



ORDERED in the Southern District of Florida on September 23, 2016.

A handwritten signature in black ink that reads "A Jay Cristol".

**A. Jay Cristol, Judge
United States Bankruptcy Court**

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

In re:

PROVIDENCE FINANCIAL
INVESTMENTS, INC.,

PROVIDENCE FIXED INCOME FUND,
LLC,

Debtors.

Case No. 16-20516-AJC
Chapter 7
(Jointly Administered)

Case No. 16-20517

**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 Tuesday, September 20, 2016 at 10:30 a.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. 34] (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), having noted that no timely objection was filed, and having considered the *ore tenus* motion for a continuance of the hearing on the Application made by potential counsel for certain creditors who may have concerns about the Application (the “Ore Tenus Motion”) made for the first time at the hearing, and after due deliberation thereon, it is

ORDERED that:

1. The Application is **APPROVED**.
2. The Ore Tenus Motion is **DENIED**.
3. Having found that James D. Gassenheimer and Berger Singerman are disinterested as required by 11 U.S.C. § 327(a), the employment of Berger Singerman, as special litigation counsel to the Trustee, is **APPROVED**.
4. 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.
5. 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 litigation counsel retention.

6. Any party-in-interest with a valid objection to the Application may file a motion for reconsideration and/or re-hearing. Any motion for reconsideration and/or re-hearing shall be in writing and shall be filed and served within fourteen (14) days of the date of this Order. If a motion for reconsideration and/or re-hearing is timely filed and served, the Court shall conduct a hearing on the motion for reconsideration and/or re-hearing on the Application.

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

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Submitted by:

James D. Gassenheimer

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(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).