

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
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In re: Case No. 12-30081-EPK
Chapter 7
CLSF III IV, INC., et al., (Substantively Consolidated)
Debtors.

_____ /

In re: Case No.: 14-14507-EPK
DEBORAH CATHERINE PECK, Chapter 7
Debtor.

_____ /

TRUSTEE'S MOTION TO AMEND (I) APPLICATION FOR APPROVAL OF EMPLOYMENT OF BERGER SINGERMAN LLP, AS COUNSEL TO DEBORAH C. MENOTTE, INTERIM CHAPTER 7 TRUSTEE, *NUNC PRO TUNC* TO AUGUST 28, 2012 [ECF NO. 19] AND (II) ORDER GRANTING APPLICATION FOR APPROVAL OF EMPLOYMENT OF BERGER SINGERMAN LLP, AS COUNSEL TO DEBORAH C. MENOTTE, INTERIM CHAPTER 7 TRUSTEE, *NUNC PRO TUNC TO AUGUST 28, 2012 [ECF NO. 47]*

Deborah C. Menotte, the duly appointed Chapter 7 Trustee for the bankruptcy estates of CLSF III IV, Inc., *et al.* (the "Trustee"), and moves the Court for the entry of an Order amending the (i) *Application for Approval of Employment of Berger Singerman LLP, as Counsel to Deborah C. Menotte, Interim Chapter 7 Trustee, Nunc Pro Tunc to August 28, 2012* [ECF No. 19], and (ii) *Order Granting Application for Approval of Employment of Berger Singerman LLP, as Counsel to Deborah C. Menotte, Interim Chapter 7 Trustee, Nunc Pro Tunc to August 28, 2012* [ECF No. 47]. In support of this Motion, the Trustee states:

1. On August 30, 2012, the Trustee filed an *Application for Approval of Employment of Berger Singerman LLP, as Counsel to Deborah C. Menotte, Interim Chapter 7 Trustee, Nunc Pro Tunc to August 28, 2012* (the "Employment Application"), seeking the approval of the

employment of Berger Singerman LLP as counsel to the Debtor, CLSF III IV, Inc. (the “Debtor”). The Trustee also filed separate applications for the approval of the employment of Berger Singerman in each of the Chapter 7 cases of the Debtor’s affiliates (the “Affiliates, and, together with the Debtor, collectively, the “Debtors”).

2. On September 25, 2014, the Court entered an *Order Granting Application for Approval of Employment of Berger Singerman LLP, as Counsel to Deborah C. Menotte, Interim Chapter 7 Trustee, Nunc Pro Tunc to August 28, 2012* [ECF No. 47] (the “Employment Order”). The Court also entered separate orders authorizing the employment of Berger Singerman as counsel to the Trustee in each of the cases of the Debtor’s affiliates.

3. On October 2, 2013, the Court entered an *Order Granting Trustee’s Second Amended Motion for Substantive Consolidation of the Jointly Administered Bankruptcy Estates* [ECF No. 561], thereby substantively consolidating the Debtor’s estate with the estates of the Affiliates and certain non-debtor entities (the “Non-Debtor Entities”).

4. On August 6, 2014, the Court entered an *Order Granting Trustee’s Amended Motion for Substantive Consolidation of the Bankruptcy Estate of Deborah Catherine Peck, Debtor, [Case No. 14-14507-BKC-EPK], and Non-Debtor Deborah C. Peck, Esq., P.A. With the Substantively Consolidated Debtors and Memorandum of Law in Support* [ECF No. 857], (the “Peck Sub Con Order”) thereby substantively consolidating the Debtors’ estates and the Non-Debtor Entities with the Chapter 7 estate of Deborah Catherine Peck (the “Peck Chapter 7 Case”) and non-debtor, Deborah C. Peck, Esq., P.A.

5. As set forth in the Peck Sub Con Order, the Trustee was appointed as successor trustee of the Peck Chapter 7 Case.

6. By this Motion, the Trustee seeks to amend the Employment Application and Employment Order to provide that Berger Singerman be retained as counsel to the Trustee in the Peck Chapter 7 Case, effective August 13, 2014, the date of the appointment of the Trustee as Successor Trustee for the estate of Deborah Catherine Peck.

