

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 LITIGATION STATUS REPORT DATED MAY 20, 2013**

Steven Jacob, ("Jacob") as a 40% partner in interest of the S&P General Partnership ("S&P") and a net loser, hereby opposes the Conservator's Litigation Status Report Dated May 20, 2013 and in support thereof states as follows:

INTRODUCTION

The conservator's litigation status report fails to answer the three questions required by the Judge at the May 14 hearing before this Court.

1) What are the facts, what evidence is there, and what underlying law supports moving forward with the following litigations:



- *Margaret Smith as General Partner of P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiff v. Janet A. Hooker Charitable Trust, et al.*, Case No. 12-034121 (07) (the "Net Winner Suit"); and

- *Margaret Smith as General Partner of P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiff v. Michael D. Sullivan, et al.*, Case No. 12-034123 (07) (the "Insiders Suit") (together, the "Lawsuits").

2) Do these Lawsuits benefit the partnerships?

3) Do these Lawsuits benefit all the partners?

There are no facts, **EVIDENCE** or memorandum of law provided by the Conservator on these cases that would show cause to allow them to proceed with the lawsuits. The Conservator has not even attached a copy of the proposed contingency agreement with Berger Singerman, LLP (BS) the counsel he hopes to engage. There is also no mention of the inherent conflict of interest in engaging former counsel BS of the above captioned four party plaintiffs and Messana, PA, counsel for the Conservator. What has been presented only opens the door to many questions and subjects the partnerships and each individual partner to unknown liabilities that could equal or exceed the assets of the partnerships.

The Conservator has provided no cost benefit analysis or upside to proceeding with these cases or how it would benefit the partnership as a whole. There is also no mention of the down side of these lawsuits to the partnership and specifically each individual partner. The partnerships are general partnerships and all partners are jointly

and severally 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 for more fees? Not all partners, and in some cases both partnerships do not have standing to sue the named defendants. For example, the S&P Partnership does not have standing to sue Kelco, a named defendant in the Insider Suit. Very few partners have heard of or have any standing to sue Frank Avelino or Michael Bienes named defendants in the Insider Suit. It is questionable that the partnership has any standing to sue the Insiders because the money paid to them did not come from the partnerships.

The Conservator was appointed with limited powers, as an **independent** fiduciary to represent all the partners of the partnership. The Conservator is not a Receiver and the partnerships are not involved in bankruptcy proceedings.

Contrary to the Court's Order, the Conservator became embroiled with the above captioned four party plaintiffs, and a small group of minority partners (Festus Stacy Group) and their counsel BS. According to bills submitted by BS, the Conservator met with counsel from BS for seven hours before he was even appointed. In contrast he spoke with Rice Pugatch, a former attorney for the partnerships, for less than $\frac{3}{4}$ of an hour. By the time he finally met with Michael Sullivan and Steven Jacob, as ordered by this Court, the Conservator and his Counsel were aggressive and did not conduct an investigation as a professional and independent fiduciary. Contrary to the *Order Appointing the Conservator* on January 17, 2013, and the subsequent status conferences before this Court to immediately move forward on the *Interpleader Action Case No: 12-124051*, and to provide a report seeking approval for proceeding with the Lawsuits, the

Conservator and his counsel attempted to engage in Discovery in an attempt to try to make cases that were never served, because they are based on allegations, lack merit, and were only filed to harass and discredit, causing substantial damages to the partnerships. To date neither the conservator nor his attorney have presented any bills to the Court even though under the court order appointing him he should do so every 60 days. It is unknown how many hours the Conservator and his Counsel have engaged in pursuing unfounded and unsubstantiated allegations to the detriment of all the partners.

Rather than immediately going forward with the only real litigation, the *Interpleader Action Case No: 12-124051*, the Conservator and his counsel have chosen to forge a path that unjustly enriches themselves and will result in no benefit or additional moneys realized to the partners and further shrink the funds that are already available.

The Undersigned hereby adopts and incorporates by reference the arguments and the prayer for relief in his Opposition Response to the Net Winner Suit filed May 10, 2013, (attached hereto as Exhibit A), and his Opposition Response to the Insider Suit filed May 10, 2013, (attached hereto as Exhibit B). The undersigned further adopts and incorporates by reference the Affidavit of Helen Davis Chaitman in Opposition to Plaintiffs Motion to Appoint Receiver and Memorandum of Law of Becker & Poliakoff, P. A. filed November 20, 2012.

