

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:

PROVIDENCE FINANCIAL HOME
FUND, INC.,

Debtor.

Case No. 16-20516-AJC
Chapter 7

In re:

PROVIDENCE FIXED INCOME FUND,
LLC,

Debtor.

Case No. 16-20517-AJC
Chapter 7

**APPLICATION FOR APPROVAL OF EMPLOYMENT OF
BERGER SINGERMAN LLP, AS SPECIAL LITIGATION
COUNSEL TO MARIA M. YIP, CHAPTER 7 TRUSTEE**

Maria M. Yip, the duly appointed and acting Chapter 7 Trustee (the “Trustee”) for the estates of Providence Financial Investments, Inc. and Providence Fixed Income Fund, LLC (collectively, the “Debtors”), pursuant to 11 U.S.C. § 327(a) and 328(a), Fed. R. Bankr. P. 2014 and 2016 and Local Rules 2014-1 and 2016-1, moves the Court for entry of an order approving the employment of Berger Singerman LLP (“Berger Singerman”), as special litigation counsel to the Trustee (the “Application”). In support of the Application, the Trustee relies on the *Declaration of James D. Gassenheimer, as Proposed Special Litigation Counsel to Maria M. Yip, Chapter 7 Trustee* (the “Gassenheimer Declaration”), attached hereto as **Exhibit A**, and respectfully represents as follows:

Background

1. On July 28, 2016, the Debtors filed voluntary petitions for relief under Chapter 7 of Title 11 of the United States Code (the “Bankruptcy Code”).
2. Maria M. Yip is the duly appointed Chapter 7 Trustee of the Debtors’ estates.
3. Since her appointment, the Trustee has been investigating the business and financial affairs of the Debtors.

Relief Requested

4. By this Application, the Trustee seeks entry of an order approving the employment of Berger Singerman, as special litigation counsel to investigate and, if appropriate, prosecute claims against third parties, at the direction of the Trustee (the “Litigation Claims”).

5. Berger Singerman specializes in complex commercial matters and is qualified to assist the Trustee with the preparation and prosecution of the Litigation Claims.

6. The Trustee requests authorization to retain Berger Singerman on a contingency fee basis with respect to the Litigation Claims, and applies for this Court’s approval, consistent with the provisions of 11 U.S.C. § 328(a),¹ in order to insulate the estate from potentially unlimited expenses in attorneys’ fees. Berger Singerman has agreed to a contingency arrangement with the Trustee for the work to be performed on the Litigation Claims, in lieu of the straight hourly fee method of compensation sometimes utilized in business and bankruptcy litigation. The proposed contingency fee arrangement is as follows:

(a) Fee on Recoveries: Berger Singerman shall earn a (1) 35% fee (with respect to Litigation Claims for those entities for which Berger Singerman does file an adversary proceeding on behalf of the Trustee or which Berger Singerman settles prior to filing suit); and

¹ Section 328(a) of the Bankruptcy Code provides, in part, that counsel retained pursuant to section 327 or 1103 may be compensated on a contingency fee basis. 11 U.S.C. § 328(a).

(2) a 40% fee (with respect to the Litigation Claims for those entities for which Berger Singerman pursues or defends an appeal, including up to the United States Court of Appeal for the Eleventh Circuit);

(b) Expenses: The Debtors shall be responsible for the advancement or reimbursement of all reasonable and necessary costs incurred by Berger Singerman in connection with the prosecution of the Litigation Claims, whether or not Berger Singerman is successful in recovering or collecting any funds on account of the Litigation Claims, including, without limitation, filing fees, long distance telephone calls, copying/printing, courier services, travel and lodging services, court reporting, expert fees, costs of investigation, computer-assisted research charges, postage and other incidental expenses.

