

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

MATTHEW J. 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,

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

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendant.

**CONSERVATOR'S MOTION TO EMPLOY
UNDERWOOD MURRAY, P.A. RETROACTIVELY TO JANUARY 1, 2022**

Philip J. von Kahle (the “**Conservator**”), as Conservator for P&S General Partnership and S&P General Partnership (together, the “**Partnerships**”), files this *Conservator’s Motion to Employ Underwood Murray, P.A. Retroactively to January 1, 2022* (the “**Motion**”), seeking to retain and compensate Thomas M. Messina (“**Messana**”) and the law firm of Underwood Murray, P.A. (“**Underwood Murray**”) to represent the Conservator as his general counsel on the terms set forth below. In support of this Motion, Conservator states as follows:

1. On January 17, 2013, this Court entered its *Order Appointing Conservator* (the “**Order of Appointment**”). Among other things, the Order of Appointment directed the Conservator to take possession of all property of the Partnerships (the “**Conservator Property**”), and to do any and all things necessary for the proper management, wind-down, preservation, maintenance, protection and administration of the Conservatorship Property.

2. To facilitate and support the Conservator in carrying out his duties, consistent with applicable Florida law, the Order of Appointment specifically authorizes the Conservator to retain and compensate legal counsel. *Creative Property Management, Inc. v. General Electric Credit Corp. of Georgia*, 314 So. 2d. 807, 808 (Fla. 3d DCA 1975) (holding that where legal services are required and benefit the estate, court-appointed professional fiduciaries may be allowed a reasonable sum for legal fees); *see also Zirot v. Gilmer*, 336 So. 2d 680, 682 (Fla 4th DCA 1976) (holding that professional fiduciary fees and expenses enjoy a priority over unsecured creditors).

3. Shortly thereafter, the Court authorized the Conservator's Motion to Employ Thomas Messana and Messana P.A. as his general counsel. Messana has served in that role ever since.

4. On January 1, 2022, Thomas M. Messana transitioned firms and now practices law at Underwood Murray, P.A. ("**Underwood Murray**"). Pursuant to the Order of Appointment, Conservator seeks to retain Underwood Murray on a flat fee basis to provide certain enumerated legal services, as more particularly described herein.

5. Presently, Conservator requires legal assistance to make another distribution in S&P and the final distribution in P&S Partners.

6. Through this Motion, the Conservator seeks entry of a court order approving the terms of Underwood Murray's engagement and providing notice to parties-in-interest of same. To the extent Conservator requires any new or additional legal services from Messana and Underwood Murray separate and apart from those described herein, Conservator will file another Motion.

7. Attorneys at Underwood Murray have over 30 years of experience representing court appointed professional fiduciaries, including receivers, trustees, and assignees.

8. Messana has regularly represented court-appointed professional fiduciaries associated with the fallout from Ponzi Schemes. Among Messana's prominent representations, he represented a court-appointed receiver in a case "described by the FBI as one of the largest Internet fraud prosecutions in the nation and arose from an investigation of CITX, a corrupt Pennsylvania Internet company, and its South Florida based marketing partner, PRSI." The U.S. Department of Justice and the U.S. Attorney General, *The Accomplishments of the U.S. Department of Justice 2001-2009 p. 40* (2012).

9. Messana is a former co-chairperson of The Florida Bar's Business Law Section, a past president of the Bankruptcy Bar Association of the Southern District of Florida, and a former chairperson of the Florida Bar Bankruptcy/UCC Committee. Messana has been recognized by Chambers & Partners, USA, as a Best Lawyer in America, a Super Lawyer, a Member of Florida's Elite Lawyers by Florida Trend and is "AV" rated by Martindale-Hubble and is generally regarded by his peers as an extremely competent professional fiduciary's attorney.

10. In consideration for representing Conservator, Underwood Murray shall be compensated \$25,000.00 on a flat fee basis (the "**Flat Fee Engagement**"). The Flat Fee Engagement shall include and consist exclusively of the following: (1) prepare application and supporting affidavits for final distribution and closing of P&S General Partnership and the next distribution in S&P General Partnership; (2) prepare and prosecute all papers seeking closing of P&S General Partnership; and (3) reopen the above captioned case as necessary to accomplish same.

11. Generally, the hourly rates for attorneys and paraprofessionals at Underwood Murray range from \$175 per hour to \$600 per hour.

12. Conservator deems the employment of Underwood Murray necessary for efficient administration of the Conservatorship. Conservator further believes that a Court Order authorizing retention and proposed compensation arrangement is necessary for Underwood Murray to effectively represent the Conservator.

13. Conservator believes that the Flat Fee Engagement is a fair estimate of likely costs to be incurred by Underwood Murray in carrying out the duties described above in paragraph 10.

WHEREFORE, Philip J. von Kahle, the Conservator, respectfully requests this Court enter an Order in substantially the form attached hereto as **Exhibit "A,"** (1) granting this Motion; (2) appointing Messana and the law firm of Underwood Murray as legal counsel for the Conservator regarding the Flat Fee Engagement retroactive to January 1, 2022; and (3) approving the Flat Fee Engagement and terms of compensation described in this Motion.

Dated: May 5, 2022.

UNDERWOOD MURRAY, P.A.
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By: /s/ Thomas M. Messana
Thomas M. Messana
Florida Bar No. 991422

By: /s/ Philip J. von Kahle
Philip J. von Kahle
Court Appointed Conservator

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Plaintiffs,

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**ORDER GRANTING CONSERVATOR'S MOTION TO EMPLOY UNDERWOOD
MURRAY, P.A. AS LEGAL COUNSEL *RETROACTIVE TO JANUARY 1, 2022***

THIS MATTER came before this Court for consideration of the *Conservator's Motion to Employ Underwood Murray, P.A. as Legal Counsel Retroactive to January 1, 2022* (the "**Motion**") filed by and through proposed counsel for the Court-Appointed Conservator, Philip J. von Kahle. Having reviewed the Motion and all argument and representation contained therein, finding the Motion and this Court's consideration of same was adequately noticed and no further or additional notice is required, and finding sufficient cause exists to grant the Motion and all relief contained therein, it is hereby:

ORDERED and **ADJUDGED** as follows:

1. The Motion is **GRANTED**.

EXHIBIT "A"

2. Thomas M. Messana and the law firm of Underwood Murray, P.A. are hereby appointed as legal counsel for the Conservator with reference to the Flat Fee Engagement.¹

3. The \$25,000.00 flat fee sought by Underwood Murray, P.A. regarding the Flat Fee Engagement is reasonable given the scope of work contemplated and is hereby **APPROVED**.

4. All other terms regarding employment and compensation of Thomas M. Messana and Underwood Murray, P.A. are hereby **APPROVED**.

Done and ordered in Chambers this ____ day of _____, 2022.

HONORABLE JACK TUTER
Circuit Court Judge

Copies furnished to:

Thomas M. Messana, Esq. who is directed to serve same upon all parties.

¹ Capitalized terms not otherwise defined herein shall have meaning ascribed in the Motion.