THE NET WINNER SUIT

The partnerships are not bankrupt. The Conservator was appointed with limited authority. He is not a receiver. The partnerships are not Ponzi schemes. A Ponzi scheme is not a Ponzi scheme just because a trustee or receiver calls it a Ponzi scheme – rather, the existence of the Ponzi scheme must be proven with actual facts. In the absence of

such proof, the burden of proof in a resulting fraudulent transfer case must rest with the trustee / receiver. In *American Cancer Society v. Cook*, 2012 U.S. App. LEXIS 5769 (5th Cir. 2012), the United States Court of Appeals for the Fifth Circuit reversed a fraudulent transfer judgment because a court appointed receiver had failed to prove the actual evidence of a Ponzi scheme, thus depriving her of the presumption of fraud in a fraudulent transfer context. The Fifth Circuit found mere allegation of a “fraudulent Ponzi-like scheme,” such as “manufactured investor returns,” without more, was not sufficient to raise the presumption of fraud that might be afforded a trustee or receiver in an actual Ponzi scheme case.

The conservator mistakenly states that the partnerships ran a Ponzi scheme. The fact is that Madoff ran a Ponzi scheme and the partnerships were the victims. A thorough and extensive investigation was conducted by the Madoff’s Bankruptcy Trustee, Irving H Picard. Mr. Picard released any claim against Mr. Sullivan, the only managing general partner, and the Partnerships S&P and P&S. Mr. Picard fully approved the partnership’s claim in the Madoff bankruptcy estate. Picard’s firm is being paid in excess of \$50 million a year. If Mr. Picard, with all his resources could not find anything against Mr. Sullivan, it is extremely doubtful that the Conservator will. It is very disconcerting that the Conservator and his counsel are attempting to use partner’s money to fund a fishing expedition, incur unnecessary professional fees, and further victimize innocent partners. Absent any proof of malfeasance, the partnerships should not be burdened with the additional expenses of litigation.

Because the books and records reconciled with the books and records of Madoff, Picard released Michael Sullivan and approved the claim of the partnership.

There is no money missing from the partnership other than the money taken by Madoff. The Conservator has possession of this information and is well aware of it. The Conservator is trying to apply, what he calls "a Ponzi context" absent any proof that the partnerships operated as a Ponzi scheme. Assuming *arguendo*, the partnership was a Ponzi scheme, the Conservator and his Counsel make no mention of the affirmative defenses that could be raised by the defendants including but not limited to; no fraudulent intent and the statute of limitations. It is inconceivable that any of the Net Winners were aware of any fraud or had any fraudulent intent. Many of the defendants listed on the Net Winners matter have not been partners since the late ninety's and the early years of this century. The Net Winners Suit was filed on December 10, 2012. According to BS bills they had prepared and researched them in May of 2012. The Festus Stacy Group had every opportunity to file these suits in June of 2012. One can only speculate that they did not wish to fund them or perhaps they lack merit. Florida has a four year statute of limitations on fraudulent transfers, which began to run on December 11, 2008, the date that Madoff confessed. *See* § 726.110, Fla. Stat. (2010) (the limitations period for claims under the Fraudulent Transfer Act is "4 years after the transfer was made or the obligation was incurred"). No distributions to partners were made after Madoff confessed in 2008. In addition, the conservator has failed to investigate the collectability of any possible funds awarded from those partners he deems are subject to claw backs. Many of the Net Winners are charities and investors that are outside the United States, making any collection highly doubtful. The conservator who is supposed to represent all partners has drawn a clear line in the sand showing that he wants to again victimize the net winners. However, in doing so the conservator is picking and choosing

what net winners to victimize. He has clearly removed from the list of net winners, partners who are part of the Festus Stacy Group and has offered no explanation for doing so. Why the conservator who is supposed to represent all partners would show such bias is cause enough to not allow the Net Winner suit to be filed by the partnerships. The Conservator and his Counsel intention to pursue such claims, further illustrates their desire to merely enrich themselves at the partners' expense. No other logical explanation exists.