(c) Remittance: In the event that the Litigation Claims are concluded by order of the Court (or the District Court upon withdrawal of the reference in respect of the Litigation Claims, or in a State Court proceeding or arbitration) after litigation (and not subject of a motion to approve a settlement under Rule 9019, Fed. R. Bankr. P., a “9019 Motion”), then upon recovery of any judgment in favor of the Trustee, Berger Singerman will file with the Court a notice of recovery setting forth the amount to be paid to Berger Singerman which will be paid immediately out of the proceeds of the recovery in the possession of the Trustee without further hearing or approval; provided, however, the foregoing is without prejudice to any party-in-interest challenging such payment under Section 328(a) of the Bankruptcy Code on the basis that the contingent fee has proven “to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.” 11 U.S.C. § 328(a). In the event the Litigation Claims are concluded by settlement that is subject to Court approval, the Bankruptcy Court order approving Berger Singerman’s retention will provide that, in the 9019

Motion filed to seek court approval of the settlement, such motion will also seek approval for the immediate payment of Berger Singerman's contingent fee out of the proceeds of the recovery of the Litigation Claims in the possession of the Trustee. To the extent that Berger Singerman incurs costs prosecuting the Litigation Claims, the Debtors' estates shall remit to Berger Singerman any such expenses, upon court approval, provided, however, that Berger Singerman shall not be required to file fee applications pursuant to any such amounts remitted.

(d) Waiver of Detailed Time Entries: The requirements under the Guidelines for Fee Applications for Professionals in the Southern District of Florida, as required by Local Rule 2016-1, for submission of detailed time entries would be waived with respect to Berger Singerman's special litigation counsel and conflict counsel retention.

7. The Trustee submits that the proposed contingency fee arrangement as set forth above is fair, reasonable, and well within the normal range for services rendered in cases of similar complexity and magnitude in this District.

8. In addition to the foregoing arrangement for the Litigation Claims, the Trustee reserves the right to retain Berger Singerman on an hourly basis in respect of any matter for which the Trustee's general counsel, Akerman LLP, is conflicted (the "Conflict Work"). The Trustee will submit a supplemental application should there be Conflict Work.

9. Accordingly, the Trustee seeks to employ Berger Singerman as special litigation counsel to the Trustee, with respect to the prosecution of the Litigation Claims, pursuant to 11 U.S.C. §§ 327(a) and 328(a), Fed. R. Bankr. 2014 and 2016, and Local Rules 2014-1 and 2016-1.

Basis for Relief Requested

10. Section 327(a) of the Bankruptcy Court provides, in relevant part, as follows:

Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 327(a).

11. Bankruptcy Rule 2014(a) provides, in relevant part, as follows:

An order approving the employment of attorneys . . . pursuant to § 327, § 1103, or § 1114 of the Code shall be made only on application of the trustee or committee. The application shall be filed and . . . a copy of the application shall be transmitted by the applicant to the United States trustee. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the persons' connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, or any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014(a).

12. Additionally, Section 328 of the Bankruptcy Code provides in relevant part:

[t]he trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.

11 U.S.C. § 328(a).

13. Furthermore, the Trustee submits that because compensation for legal services provided for the Litigation Claims shall be paid on a contingency fee basis, the requirements under the Guidelines for Fee Applications for Professionals in the Southern District of Florida, as

required by Local Rule 2016-1, for submission of detailed time entries should be waived with respect to this proposed engagement.

14. Except as disclosed herein and in the Gassenheimer Declaration, a copy of which is attached hereto as **Exhibit “A”**, to the best of the Trustee’s knowledge, neither James D. Gassenheimer nor Berger Singerman holds or represents any interest adverse to the estate. The Trustee believes that the employment of Berger Singerman is in the best interest of the Debtors’ estates.

15. The Gassenheimer Declaration demonstrates that Berger Singerman is disinterested as required by Section 327(a) of the Bankruptcy Code, and is the verified statement as required under Rule 2014 of the Federal Rules of Bankruptcy Procedure.

16. Compensating Berger Singerman with respect to prosecution of the Litigation Claims on the terms and conditions set forth herein is in the best interests of the Debtors’ estates. In addition, the contingent fee request for performing such services as set forth herein is reasonable and not in excess of the rate typically charged for these types of litigation.

