

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

IN RE: Case No.: 12-30081-BKC-EPK  
CLSF III IV, Inc., *et al.*, Chapter 7  
Debtors. (Substantively Consolidated)

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**TRUSTEE’S MOTION TO APPROVE STIPULATION FOR COMPROMISE AND  
SETTLEMENT BETWEEN (I) DEBORAH C. MENOTTE, CHAPTER  
7 TRUSTEE; AND (II) LITAI ASSETS, LLC**

**NOTICE**

**Any interested party who fails to file and serve a written response to this motion within 21 days after the date of service stated in this motion shall, pursuant to Local Rule 9013-1(D), be deemed to have consented to the entry of an order in the form attached to this motion. Any scheduled hearing may then be canceled.**

Deborah C. Menotte, the duly appointed and acting Chapter 7 Trustee (the “Trustee”) for the bankruptcy estates of CLSF III IV, Inc., *et al.*, by and through undersigned counsel, moves the Court for the entry of an Order approving a *Stipulation for Compromise and Settlement* between the Trustee and Litai Assets, LLC (“Litai”) dated March 5, 2015. In support of this Motion, the Trustee states:

**Background**

1. On August 22, 2012 (the “Petition Date”), the above-captioned bankruptcy case was commenced by the filing of an involuntary petition against CLSF III IV, Inc., (the “Debtor”) for relief under Chapter 7 of the Bankruptcy Code.

2. Thereafter, thirty-two affiliates (the “Affiliates”) of the Debtor (together with the Debtor, collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 7 of the Bankruptcy Code between October 24, 2012 and November 7, 2012.

3. On December 11, 2012, the Chapter 7 cases of the Debtors were jointly administered pursuant to this Court’s *Order of Joint Administration of Related Cases With CLSF III IV, Inc. as Lead Case* [ECF No. 120].

4. Deborah C. Menotte is the duly appointed and acting Chapter 7 Trustee of the Debtors’ estates.

5. On January 9, 2013, the Trustee filed *Chapter 7 Trustee’s Motion to Approve Servicing Agreement Between Trustee and Litai Assets, LLC, Nunc Pro Tunc to October 25, 2012* [ECF No. 135], requesting the entry of an Order approving a *Servicing Agreement* entered into between the Trustee and Litai with respect to certain quality investments’ life insurance policies owned by the Debtors.

6. On May 31, 2013, the Court entered an order, *nunc pro tunc* to October 25, 2012 [ECF No. 363], approving the Trustee’s engagement of Litai to service the numerous life insurance policies owned by the substantively consolidated Debtors. Pursuant to the terms of the *Servicing Agreement* entered into between the Trustee and Litai, Litai’s services were to include: ordering policy illustrations and premium schedules, cooperating with the Trustee, Investment Manager and/or other authorized representative of the Trustee with respect to optimizing premium payment services, advising the Trustee on the amount of premium obligations that are due, and such other services relating to the collection and payment of premiums as may reasonably be requested by the Trustee.

7. Following the services rendered by Litai, a dispute arose between the Trustee and

Litai with respect to fees charged by Litai for the services and other issues.

8. In the interest of avoiding further costly and time-consuming litigation, the Trustee and Litai have entered into a *Stipulation for Compromise and Settlement* (the “Stipulation”), a copy of which is attached hereto as **Exhibit “A,”** which is subject to the approval of this Court after notice to creditors. The terms of the Stipulation are set forth below:

(a) In full and final settlement of all disputes between the Trustee and Litai, Litai agrees to deliver, within five (5) calendar days from the entry of a final Order of the Bankruptcy Court approving the Stipulation, the sum of \$25,000.00 (the “Settlement Amount”), in the form of check, cashier’s check, wire transfer or other form of immediately available funds, made payable to “Berger Singerman LLP Trust Account” and forwarded to Berger Singerman LLP, 350 E. Las Olas Boulevard, Suite 1000, Ft. Lauderdale, FL 33301, Attn: Leslie Gern Cloyd, Esq.

(b) Upon receipt of a completely executed Stipulation, the Trustee shall promptly prepare and file a motion with the Bankruptcy Court seeking approval of the Stipulation, with notice to creditors and parties in interest.

(c) Upon approval of the Stipulation by final order of the Bankruptcy Court, and the receipt of the Settlement Amount, the Trustee shall be deemed to have fully, finally, and forever released, relinquished, discharged and waived any and all claims, cause, and causes of action against Litai, including any and all of Litai’s predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates and assigns, and its and their past, present and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns and successors in interest, and all persons acting

by, through, under, or in concert with them, including, but not limited to, causes of action, costs or damages, expenses, remedies, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, which the Trustee may have had against them. However, nothing herein shall operate or otherwise be construed to operate as a release or discharge of any of the obligations of Litai under the Stipulation.