THE INSIDER SUIT

The Conservator states that he has evidence to support certain allegations contained in the Insider Suit. However, he does not provide any evidence to the court but continues with the same unfounded and unproven allegations previously presented by BS. In the Conservator's Litigation Status Report his first three bullet points on the insider suit state the same thing that "money was never invested". How can that be true? The dollars showed by Madoff for the partnerships equal what every partners account shows on the partnership books and the Madoff trustee Irving Picard has confirmed this. The other two bullet points discussed payments to other individuals. The partnerships had no employees. None of these payments came from partnership funds. Under the partnership agreement the managing general partner was entitled to 20% of the profits as fees in addition to expenses of the partnership. All items mentioned by the Conservator were paid from the managing general partners fees which were approved by the partnership and each partner. Barring absolute proof that the managing general partner had knowledge of Madoff's fraud the fees taken were legitimate business expenses. Again, the Conservator has jumped to a conclusion without any proof that the partnership

operated a Ponzi scheme and in doing so he has chosen to victimize certain partners that are not part of the Festus Stacy group. Festus and Helen Stacy Foundation and others enjoyed the exact same relationship as Kelco, one of the named insiders. The undersigned Steve Jacob, was not considered an insider until November of 2012, when he stood up against the Festus Stacey Group further victimizing innocent partners, many old and living on limited incomes and wasting the Time and Money of the partnerships. The conservator also fails to include in the Insider suit other partners that received forms of payment similar to those mentioned in the Insider suit. Again we see that the Conservator has taken one side and is representing a small group of partners against every other partner and wanting to use partnership funds to further the interests of the Festus Stacy Group and unjustly enrich himself and his counsel at the expense of the other partners. Like the Net Winner Suit, there is no mention that the Conservator has vetted the individuals he does name, to determine if there is any possibility of recovering funds, should any lawsuit although very unlikely, provide a recovery. Like the Net Winner Suit, the Conservator does not acknowledge the real possibility of counter claims/cross claims lack of standing and the potential liability to the partnership for filing these suits. The Conservator speaks in very general terms and does not provide an actual dollar amount for recovery, just speculation. To move forward on Lawsuits that have a remote chance of creating a judgment and an even less chance of collecting any actual money, provides no benefit to the partnership or the partners and just provides an opportunity for the Conservator and his counsel to unjustly enrich themselves at the expense of the partners.

**CONFLICT OF INTEREST TO RETAIN SPECIAL COUNSEL BERGER
SINGERMAN FOR THE LAWSUITS AND FOR THOMAS MESSANA, P.A. TO
JOIN AS COUNSEL IN THE INSIDER SUIT**

Even if BS was not causing an undue influence on the Conservator and his Counsel, BS was prior counsel for the four above named plaintiffs and there is no doubt the BS Law Firm would have a conflict of interest. Although the Festus and Helen Stacy Foundation were not named in the Insider Suit they are also an Insider. It is more than likely they would be joined in counter suit/cross claim by the named Insider Defendants. There was no way to resolve the net winner matter/net loser matter without an Interpleader. The conservator fails to state under what statute or rules of conduct that it is now permissible for BS to represent net losers against net winners within the partnership. Rule 4-1.8 of the Florida Bar Rules of Professional Conduct states:

“An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party, or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question.”

The aforementioned conflict between the Festus and Helen Stacy Foundation and the other members of the general partnerships clearly creates an incompatibility of positions that runs afoul of Rule 4-1.8. In addition, there are substantially different possibilities of settlements of claims or liabilities” because all the partners are joint and severally liable for the liabilities incurred by any of the other partners. Because BS represented the Festus and Helen Stacy Foundation and other minority partners in that litigation, it is inappropriate for BS to represent the partnerships because the interests of the Festus and Helen Stacy Foundation and other minority partners conflicts with other

members of the partnership who may be exposed to liability in furtherance of the minority partners' interest.