17. The Trustee submits that (i) Berger Singerman’s representation of the Trustee is permissible under 11 U.S.C. §§ 327 and 328; (ii) the contingency fee arrangement is permissible under § 328 of the Bankruptcy Code, and (iii) the contingency fee representation is in the best interests of the Debtors’ estates, its creditors and all parties in interest. The contingency fee arrangement proposed herein similar to other contingency fee arrangements that have been approved recently in cases pending in this and other Districts. *See, e.g., In re Able Body Temporary Services, Inc.*, Case No. 8:13-06864-CED (Bankr. M.D. Fla. April 14, 2014) [ECF No. 115] (approving contingency fee arrangement providing for 35% of any monies recovered, and an additional 5% in the event of an appeal, plus expenses). Similarly, the provisions

regarding waiver of the requirement to maintain detailed time entries and file fee applications have been approved by courts in this District. *See, e.g., In re Adinath Corp.*, No. 15-16885-LMI (Bankr. S.D. Fla. Dec. 3, 2015)

WHEREFORE, the Trustee respectfully requests the entry of an order in the form annexed hereto as **Exhibit "B"** (i) granting the Application; (ii) approving the Trustee's employment of Berger Singerman as special litigation counsel to the Trustee, pursuant to the contingency fee arrangement set forth herein; and (iii) granting the Trustee such other and further relief as may be just and proper.

Dated: September 1, 2016

Respectfully submitted,



Maria M. Yip, Chapter 7 Trustee
trustee@yipcpa.com

One Biscayne Tower
2 S. Biscayne Blvd., Ste. 2690
Miami, FL 33131
Telephone: (305) 908-1862
Facsimile: (305) 800-3903

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served electronically through the Court's CM/ECF system upon all parties registered to receive electronic notice in this case as indicated on the attached Electronic Mail Notice list on this 1st day of September, 2016.

Dated: September 1, 2016

BERGER SINGERMAN LLP
Proposed Special Litigation Counsel to the Trustee
1450 Brickell Avenue, Ste. 1900
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

By: /s/ James D. Gassenheimer
James D. Gassenheimer
jgassenheimer@bergersingerman.com
Florida Bar No. 959987
Isaac M. Marcushamer
imarcushamer@bergersingerman.com
Florida Bar No. 060373

EXHIBIT "A"

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:

PROVIDENCE FINANCIAL HOME
FUND, INC.,

Case No. 16-20516-AJC
Chapter 7

Debtor.

In re:

PROVIDENCE FIXED INCOME FUND,
LLC,

Case No. 16-20517-AJC
Chapter 7

Debtor.

**DECLARATION OF JAMES D. GASSENHEIMER ON BEHALF OF
BERGER SINGERMAN LLP, AS PROPOSED SPECIAL LITIGATION COUNSEL
AND CONFLICTS COUNSEL TO MARIA M. YIP, CHAPTER 7 TRUSTEE**

1. I am James D. Gassenheimer. I am an attorney and partner with the law firm of Berger Singerman LLP (“Berger Singerman”). Our firm maintains offices for the practice of law at 1450 Brickell Avenue, Suite 1900, Miami, FL 33131; 350 E. Las Olas Boulevard, Suite 1000, Fort Lauderdale, Florida 33301; 125 South Gadsden Street, Suite 300, Tallahassee, Florida 32301 and One Town Center Road, Suite 301, Boca Raton, Florida 33486. I am familiar with the matters set forth herein and make this Declaration in support of the *Trustee’s Application for Approval of Employment of Berger Singerman LLP as Special Litigation Counsel to Maria M. Yip, Chapter 7 Trustee* (the “Application”).

2. In support of the Application, I disclose the following:

(a) Unless otherwise stated, this Declaration is based upon facts of which I have personal knowledge.

