

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

MARGARET SMITH, et al.,

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

---

Case No. 12-034123 (07)  
COMPLEX LITIGATION UNIT

**NOTICE OF FILING:**

**CONSERVATOR'S AMENDED STATUS CONFERENCE  
AGENDA FOR SEPTEMBER 6, 2013**

Philip J. Von Kahle, as Conservator for P&S, General Partnership and S&P, General Partnership, by and through counsel, hereby gives notice of filing the attached September 5, 2013, Conservator's Amended Status Conference Agenda for September 6, 2013 in the matter of *Matthew Carone, et. al. v. Michael D. Sullivan, individually*, Case No. 12-24051 (07) in the Circuit Court of the 17<sup>th</sup> Judicial Circuit, in and for Broward County, Florida.

Respectfully submitted this September 5, 2013.

MESSANA, P.A.  
*Attorneys for Conservator*  
Post Office Drawer 2485  
Fort Lauderdale, FL 33303  
Telephone: 954-712-7400  
Facsimile: 954-712-7401  
e-mail: tmessana@messana-law.com

By: /s/ Thomas M. Messana

Thomas M. Messana  
Florida Bar No. 991422

IN THE CIRCUIT COURT OF THE 17<sup>th</sup>  
JUDICIAL CIRCUIT, IN AND FOR  
BROWARD COUNTY, FLORIDA  
CASE NO.: 12-24051 (07)  
COMPLEX LITIGATION UNIT

MATTHEW CARONE, et al.,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendant.

---

CONSERVATOR'S AMENDED STATUS CONFERENCE AGENDA FOR  
SEPTEMBER 6, 2013<sup>1</sup>

Philip J. von Kahle (the “**Conservator**”), as Conservator for P&S Associates, General Partnership (“**P&S**”) and S&P Associates, General Partnership (“**S&P**”) (together, the “**Partnerships**”), by and through undersigned counsel, pursuant to this Court’s July 9, 2013 *Standing Order Setting Monthly Status Conferences* (the “**Standing Order**”), hereby files the Conservator’s Amended Status Conference Agenda for September 6, 2013 (the “**Amended Agenda**”), and in support thereof states as follows:

**Brief Introduction**

1. The Conservator was appointed pursuant to this Court’s January 17, 2013 *Order Appointing Conservator* (“**Conservator Order**”) in the above-captioned action (the “**Conservator Suit**”).

2. The Conservator Suit, and certain related cases, are presently pending before this Court, styled:

- *P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Alves, et al.*, Case No. 12-028324 (07) (the “**Distribution Action**”);
- *Margaret Smith as General Partner of P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Janet A. Hooker Charitable Trust, e. al.*, Case No. 12-034121 (07) (the “**Net Winner Suit**”); and

---

<sup>1</sup> The only additions to the Amended Agenda are the Joint Motion to Substitute Party filed in the Net Winner Suit and the Joint Motion to Substitute Party filed in the Insider Suit.

- *Margaret Smith as General Partner of P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Michael D. Sullivan, et al.*, Case No. 12-034123 (07) (the “**Insider Suit**” and together with the Conservator Suit, the “**Lawsuits**”).

3. The Conservator has identified the following matters and requests that this court consider the same at the status conference presently scheduled for September 6, 2013 (the “**Status Conference**”).

**The Conservator Suit**

4. At this time, the Conservator Suit continues to serve administrative functions, but does not otherwise require Court action.

**The Distribution Action**

5. **Service:** As of the date of this Agenda, 149 defendants of 245 have been served in this matter. The Conservator will provide updated service statistics at the Status Conference.

6. **Conservator’s Motion for Nunc Pro Tunc Approval of Modified Service By Website** filed on June 27, 2013 (the “**Modified Service Motion**”). The Conservator requests that this Court consider the Modified Service Motion at the Status Conference and grant the same.

7. **Service by Publication.** The Conservator is attempting to effectuate personal service on all named defendants in the Distribution Action. However, in light of the exceptional circumstances surrounding the Distribution Action, the objective to provide a prompt distribution to partners, and the limited identifying information available to the Conservator, the Court ought to consider whether service of the Complaint by publication is appropriate.

8. **Final Case Management Conference** is scheduled for September 6, 2013; the same date as the Status Conference. Based on the unique circumstances of this case, the Conservator will prepare and provide the information that would found in a pre-trial statement.

9. **Hearing on Conservator’s Motion for Summary Judgment to: (i) Approve Determination of Claims, (ii) Approve Plan of Distribution, and (iii) Establish Objection Procedure (the “MSJ”)** scheduled for October 4, 2013 at 9:30am (the “**MSJ Hearing**”).<sup>2</sup>

---

<sup>2</sup> The Conservator’s pre-trial statement in the Distribution Action will provide details concerning the defendants’ legal positions in response to the Complaint and Conservator’s MSJ.

**The Net Winner Suit**

10. **Service:** Berger Singerman, special litigation counsel for the Conservator in the Net Winner Suit, will provide updated service statistics at the Status Conference.

11. **Joint Motion to Substitute Party.** Motion seeks to substitute the Conservator in place of the Partnerships' former managing partner in the Net Winner Suit brought by Partnerships.

**The Insider Suit**

12. **Service:** As of the date of this Agenda, the Conservator has served all defendants, except for Michael Bienes who remains outside of the country. The deadline to serve Mr. Bienes is October 26, 2013. The Conservator will provide an update at the Status Conference in the event that Mr. Bienes is served in the interim.

13. **Joint Motion to Substitute Party.** Motion seeks to substitute the Conservator in place of the Partnerships' former managing partner in the Insider Suit brought by Partnerships.

**Conclusion**

14. The above identified matters are not intended to be an exhaustive list of matters the Court may consider at the Status Conference, as the Standing Order provides that the "Agenda shall by no means limit this Court's authority to enter Orders as it sees fit or preclude parties who attend the Status Conferences from presenting *ore tenus* motions that are not included in the Agenda." (Standing Order at ¶4).

Respectfully submitted this September 5, 2013.

MESSANA, P.A.  
Attorneys for Conservator  
401 East Las Olas Boulevard, Suite 1400  
Ft. Lauderdale, FL 33301  
Telephone: (954) 712-7400  
Facsimile: (954) 712-7401  
Email: tmessana@messana-law.com  
By: /s/ Thomas M. Messana  
Thomas M. Messana, Esq.  
Florida Bar No. 991422  
Brett D. Lieberman, Esq.  
Florida Bar No. 69583