up to me.

24           MR. SAMUELS: It is ultimately up to  
25      you. Right. That's correct. But --

1           THE COURT: But back off for a  
2 minute.

3           Reynolds moved us right past who is  
4 going to be the conservator or the  
5 receiver or the general master or  
6 whatever, to who is going to represent  
7 that man or woman, so that's a little bit  
8 ahead of ourselves.

9           So, here's what we're going to do.  
10 Everyone needs to take a step back and  
11 take a deep breath and say, okay. We need  
12 to stop expending funds unnecessarily and  
13 we need to move in a different direction,  
14 and it needs to start now. So, I'm going  
15 to take a break for a few minutes, offer  
16 you some decaf, and see what you can  
17 accomplish. When you're ready for me let  
18 my clerk know and we'll pick this up.

19          MR. REYNOLDS: Certainly.

20          (A recess was taken.)

21          THE COURT: Okay.

22          How are we doing?

23          MR. SAMUELS: We're doing, but if  
24 you're looking for us to have an agreement  
25 on something, we've been unable to reach

1 an agreement on something.

2 As of the moment, I can tell you what  
3 the basis of some of the discussions are.

4 THE COURT: Okay. Tell me.

5 MR. SAMUELS: The bases of some of  
6 the discussions have been -- and, again,  
7 nothing has been agreed to -- to have  
8 Maggie Smith and Mr. Jacob both sort of  
9 jointly take charge and make decision  
10 making. We had an issue with that, since  
11 Mr. Jacob is currently a defendant in a  
12 lawsuit right now. So, you know, that's  
13 been out there.

14 Other issues that are out there are  
15 potentially appointing somebody else as a  
16 party that would be unfamiliar to anybody  
17 at the moment in terms of these  
18 proceedings and, you know, our position  
19 again is right now that we think Maggie  
20 Smith is the appropriate one. She is  
21 still at P&S. That's never been  
22 contested.

23 THE COURT: Why not have three? Have  
24 a third person join those two?

25 MR. SAMUELS: Well, the problem we

1       have with Mr. Jacob, and I suggested  
2       Mr. Moss, who is somebody on their side,  
3       but he can't do it for licensing issues or  
4       with his profession. He can't work as a  
5       receiver or a conservator, so we're still  
6       trying to work all this through.

7               What I'm telling Your Honor is, we  
8       think that Maggie Smith belongs. She's in  
9       at P&S and should be appointed and, you  
10      know, that's our position.

11             THE COURT: Okay.

12             MR. SAMUELS: Okay.

13             THE COURT: Anyone else want to tell  
14      me where we are?

15             MR. REYNOLDS: There were a lot of  
16      discussions, Your Honor.

17             We have some other names we would  
18      suggest if the Court would accept those.

19             THE COURT: I'm listening.

20             MR. REYNOLDS: One of the names that  
21      Mr. Pugatch and I bounced around is a  
22      lawyer named Pat Scott, who is at the Grey  
23      Robinson firm. He's been an insolvency  
24      lawyer for years. He's very well  
25      qualified we believe to -- and when

1 Mr. Pugatch and I had a discussion, we've  
2 both had cases with him and against him.  
3 I've used him as a mediator in cases. He  
4 would be one name.

5 We bounced some other ideas of some  
6 of the bankruptcy trustees around. I  
7 think Mr. Samuels had questions because he  
8 wanted to vet some of the names that he  
9 was not familiar with but of course  
10 Mr. Singerman would know, but apparently  
11 Mr. Singerman can't be reached because  
12 he's in court or some -- whatever the  
13 reason is, he can't --

14 THE COURT: They're not busy enough  
15 over there?

16 MR. REYNOLDS: Well, that could be  
17 it. Mr. Singerman's off, you know,  
18 chasing his next, whatever he's doing.

19 THE COURT: Well, no. I mean,  
20 they're just -- they're really busy with  
21 the Rothstein stuff as it is.

22 MR. REYNOLDS: Well, no. I think  
23 Mr. Samuels just wants to --

24 THE COURT: I'm going to get a big  
25 Christmas card from those guys if you do



1           that.

2           MR. REYNOLDS: I think Mr. Samuels  
3           wanted to run some of the names by you and  
4           see if we could come to a consensus on  
5           some independent person.