(b) In preparing this Declaration, I and others working with me on this case reviewed a list of the creditors and interested parties of the Debtors, Providence Financial Home Fund, Inc. and Providence Fixed Income Fund, LLC (collectively, “the “Debtors”), as reflected on the creditor matrices as filed with the Court as of August 24, 2016, as well as a list of potential litigation targets as provided to me by Maria M. Yip, the Chapter 7 Trustee of the Debtors’ estates.¹ I caused our accounting department to compare the information obtained thereby with the information contained in our law firm’s client and adverse party conflict check index system. The facts stated in this Declaration as to the relationship between other lawyers in our law firm and the Debtors, the Debtors’ creditors, the United States Trustee, other persons employed by the Office of the United States Trustee are based on the results of my review of our firm’s conflict check index system. Specifically, I have caused to be (i) conducted a computer search of our firm’s records in respect of all of the names referred to in the first sentence of this paragraph 2(b) and (ii) disseminated a written request for information to all of the attorneys in our firm regarding connections to the Debtors, the creditors of the Debtors, as well as the Potential Litigation Targets. Based upon such search, our firm does not represent any entity in a matter which would constitute a conflict of interest or impair the disinterestedness of Berger Singerman.

3. Berger Singerman’s client and adverse party conflicts check system is comprised of records regularly maintained in the course of business of the firm and it is the regular practice of the firm to make and maintain these records. It reflects entries that are noted in the system at the time the information becomes known by persons whose regular duties include recording and

¹ The names of the potential targets are not being disclosed in the application or this Declaration in order to protect attorney-client privilege and work product. However, upon request by the Court or the office of the United States Trustee, Berger Singerman is prepared to submit under seal or for *in camera* inspection the list of potential targets that are currently subject of investigation.

maintaining this information. I regularly use and rely upon the information contained in the system in the performance of my duties with the law firm and in my practice of law.

4. A search of our firm's conflicts check system revealed the following matters, which do not constitute any conflict of interest:

a) *Maria M. Yip* ("Ms. Yip") is the Chapter 7 Trustee of the Debtors' estates. Berger Singerman represents and has previously represented Ms. Yip in her fiduciary capacity as chapter 7 trustee in matters wholly unrelated to the instant bankruptcy case;

b) *Banco Bradesco, S.A.* is listed as a creditor or party in interest of the Debtors. Berger Singerman formerly represented *Banco Bradesco, S.A.* in a matter wholly unrelated to the instant bankruptcy case. Berger Singerman presently has no active representations of *Banco Bradesco, S.A.*;

c) *Bank of America* is listed as a creditor or party in interest of the Debtors. Berger Singerman formerly represented *Bank of America* in matters wholly unrelated to the instant bankruptcy case. Berger Singerman presently has no active representations of *Bank of America*. In addition, Berger Singerman has represented clients who are adverse to *Bank of America* in that they have incurred a debt to *Bank of America* in matters wholly unrelated to the instant bankruptcy case; and

d) *Citibank* is listed as a creditor or party in interest of the Debtors. Berger Singerman formerly represented *Citibank* in matters wholly unrelated to the instant bankruptcy case. Berger Singerman presently has no active representations of *Citibank*. In addition, Berger Singerman has represented a number of clients who are adverse to *Citibank* in that they have incurred a debt to *Citibank* in matters wholly unrelated to the instant bankruptcy case;

e) *Espirito Santo Bank* is listed as a creditor or party in interest of the Debtors. Berger Singerman formerly represented *Espirito Santo Bank* in matters wholly unrelated to the instant bankruptcy case. Berger Singerman presently has no active representations of *Espirito Santo Bank*.