(d) Upon approval of the Stipulation by final order of the Bankruptcy Court, and the payment of the Settlement Amount, Litai shall be deemed to have fully, finally, and forever released, relinquished, discharged and waived any and all claims, cause, and causes of action against the Debtors' estate, including, but not limited to, causes of action, costs, damages, expenses, remedies, whether now known or unknown, and whether pending or not yet asserted, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, which they individually or collectively, have or may have had against the Debtors, the Trustee and the Trustee's attorneys and accountants, relating in any manner whatsoever, directly or indirectly to the Debtors, and this bankruptcy case. However, nothing herein shall operate or otherwise be construed to operate as a release or discharge of any of the obligations of the Trustee under the Stipulation.

### **Legal Analysis**

9. The Trustee seeks approval of the Stipulation pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

10. Rule 9019(a) provides that, after notice and a hearing, a court may approve a proposed settlement of a claim. The decision of whether or not to approve a compromise is within the sound discretion of the court. *In re Carson*, 82 B.R. 847 (Bankr. S.D. Ohio 1987); *In re Mobile Air Drilling Co.*, 53 B.R. 605 (Bankr. N.D. Ohio 1985).

11. In passing on proposed settlements, the standard that courts applied under the former Bankruptcy Act is the same standard as courts should apply under the Bankruptcy Code. *In re Carla Leather, Inc.*, 44 B.R. 457, 466 (Bankr. S.D.N.Y. 1984). As stated by the United States Supreme Court in *Protective Committee v. Anderson*, 300 U.S. 414 (1968), under the Act, to approve a proposed settlement, a court must find that the settlement was “fair and equitable” based on an educated estimate of the complexity, expense, and likely duration of . . . litigation, the possible difficulties of collecting on any judgment which might be obtained and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. *Protective Committee*, 300 U.S. at 424.

12. This test was adopted by the Eleventh Circuit in *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990), which provides additional guidance as to whether a compromise should be approved. *Justice Oaks* established the following four-part test for approval:

- (a) The probability of success in litigation;
- (b) The difficulties, if any, to be encountered in the matter of collection;
- (c) The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
- (d) The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

13. The Stipulation satisfies the *Justice Oaks* standard.

14. Applying the foregoing, the terms of the Stipulation satisfy that four-part test relating to the Rule 9019 request. The Trustee believes that notwithstanding the likelihood of success in potential litigation, the expense, inconvenience and delay that would be caused by

litigating and the uncertainty of the collection of the monies owed would not be in the best interests of the Debtors' estate. Therefore, it is the belief of the Trustee that after full and careful consideration of the merits of the Trustee's claims, settlement of the claims pursuant to the terms set forth herein and in the Stipulation would be in the best interests of the Debtors' estate.

15. Additionally, counsel for the Trustee is mindful of the additional administrative expenses that will be incurred in the event that the Stipulation is not approved. The Trustee believes that resolution of the above-referenced matters in the manner set forth herein and in the Stipulation is reasonable and falls well within the range of reasonableness as required by Rule 9019 of the Federal Rules of Bankruptcy Procedure and applicable law.

**WHEREFORE**, the Trustee respectfully requests that this Court enter an Order in the form attached hereto as **Exhibit "B"**:

- (i) Granting this Motion;
- (ii) Approving the Stipulation in its entirety, in the event that no written objections are filed within the time prescribed by Local Rule 9013-1(D); and
- (iii) Granting such other and further relief as the Court deems just and proper.

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was served on this 6<sup>th</sup> day of March, 2015, via electronic transmission through the Court's CM/ECF system upon all parties on the attached CM/ECF Service List; via electronic transmission upon all parties on the attached lists of creditors and foreign investors who have consented to electronic service; and via first class, U.S. Mail upon all parties listed below and identified on the Service List attached to the original of this Motion, to the extent that such parties were not already served electronically

through the Court's CM/ECF system.

Dated: March 6, 2015

Respectfully submitted,

BERGER SINGERMAN LLP  
*Counsel for the Trustee*  
350 East Las Olas Blvd, Suite 1000  
Fort Lauderdale, FL 33301  
Telephone No. (954) 525-9900  
Facsimile No. (954) 523-2872

By: /s/ Leslie Gern Cloyd  
Leslie Gern Cloyd  
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**EXHIBIT "A"**



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

CLSF III IV, INC., *et al.*,

Debtors.