The Conservator's counsel Messanna, P. A. must act independently and has a fiduciary responsibility to all the partners. There is no possible way that the Conservator and Messana, PA can keep costs to the partnership to a minimum as the Conservator and his Counsel would still bill the partnership for receipt and review of all litigation. He cannot do so if he must choose a side of one partner against the other. **There is also no opinion from Independent Legal Counsel in the Conservator's Litigation report confirming BS or Messana P.A.'s legal theory.**

CONCLUSION

The Conservator has simply picked up lawsuits that were prepared by Berger Singerman in May and June 2012. These lawsuits were never filed and the remaining partners can only speculate that Berger Singerman's clients the Festus Stacy group did not want to fund litigation with their own money or perhaps one or more the cases did not have merit. The Festus Stacey Group put together a plan to force the partnership and all partners to pay for litigation that they want. Anyone who stood in the way of the Festus Stacy group has become a target of unfounded and unproven allegations. First they targeted Mike Sullivan. Once Mike Sullivan resigned under duress and to benefit the partnership as a whole, they thought they had a clear line to push their own agenda. Second they targeted the undersigned, a partner in interest in S&P, when he stood up against the waste of Time and Money in November of 2012 by conducting a proper partnership election for S&P. Even though Jacob's name was never been mentioned or disclosed in the BS bills he was listed as part of the insider suit on the December 10

filing. Such joiner of Jacob on the Insider Suit was done only to discredit him and is without any basis in fact. An email was sent out by the Festus Stacy Group to all partners attaching the Insider Suit that was only filed and not served saying that Steve Jacob was named in a lawsuit. Third, when earlier this year Mr. Moss filed a complaint objecting to fees they targeted Mr. Moss's wife. In response to Mr. Moss's objection the Conservator has tried to discredit Mr. Moss's objection by saying that his wife is now being considered an insider. At no time prior, has Ms. Moss ever been mentioned. To move forward with the lawsuits would be a direct violation of the Conservator's foremost duty, to protect the partnership assets to the benefit of all the partners. The Conservator has clearly taken a side with a minority group of partners who wish to use partnership funds for their own selfish purposes.

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 conservator's job is to preserve the assets for the partners rather than gamble them away on the allegation and whim of BS and the Festus Stacy Group. Any effort to bring these Lawsuits on behalf of the partnerships would be an utter waste of time and money. Certainly, if the Festus Stacy Group or any of the partners want to litigate for their benefit, they are free to do so with their own money.

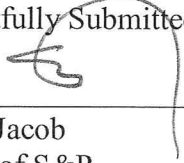
RELIEF REQUESTED

The undersigned respectfully requests that this Court:

1. Deny the Motions to Appoint Special Council in the aforementioned Lawsuits and not subject the partnerships nor the individual partners to the liabilities associated with prolonged litigation.
2. Separate the Lawsuits from the General Partnerships and allow any partner that wishes to pursue these litigations to do so outside the Partnership.

May 29, 2013

Respectfully Submitted



Steven Jacob
Partner of S&P

Copies Furnished To:

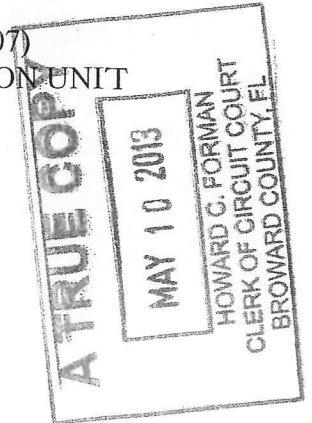
Leonard K. Samuels, Esq., lsamuels@bergersingerman.com
William G. Salim, Jr., Esq., wsalim@mmsslaw.com; cleibovitz@mmsslaw.com
Gary C. Rosen, Esq., grosen@becker-poliakoff.com
Domenica L. Frasca, Esq., dfrasca@mayersohnlaw.com
Brett D. Lieberman, Esq., blieberman@messana-law.com
Burt Moss, burtmoss@broadsmart.net
Frank Walker, Esq., fwalker@fcwalker.net
Helen Chaitman, Esq., HChaitman@becker-poliakoff.com
Thomas Messana, Esq., tmessana@messana-law.com

Exhibit

A

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,

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MICHAEL D. SULLIVAN

Defendant

**OPPOSITION RESPONSE AND INCORPORATED MEMORANDUM OF LAW
TO CONSERVATOR'S MOTION TO RETAIN AND COMPENSATE BERGER
SINGERMAN, LLP AND MESSANA, P. A. AS SPECIAL LITIATION COUNSEL
IN THE MICHAEL D SULLIVAN 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") opposes the Conservator's Motion To Retain and Compensate Berger Singerman, LLP and Messana, P. A., As Special Litigation Counsel In The Michael D. Sullivan, Et. Al. Matter and Approving the Contingency Fee Compensation Agreement 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 partnerships 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 as Exhibit A to the Janet Hooker Opposition Response) 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. The Helen and Festus Stacy Foundation and others had the same insider relationship as defendants named in the above suit.