f) *Chase Bank, N.A.* and *JP Morgan Chase Bank, B.A.* are listed as creditors or party in interest of the Debtors. Berger Singerman formerly represented *Chase Bank, N.A.* and *JP Morgan Chase Bank, B.A.* in matters wholly unrelated to the instant bankruptcy case. Berger Singerman presently has no active representations of *Chase Bank, N.A.* and *JP Morgan Chase Bank, B.A.* In addition, Berger Singerman has represented a number of clients who are adverse to *Chase Bank, N.A.* and *JP Morgan Chase Bank, B.A.* in that they have incurred a debt to *Chase Bank, N.A.* and *JP Morgan Chase Bank, B.A.* in matters wholly unrelated to the instant bankruptcy case;

g) *Regions Bank* is listed as a creditor or party in interest of the Debtors. Berger Singerman formerly represented *Regions Bank* in matters wholly unrelated to the instant bankruptcy case. Berger Singerman presently has no active representations of *Regions Bank*. In addition, Berger Singerman has and represented clients and currently is representing a client adverse to *Regions Bank* in matters wholly unrelated to the instant bankruptcy case;

h) *Total Bank* is listed as a creditor or party in interest of the Debtors. Berger Singerman formerly represented *Total Bank* in matters wholly unrelated to the instant bankruptcy case. Berger Singerman presently has no active representations of *Total Bank*. In addition, Berger Singerman has represented clients who are adverse to *Total Bank* in that they have incurred a debt to *Total Bank* in matters wholly unrelated to the instant bankruptcy case; and

i) *Wells Fargo Bank, N.A.* (formerly known as *Wachovia Bank, N.A.*) is listed as a creditor or interested party of the Debtors. Berger Singerman has represented *Wells Fargo Bank, N.A.* in matters that are wholly unrelated to the instant bankruptcy case. Further, Berger Singerman previously represented *Wachovia Bank, N.A.* (which I understand was acquired by *Wells Fargo Bank, N.A.*) in matters that are wholly unrelated to the instant bankruptcy case. As of this date, Berger Singerman has no active representations of *Wells Fargo Bank, N.A.* In addition, Berger Singerman has represented a number of clients who are adverse to *Wells Fargo Bank, N.A.* in that they have incurred a debt to *Wells Fargo Bank, N.A.*, in matters wholly unrelated to the instant bankruptcy case;

j) Katie Phang, a partner in our Law Firm, is married to the attorney for Antonio Buzaneli, one of the owners of the Debtors. Ms. Phang will not participate in any manner in this engagement and she will be walled off from accessing the file. This representation is consistent with Florida Bar Rule 4-1.7(d).

k) There are numerous creditors or parties in interest, which have been creditors of, or adverse to, other entities represented by Berger Singerman in cases and matters wholly unrelated to the instant bankruptcy case. These entities are: *Liberty Trust Company, PNC Bank, PricewaterhouseCoopers, Royal Bank of Scotland* and *U.S. Century Bank*.

l) Berger Singerman represents privately held as well as public companies in out of court and restructuring matters (the "Non-Debtor Clients"). Several creditors of the instant Debtor may be creditors of one or more of our firm's Non-Debtor Clients. Berger Singerman's representation of the Non-Debtor Clients does not impair Berger Singerman's disinterestedness or its ability to represent the Trustee in this case.

5. Berger Singerman submits that none of the foregoing representations or connections constitutes a conflict of interest or in any way impairs its disinterestedness in this case.

6. Other than as set forth in this declaration, Berger Singerman neither holds nor represents any interest adverse to the Debtor and is a “disinterested person” within the scope and meaning of Section 101(14) of the Bankruptcy Code.

7. Neither I nor our firm has or will represent any other entity in connection with this case, and neither I nor our firm will accept any fee from any other party or parties in this case, except the Trustee, unless otherwise authorized by the Court.

8. As reflected in the Application, a request is being made of the Court for Berger Singerman to not have to have professional fees and costs it incurs in the course of its representation of the Trustee in connection with Litigation Claims to be subject to the application and notice requirements of 11 U.S.C. §§ 327, 330 and 331 and FRBP 2014 and 2016.

9. There is no agreement of any nature, other than the shareholder agreement of our firm, as to the sharing of any compensation to be paid to the firm. No promises have been received by Berger Singerman nor any member, or associate thereof as to compensation in connection with this case other than in accordance with the provisions of the Bankruptcy Code.