Case No. 12-30081-EPK

Chapter 7

Substantively Consolidated

**STIPULATION FOR COMPROMISE AND SETTLEMENT**

**THIS STIPULATION OF SETTLEMENT** (the "Stipulation") is entered on the date stated below, by and between Deborah C. Menotte, Chapter 7 Trustee (the "Trustee") of the substantively consolidated bankruptcy estates of CLSF III IV, Inc., *et al.* (collectively, the "Debtors"), and Litai Assets LLC ("Litai") (collectively with the Trustee, the "Parties"). The Parties recite as follows:

**WHEREAS**, on August 22, 2012 ("Petition Date"), the above-captioned bankruptcy case was commenced against CLSF III IV, Inc. (the "Debtor") by the filing of an involuntary petition for relief in this Court under Chapter 7 of the Bankruptcy Code;

**WHEREAS**, between October 24, 2012 and November 7, 2012, thirty-two affiliates ("Affiliates") of the Debtor filed voluntary petitions for relief under Chapter 7 of the Bankruptcy Code;

**WHEREAS**, on January 9, 2013, the Trustee filed *Chapter 7 Trustee's Motion to Approve Servicing Agreement Between Trustee and Litai Assets, LLC, Nunc Pro Tunc to October 25, 2012* [ECF No. 135], requesting the entry of an Order approving a *Servicing Agreement* entered into between the Trustee and Litai with respect to certain quality investments' life insurance policies owned by the Debtors;

**WHEREAS**, on May 31, 2013, the Court entered an order, *nunc pro tunc* to October 25, 2012 [ECF No. 363], approving the Trustee's engagement of Litai to service the numerous life insurance policies owned by the substantively consolidated Debtors. Pursuant to the terms of the Servicing Agreement entered into between the Trustee and Litai, Litai's services were to include: ordering policy illustrations and premium schedules, cooperating with the Trustee, Investment Manager and/or other authorized representative of the Trustee with respect to optimizing premium payment services, advising the Trustee on the amount of premium obligations that are

due, and such other services relating to the collection and payment of premiums as may reasonably be requested by the Trustee;

**WHEREAS**, following the services rendered by Litai, a dispute arose between the Trustee and Litai with respect to fees charged by Litai for the services and other issues;

**WHEREAS**, in the interest of avoiding further costly and time-consuming litigation, the Trustee and Litai have agreed to the terms set forth in this Stipulation;

**NOW, THEREFORE**, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

The Parties agree that the above recitations are true and correct.

1. In full and final settlement of all disputes between the Trustee and Litai, Litai agrees to deliver, within five (5) calendar days from the entry of a final Order of the Bankruptcy Court approving this Stipulation, the sum of \$25,000.00 (the "Settlement Amount"), in the form of check, cashier's check, wire transfer or other form of immediately available funds, made payable to "Berger Singerman LLP Trust Account" and forwarded to Berger Singerman LLP, 350 E. Las Olas Boulevard, Suite 1000, Ft. Lauderdale, FL 33301, Attn: Leslie Gern Cloyd, Esq.

2. Upon receipt of a completely executed Stipulation, the Trustee shall promptly prepare and file a motion with the Bankruptcy Court seeking approval of this Stipulation, with notice to creditors and parties in interest.

3. Upon approval of this Stipulation by final order of the Bankruptcy Court, and the receipt of the Settlement Amount, the Trustee shall be deemed to have fully, finally, and forever released, relinquished, discharged and waived any and all claims, cause, and causes of action against Litai, including any and all of Litai's predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates and assigns, and its and their past, present and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns and successors in interest, and all persons acting by, through, under, or in concert with them, including, but not limited to, causes of action, costs or damages, expenses, remedies, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, which the Trustee may have had against them. However, nothing herein shall operate or otherwise be construed to operate as a release or discharge of any of the obligations of Litai under this Stipulation.

4. Upon approval of this Stipulation by final order of the Bankruptcy Court, and the payment of the Settlement Account, Litai shall be deemed to have fully, finally, and forever released, relinquished, discharged and waived any and all claims, cause, and causes of action

against the Debtors' estate, including, but not limited to, causes of action, costs, damages, expenses, remedies, whether now known or unknown, and whether pending or not yet asserted, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, which they individually or collectively, have or may have had against the Debtors, the Trustee and the Trustee's attorneys and accountants, relating in any manner whatsoever, directly or indirectly to the Debtors, and this Bankruptcy Case. However, nothing herein shall operate or otherwise be construed to operate as a release or discharge of any of the obligations of the Trustee under this Stipulation.