6           THE COURT: How much time would you  
7           like to do that?

8           MR. SAMUELS: Your Honor, this is  
9           what -- before I answer your question, a  
10          couple of things are going on now.

11          We think that we can come back in a  
12          couple of weeks maybe and just figure it  
13          out who the names are, because I do want  
14          to vet this with Mr. Singerman. But let  
15          me again, Your Honor, encourage the  
16          appointment of Ms. Smith, who apparently  
17          they were okay with in terms of being one  
18          of two.

19          Ms. Smith has done a ton of work --

20          THE COURT: I got that.

21          MR. SAMUELS: -- that is going to  
22          have to be duped by somebody.

23          THE COURT: No.

24          MR. SAMUELS: Well, someone's going  
25          to --

1 THE COURT: No. Not necessarily.

2 MR. SAMUELS: Well, she's invested a  
3 lot of time in this. She's done nothing  
4 wrong. She has filed a lawsuit to  
5 preserve -- she hasn't even made the  
6 decision --

7 THE COURT: Well, wait a minute.

8 MR. SAMUELS: -- Your Honor, to  
9 continue.

10 Yes?

11 THE COURT: How many times are you  
12 going to tell me that?

13 I got that.

14 MR. SAMUELS: Well, I was going to  
15 tell you some new information.

16 THE COURT: All right.

17 MR. SAMUELS: That Ms. Smith,  
18 although she filed the lawsuits to  
19 preserve them, has not yet as of now made  
20 a decision in terms of how vigorously to  
21 pursue them or not. They are preservation  
22 matters that she is going to continue to  
23 analyze as she goes forward in reviewing  
24 things.

25 She's going to be very prudent.

1 She's been appointed by Your Honor on a  
2 couple of other occasions, and I guess  
3 I've probably made my case for her.

4 THE COURT: Okay.

5 This is what I want to do.

6 First of all, I think it would be  
7 appropriate to have one person from each  
8 camp and then a third uninvolved person  
9 serve in that capacity.

10 I really want to lay out a structure  
11 right now on when that's going to be  
12 confirmed, and then how we're going to  
13 address these two areas of issues,  
14 because, I mean, so far, I have not even  
15 received in evidence the partnership  
16 agreements which govern everything.

17 I'm not going to ignore them.  
18 Whatever we do has to be consistent with  
19 those. So, what I want to address right  
20 now is the structure.

21 Are we going to conduct new meetings  
22 or are we going to have a hearing on  
23 whether or not I should enter a  
24 declaratory ruling as to the validity of  
25 prior meetings of either or both of the

1       partnerships? And this is something  
2       really that should be discussed first  
3       among those three after consulting? I  
4       mean, to me, the partners meetings should  
5       not be a monthly event, so these are the  
6       things that I'd like you to discuss.

7               Now, after Friday I'm out until  
8       January 7th. Now, I have time on Friday.  
9       I left it open because you never know what  
10      happens this time of year. That used to  
11      be true in family court, but I've also  
12      found it to be true in this court. So,  
13      that would give you three days, because I  
14      don't want to just let this sit, and then  
15      you'll go off and things will start to  
16      deteriorate. I'd rather have you come  
17      back and get this set in stone.

18             Does that work for you?

19             MR. SAMUELS: Yes. That will give us  
20      more time to figure out what we think  
21      works.

22             THE COURT: Does that work for you,  
23      Mr. Reynolds?

24             MR. REYNOLDS: What time Friday, Your  
25      Honor?

1 THE COURT: 1:30? 2:00 o'clock?

2 MR. PUGATCH: I'm open all day.

3 MR. SAMUELS: I'm open too.

4 The only thing I would ask to be part  
5 of an order today is, you know, we've had  
6 these contested elections, and there are  
7 lawsuits filed, including one against  
8 Mr. Jacob, that we felt was filed in order  
9 to preserve the statute of limitations.

10 Mr. Jacob is now claiming to be a  
11 managing partner of one of those entities.  
12 We just need to make sure that Mr. Jacobs  
13 does not dismiss that lawsuit to the  
14 potential prejudice to the parties --

15 THE COURT: Well, there's a stand  
16 still.

17 MR. SAMUELS: That's what I wanted to  
18 know.

19 THE COURT: No. There's a stand  
20 still.

21 MR. SAMUELS: Okay.

22 THE COURT: Status quo, as of right  
23 this minute.

24 MR. SAMUELS: Okay.

25 THE COURT: No action.

1 I need an order.

2 No action shall be taken that changes  
3 one aspect of these partnerships'  
4 operations, funds, actions taken by either  
5 or both partnerships as of today, the  
6 18th, at 11:30 a.m., absent a court  
7 order.