10. No attorney in our firm holds a direct or indirect equity interest in the Debtors, including stock or stock warrants, or has a right to acquire such an interest.

11. No attorney in our firm is or has served as an officer, director or employee of the Debtors within two years before the Petition Date.

12. No attorney in our firm is in control of the Debtors or is a relative of a general partner, director, officer or person in control of the Debtors.

13. No attorney in our firm is a general or limited partner of a partnership in which the Debtors are also a general or limited partner.

14. No attorney in our firm is or has served as an officer, director or employee of a financial advisor that has been engaged by the Debtors in connection with the offer, sale or issuance of a security of the Debtors, within two years before the Petition Date.

15. No attorney in our firm has represented a financial advisor of the Debtors in connection with the offer, sale or issuance of a security of the Debtors within three years before the filing of the petition.

16. No attorney in the firm has any other interest, direct or indirect, that may be affected by the proposed representation.

17. Except as forth herein, no attorney in our firm has had or presently has any material connection with the Debtors, the Debtors' creditors, any other party in interest or their respective attorneys and accountants, the United States Trustee, or any person employed in the Office of the United States Trustee (but the undersigned and many employees of Berger Singerman have personal relationships and friendships with attorneys at the Office of the United States Trustee in the Southern District of Florida), on any matters in which the firm is to be engaged, except that I, our law firm, and our attorneys (i) may have appeared in the past, and may appear in the future, in other cases in which one or more of said parties may be involved; and (ii) may represent or may have represented certain of the Debtors' creditors in matters unrelated to this case.

18. This concludes my Declaration.

28 U.S.C § 1746 Declaration

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on September 1, 2016.

/s/ James D. Gassenheimer

JAMES D. GASSENHEIMER

EXHIBIT "B"

(Proposed form of Order)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:

PROVIDENCE FINANCIAL HOME
FUND, INC.,

Debtor.

_____ /

Case No. 16-20516-AJC
Chapter 7

In re:

PROVIDENCE FIXED INCOME FUND,
LLC,

Debtor.

_____ /

Case No. 16-20517-AJC
Chapter 7

**ORDER GRANTING APPLICATION FOR APPROVAL
OF EMPLOYMENT OF BERGER SINGERMAN LLP, AS SPECIAL
LITIGATION COUNSEL TO MARIA M. YIP, CHAPTER 7 TRUSTEE**

THIS MATTER came before the Court on _____, 2016 at __:__ a.m./p.m.
upon the *Application for Approval of Employment of Berger Singerman LLP, as Special
Litigation Counsel to Maria M. Yip, Chapter 7 Trustee* [ECF No. ____] (the “Application”). The

Litigation Counsel to Maria M. Yip, Chapter 7 Trustee [ECF No. ____] (the “Application”). The Application requests entry of an order approving the employment by Maria M. Yip, the Chapter 7 Trustee (the “Trustee”) of Berger Singerman LLP (“Berger Singerman”) to represent her as special litigation counsel in this chapter 7 case, pursuant to a contingent fee compensation arrangement, with respect to the prosecution of the Litigation Claims¹ described in the Application and below. The Court, having considered the Application and the *Declaration of James D. Gassenheimer, on behalf of Berger Singerman LLP, as Proposed Special Litigation Counsel to Maria M. Yip, Chapter 7 Trustee* (the “Gassenheimer Declaration”), attached to the Application as **Exhibit “A”**, having noted that the Gassenheimer Declaration makes the relevant disclosures as required by Fed. R. Bankr. P. 2014 and Fed. R. Bankr. P. 2016, and that the Gassenheimer Declaration contains a verified statement as required by Fed. R. Bankr. P. 2014 demonstrating that James D. Gassenheimer and Berger Singerman as disinterested as required by 11 U.S.C. § 327(a), and after due deliberation thereon, good and sufficient cause exists for the granting of the relief set forth herein. Accordingly, it is

ORDERED that:

1. The Application is **APPROVED**.
2. The employment of Berger Singerman, as special litigation counsel to the Trustee, is **APPROVED**.
3. The contingency fee for Berger Singerman’s services to the Trustee as contained in the Application and this Order shall govern, unless modified by subsequent Court Order.
4. The Trustee is authorized to retain Berger Singerman on a contingency fee basis with respect to the Litigation Claims, upon the following terms:

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Application.