5. The Parties believe that the Stipulation is in the best interests of Litai, the Trustee and the Debtors' estate.

6. The Parties shall cooperate in the consummation of the settlement and in the preparation and execution of any and all documents necessary to carry out the intent and purpose of this Stipulation.

7. This Stipulation shall be binding upon and inure to the benefit of the Parties hereto and their successors, successors-in-interest, and assigns.

8. This Stipulation shall not be construed against either party as an admission of liability or concession of any matters, except as to those specific agreements contained herein.

9. This Stipulation shall be construed and governed by the laws of the State of Florida to the extent state law is applicable.

10. This Stipulation constitutes the entire agreement and understanding of the Parties and supersedes all prior negotiations and/or agreements, proposed or otherwise, written or oral concerning the subject matter hereof. Furthermore, no modification of this Stipulation shall be binding unless it is in writing and signed by each of the Parties hereto.

11. The Parties hereby acknowledge that there are no communications or oral understandings contrary to or different from this Stipulation.

12. The Parties shall request that the Bankruptcy Court retain jurisdiction to enforce and construe the provisions of this Stipulation. The Parties consent to the Bankruptcy Court's exercise of personal and subject matter jurisdiction (including "core" jurisdiction) to adjudicate any disputes that might arise under this Stipulation.

13. The Stipulation may be executed in one or more counterparts, each counterpart to be considered an original portion of this Stipulation and all of which shall constitute a singular instrument.

14. Each party to this Stipulation represents and warrants that it is duly authorized to execute this Stipulation and that the person through whom each party executes this Stipulation is fully and duly empowered and authorized to execute it on the respective party's behalf.

Dated: March \_\_\_\_\_, 2015

Dated: March 3, 2015

LITAI ASSETS, LLC

DEBORAH C. MENOTTE, CHAPTER 7  
TRUSTEE OF THE ESTATES OF CLSF  
III IV, INC., ET AL.

By: \_\_\_\_\_  
JAN-ERIC SAMUEL, MANAGER

By: Deborah Menotte

14. Each party to this Stipulation represents and warrants that it is duly authorized to execute this Stipulation and that the person through whom each party executes this Stipulation is fully and duly empowered and authorized to execute it on the respective party's behalf.

Dated: March 5, 2015

Dated: March \_\_, 2015

**LITAI ASSETS, LLC**

**DEBORAH C. MENOTTE, CHAPTER 7  
TRUSTEE OF THE ESTATES OF CLSF  
III IV, INC., ET AL.**

By:   
JAN ERIC SAMUEL, MANAGER

By: \_\_\_\_\_

**EXHIBIT "B"**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
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IN RE: Case No.: 12-30081-BKC-EPK  
CLSF III IV, INC., *et al.* Chapter 7  
Debtors. (Substantively Consolidated)  
\_\_\_\_\_ /

**ORDER GRANTING TRUSTEE'S MOTION TO APPROVE STIPULATION FOR  
COMPROMISE AND SETTLEMENT BETWEEN (I) DEBORAH C. MENOTTE,  
CHAPTER 7 TRUSTEE; AND (II) LITAI ASSETS, LLC**

**THIS MATTER** came before the Court upon the *Trustee's Motion to Approve Stipulation for Compromise and Settlement Between (I) Deborah C. Menotte, Chapter 7 Trustee; and (II) Litai Assets, LLC* (the "Motion") [ECF No. \_\_\_\_\_] (the "Motion"). The Court, having considered the Motion and the *Stipulation for Settlement* (the "Stipulation") attached to the Motion as Exhibit "A," having noted that no objections to the Motion were filed as evidenced by the *Certificate of No Response or Settlement and Request for Entry of Order* [ECF No. \_\_\_\_] filed on March \_\_\_\_, 2015, and being otherwise fully advised in the premises, does thereupon

**ORDER** as follows:

1. The Motion is **GRANTED**.

2. The Stipulation is **APPROVED** in its entirety.
3. The Parties are directed to comply with the terms and conditions of the Stipulation, and the Court retains jurisdiction to enforce the terms thereof.

# # #

Submitted by:

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Copies to:

Leslie Gern Cloyd, Esq.  
*(Attorney Cloyd serve a copy of this Order upon all interested parties upon receipt and file a Certificate of Service.)*