8 The funds stay where they are. The  
9 lawsuits stay where they are, except you  
10 have my authority to move to transfer them  
11 to Division 7.

12 MR. SAMUELS: Okay.

13 THE COURT: You have -- that needs to  
14 be done.

15 Is there any objection to that by  
16 anyone?

17 I hear none.

18 Okay.

19 MR. REYNOLDS: Your Honor, I'm not  
20 objecting. I know that both Mr. Moss and  
21 Mr. Jacob wanted to be able to address the  
22 Court.

23 THE COURT: On what?

24 MR. REYNOLDS: I was planning on  
25 putting them both on the witness stand.

1 THE COURT: On what?

2 MR. REYNOLDS: To be able to speak  
3 about what they believe should happen.  
4 They've asked me to make that request, so  
5 I'm going to make the request.

6 If the Court doesn't wish to do that  
7 today given the status quo that the Court  
8 has just entered and wants to maybe --

9 THE COURT: Well, why don't you tell  
10 me what they want to tell me?

11 MR. REYNOLDS: They basically want to  
12 tell you their side of the story, Judge.

13 THE COURT: See, but here's the  
14 point. See, once people get on that stand  
15 I don't forget what they tell me.  
16 Sometimes that works out great; sometimes  
17 it doesn't.

18 MR. REYNOLDS: Well --

19 THE COURT: I think people should  
20 swallow that desire until it really  
21 becomes necessary and might accomplish  
22 something. Right now, the answer is no.  
23 That won't happen.

24 MR. REYNOLDS: Yes, sir.

25 I've made the request, Your Honor.

1           What I was going to suggest after  
2           Your Honor's statement was, may we carry  
3           it to Friday and see --

4           THE COURT:   Correct.

5           MR. REYNOLDS:  Yes, sir.

6           THE COURT:  All right.

7           Now, what I want you to be  
8           discussing, first and foremost, of course,  
9           is the structure.  I'm not whetted to one,  
10          two, and a third person.  I understand  
11          that could create complications.  Ideally,  
12          one person is best.  It would minimize  
13          internal disruption and conflict.  That's  
14          best.  That is my desire.

15          If you can't agree upon one, I may  
16          end up appointing one anyway.  But, if on  
17          the other hand, if everybody consents to a  
18          three-person structure, then that's great  
19          too because you have agreed to it.  So, my  
20          preference is that you bring something  
21          that's agreed to.

22          MR. ROSEN:  Your Honor?  If I may?

23          THE COURT:  Yes.

24          MR. ROSEN:  Neither Ms. Chaitman nor  
25          I can attend on Friday, and the only



1 contribution that I would make on Friday  
2 is almost an entire echo of what Your  
3 Honor just said with regard to the  
4 preference for --

5 THE COURT: One?

6 MR. ROSEN: -- a single person.

7 THE COURT: Okay.

8 MR. ROSEN: And, unfortunately, our  
9 schedules won't --

10 THE COURT: Well, do you have anyone  
11 that you can -- I mean, you've got a  
12 couple of other people still employed over  
13 there, right?

14 MR. ROSEN: We do, Your Honor. We  
15 do.

16 THE COURT: Anyone else you trust?

17 MR. ROSEN: Well, to parachute into  
18 this bit of a situation, I can certainly  
19 muster somebody up and try and get them up  
20 to speed.

21 THE COURT: You know, I could try to  
22 find time Thursday, but I'd like to really  
23 give you all as much time as you need to  
24 work on stuff outside of the courtroom.

25 MR. ROSEN: I'm not asking the Court

1 to rearrange anything. Certainly, go  
2 forward. If I can't be here I'll try and  
3 get somebody here. If not, then go  
4 forward regardless. I think the issues  
5 are going to be fully aired.