14. No money was paid from Partnership funds to the alleged insiders.

15. Irving Piccard stays litigation involving Avelino & Bienes two of the alleged insiders named in the above suit.

16. 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

The funds paid to the alleged insiders were not paid from partnership funds and the partnership has no standing to pursue these claims. 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 insider matter in May and June of 2012. If the case had so much merit, why was it not filed? When the case was filed, why was it not served? Pursuant to BS's bills Jacob was not considered an insider until November when he took a stand against further wasting of time and money of the innocent victims of Madoff by requesting a special election to confirm that Maggie Smith was never the managing general partner of S&P.

BS has billed numerous hours related to this law suit and was ready to file it in August 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 insider 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 a case against certain alleged insiders when his prior client the Stacey Foundation was an alleged insider. He cannot do so if he must choose a side of one partner against the other.

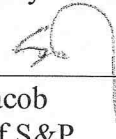
RELIEF REQUESTED

Jacob respectfully requests that this Court:

1. Deny the Motion to Appoint Special Council in the Insider 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:

Leonard K. Samuels, Esq., lsamuels@bergersingerman.com
William G. Salim, Jr., Esq., wsalim@mmsslaw.com; cleibovitz@mmsslaw.com
Gary C. Rosen, Esq., groten@becker-poliakoff.com
Domenica L. Frasca, Esq., dfrasca@mayersohnlaw.com
Brett D. Lieberman, Esq., blieberman@messana-law.com
Burt Moss, burtmoss@broadsmart.net
Frank Walker, Esq., fwalker@fcwalker.net
Helen Chaitman, Esq., HChaitman@becker-poliakoff.com
Thomas Messana, Esq., tmessana@messana-law.com

Exhibit B

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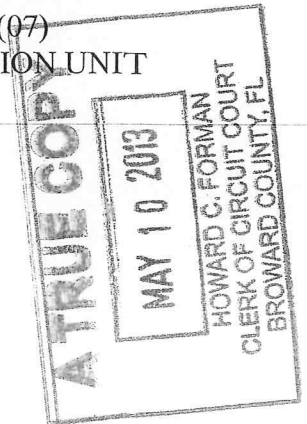
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14. No money was paid from Partnership funds to the alleged insiders.

15. Irving Piccard stays litigation involving Avelino & Bienes two of the alleged insiders named in the above suit.

16. 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

The funds paid to the alleged insiders were not paid from partnership funds and the partnership has no standing to pursue these claims. 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 insider matter in May and June of 2012. If the case had so much merit, why was it not filed? When the case was filed, why was it not served? Pursuant to BS's bills Jacob was not considered an insider until November when he took a stand against further wasting of time and money of the innocent victims of Madoff by requesting a special election to confirm that Maggie Smith was never the managing general partner of S&P.

BS has billed numerous hours related to this law suit and was ready to file it in August 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 insider 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 a case against certain alleged insiders when his prior client the Stacey Foundation was an alleged insider. He cannot do so if he must choose a side of one partner against the other.

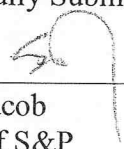
RELIEF REQUESTED

Jacob respectfully requests that this Court:

1. Deny the Motion to Appoint Special Council in the Insider 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:

Leonard K. Samuels, Esq., lsamuels@bergersingerman.com
William G. Salim, Jr., Esq., wsalim@mmsslaw.com; cleibovitz@mmsslaw.com
Gary C. Rosen, Esq., grozen@becker-poliakoff.com
Domenica L. Frasca, Esq., dfrasca@mayersohnlaw.com
Brett D. Lieberman, Esq., blieberman@messana-law.com
Burt Moss, burtmoss@broadsmart.net
Frank Walker, Esq., fwalker@fcwalker.net
Helen Chaitman, Esq., HChaitman@becker-poliakoff.com
Thomas Messana, Esq., tmessana@messana-law.com