(a) Fee on Recoveries: Berger Singerman shall earn a (1) 35% fee (with respect to Litigation Claims for those entities for which Berger Singerman does file an adversary proceeding on behalf of the Trustee or which Berger Singerman settles prior to filing suit); and (2) a 40% fee (with respect to the Litigation Claims for those entities for which Berger Singerman pursues or defends an appeal, including up to the United States Court of Appeal for the Eleventh Circuit);

(b) Expenses: The Trustee shall be responsible for the advancement or prompt reimbursement of all reasonable and necessary costs incurred by Berger Singerman in connection with the prosecution of the Litigation Claims, whether or not Berger Singerman is successful in recovering or collecting any funds on account of the Litigation Claims, including, without limitation, filing fees, long distance telephone calls, copying/printing, courier services, travel and lodging services, court reporting, expert fees, costs of investigation, computer-assisted research charges, postage and other incidental expenses.

(c) Remittance: In the event that the Litigation Claims are concluded by order of the Court (or the District Court upon withdrawal of the reference in respect of the Litigation Claims or in a State Court proceeding or arbitration) after litigation (and not subject of a motion to approve a settlement under Rule 9019, Fed. R. Bankr. P., a “9019 Motion”), then upon recovery of any judgment in favor of the Trustee, Berger Singerman will file with the Court a notice of recovery setting forth the amount to be paid to Berger Singerman which will be paid immediately out of the proceeds of the recovery in the possession of the Trustee without further hearing or approval; provided, however, the foregoing is without prejudice to any party-in-interest challenging such payment under Section 328(a) of the Bankruptcy Code on the basis that the contingent fee has proven “to have been improvident in light of developments not capable of

being anticipated at the time of the fixing of such terms and conditions.” 11 U.S.C. § 328(a). In the event the Litigation Claims are concluded by settlement that is subject to Court approval, the 9019 Motion filed to seek approval of the settlement will also seek approval for the immediate payment of Berger Singerman’s contingent fee out of the proceeds of recovery of the Litigation Claims in the possession of the Trustee. To the extent that Berger Singerman incurs costs prosecuting the Litigation Claims, the Trustee is authorized to remit to Berger Singerman any such expenses, upon court approval, provided, however, that Berger Singerman shall not be required to file fee applications pursuant to any such amounts remitted.

(d) Waiver of Detailed Time Entries: The requirements under the Guidelines for Fee Applications for Professionals in the Southern District of Florida, as required by Local Rule 2016-1, for submission of detailed time entries are waived with respect to Berger Singerman’s special counsel and conflict counsel retention.

5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order

#

Submitted by:
James D. Gassenheimer
jgassenheimer@bergersingerman.com
BERGER SINGERMAN LLP
1450 Brickell Avenue, Ste. 1900
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

(James D. Gassenheimer, Esq. is directed to serve a confirmed copy of this Order upon all interested parties and file a proof of service within 3 days of the entry of this Order).

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

- Eyal Berger eyal.berger@akerman.com, jeanette.martinez@akerman.com
- Richard J Cole rcole3@gmail.com, rc3@colegelelaw.com
- Catherine E Douglas catherine.douglas@akerman.com,
jeanette.martinez@akerman.com
- Joan M Levit joan.levit@akerman.com, charlene.cerda@akerman.com
- James B Miller bkcmiami@gmail.com
- Office of the US Trustee USTPRegion21.MM.ECF@usdoj.gov
- Susan R Sherrill-Beard sherrill-beards@sec.gov,
atlreorg@sec.gov;berlina@sec.gov;martinc@sec.gov
- Maria Yip trustee@yipcpa.com, myip@ecf.epiqsystems.com