6 THE COURT: Is Becker still in Maine,  
7 or is he back?

8 MR. ROSEN: No. No. He's actually  
9 sojourned back to South Florida for the  
10 winter.

11 THE COURT: Well, he's a quick study.

12 MR. ROSEN: I'll tell him you  
13 suggested him, Your Honor.

14 THE COURT: Good.

15 MR. ROSEN: In his current new status  
16 in life.

17 THE COURT: Okay. So, separate and  
18 apart from that is -- I mean, I want to  
19 put a case management order in place on  
20 Friday, as well. I really want to end  
21 this year looking forward to, this is what  
22 we're doing and this is when we're going  
23 to do it. So, you need to be focusing on  
24 this now, addressing the two separate  
25 areas of issues, which one is, who has

1       been properly elected as the managing  
2       partner of each of these two entities? Is  
3       another election necessary or are we going  
4       to stand on the elections we had, and have  
5       we determined their validity? That's one  
6       set of issues.

7               Secondly is setting up the structure  
8       on how and when the determination will be  
9       made as to how the funds will be  
10      distributed, so when we end this year we  
11      know exactly where we are going and when.

12             Does that work for you?

13             MR. SAMUELS: It does.

14             I would just request that I receive  
15      the information they have concerning the  
16      vote on the proxies and the notices and  
17      things of that nature, and as soon as  
18      possible so that we can analyze what  
19      transpired, Your Honor.

20             THE COURT: All right.

21             MR. REYNOLDS: Your Honor, I have  
22      them with me.

23             THE COURT: Good.

24             MR. REYNOLDS: Because I was  
25      intending to show them today if need be.

1           Judge, at the end of the election  
2           that they held in August they said they  
3           would attach the voting information to the  
4           minutes and have them be circulated.  
5           That's never happened, so I need all of  
6           theirs as well. So, I would ask that be  
7           -- I'm making a reciprocal request.

8           MR. SAMUELS: Can you tell me  
9           precisely what it is that you need?

10          THE COURT: Hold on. You all --

11          MR. SAMUELS: We'll talk outside the  
12          courtroom.

13          MR. REYNOLDS: Yes.

14          MR. SAMUELS: They will get what they  
15          need.

16          MR. REYNOLDS: I need the election  
17          results from the first election, the  
18          votes, the proxies and the notice that  
19          called it.

20          THE COURT: All right.

21          How long do you think it will take  
22          you to get that to them?

23          MR. SAMUELS: Mr. --

24          GENTLEMAN IN AUDIENCE: I have it  
25          right here.

1 MR. SAMUELS: We have it on us.

2 THE COURT: Okay. Within 24 hours  
3 you'll need to do that exchange.

4 MR. REYNOLDS: May we go outside in  
5 the hallway and trade?

6 THE COURT: 24 minutes? 24 seconds?  
7 That's fine.

8 Anything else from Mr. Samuels?

9 MR. SAMUELS: No, Your Honor.

10 THE COURT: Mr. Reynolds?

11 MR. REYNOLDS: At the moment, no,  
12 Your Honor.

13 THE COURT: Mr. Pugatch?

14 MR. PUGATCH: No, Your Honor.

15 Thank you.

16 THE COURT: Mr. Rosen?

17 MR. ROSEN: No, Your Honor.

18 THE COURT: Okay.

19 1:30 Friday. See you then.

20 MR. SAMUELS: Thank you.

21 MR. REYNOLDS: Actually, Your Honor,  
22 I do have one.

23 THE COURT: What?

24 MR. REYNOLDS: We would like an order  
25 from today that states everything Your

1 Honor said in the ruling and that sets  
2 that hearing at 1:30 on Friday.

3 THE COURT: Right.

4 Mr. Rosen -- excuse me.

5 Mr. Samuels is to prepare it and  
6 circulate it.

7 MR. SAMUELS: We will, Your Honor.

8 MR. REYNOLDS: Thank you, Your Honor.

9 THE COURT: Okay.

10 Thank you.

11 (The proceedings were concluded at  
12 11:43 o'clock, a.m.)  
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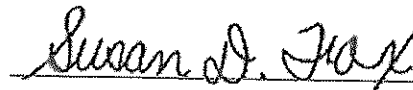
THE STATE OF FLORIDA       )  
COUNTY OF BROWARD       )

I, Susan D. Fox, Florida Professional Reporter and Notary Public in and for the State of Florida at Large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the foregoing pages are a true and correct transcription of my shorthand notes.

I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney interested in the action.

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IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of December, 2012.



Susan D. Fox, FPR  
Notary Public - State of Florida  
My Commission EE090684  
My Commission expires 5/15/2015