7. The Trustee submits, based upon the attached *Declaration of Leslie Gern Cloyd, on Behalf of Berger Singerman LLP, in Support of Trustee's Motion to Amend (I) Application for Approval of Employment of Berger Singerman LLP, as Counsel to Deborah C. Menotte, Interim Chapter 7 Trustee, Nunc Pro Tunc to August 28, 2012 [ECF No. 19] and (II) Order Granting Application for Approval of Employment of Berger Singerman LLP, as Counsel to Deborah C. Menotte, Interim Chapter 7 Trustee, Nunc Pro Tunc to August 28, 2012 [ECF No. 47]* annexed hereto as **Exhibit "A,"** that Berger Singerman does not hold or represent any interest adverse to the estate of Deborah Catherine Peck, and that Berger Singerman is "disinterested" as the term is defined in 11 U.S.C. § 101(14).

8. Berger Singerman has agreed to be compensated in accordance with 11 U.S.C. §§ 330 and 331.

WHEREFORE, the Trustee respectfully requests the Court to enter an order in the form attached hereto as **Exhibit "B":**

- A. Granting this Motion;
- B. Amending the Employment Application and Employment Order to provide that Berger Singerman be authorized to represent the Trustee, as the Trustee's general counsel, with respect to the Peck Chapter 7 Case, *nunc pro tunc* to August 13, 2014; and
- C. Granting such further and other relief the Court deems just and appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this 6th day of November, 2014, by electronic transmission through the Court's CM/ECF system upon all parties on the attached CM/ECF Service List.

Dated: November 6, 2014

BERGER SINGERMAN LLP
Counsel to the Trustee
350 East Las Olas Boulevard, Suite 1000
Fort Lauderdale, FL 33301
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By: /s/ 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

In re: Case No. 12-30081-EPK
Chapter 7
CLSF III IV, INC., et al., (Substantively Consolidated)
Debtors.

_____ /

In re: Case No.: 14-14507-EPK
DEBORAH CATHERINE PECK, Chapter 7
Debtor.

_____ /

DECLARATION OF LESLIE GERN CLOYD, ON BEHALF OF BERGER SINGERMAN LLP, IN SUPPORT OF TRUSTEE'S MOTION TO AMEND (I) APPLICATION FOR APPROVAL OF EMPLOYMENT OF BERGER SINGERMAN LLP, AS COUNSEL TO DEBORAH C. MENOTTE, INTERIM CHAPTER 7 TRUSTEE, *NUNC PRO TUNC* TO AUGUST 28, 2012 [ECF NO. 19] AND (II) ORDER GRANTING APPLICATION FOR APPROVAL OF EMPLOYMENT OF BERGER SINGERMAN LLP, AS COUNSEL TO DEBORAH C. MENOTTE, INTERIM CHAPTER 7 TRUSTEE, *NUNC PRO TUNC* TO AUGUST 28, 2012 [ECF NO. 47]

1. I am Leslie Gern Cloyd. I am an attorney and shareholder with the law firm of Berger Singerman LLP ("Berger Singerman"). The firm maintains offices for the practice of law at 1450 Brickell Avenue, Ste. 1900, Miami, Florida 33131; 350 East Las Olas Boulevard, Ste. 1000, Fort Lauderdale, Florida 33301; 2650 North Military Trail, Suite 240, Boca Raton, Florida 33430; and 125 South Gadsden Street, Ste. 300, Tallahassee, Florida 32301. I am familiar with the matters set forth herein and make this Declaration in support of the *Trustee's Motion to Amend (I) Application for Approval of Employment of Berger Singerman LLP as Counsel to Deborah C. Menotte, Interim Chapter 7 Trustee, Nunc Pro Tunc to August 28, 2012 [ECF No. 19] and (II) Order Granting Application for Approval of Employment of Berger Singerman LLP*

as Counsel to Deborah C. Menotte, Interim Chapter 7 Trustee, Nunc Pro Tunc to August 28, 2012 [ECF No. 47] (the “Motion”).

2. In support of the Motion, 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 reviewed the names of the creditors of the Debtor, Deborah Catherine Peck (“Peck”), as well as the names of the creditors of the Debtors, as reflected on the claims registers filed in the Debtors’ chapter 7 cases and the Peck chapter 7 case. I compared 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 lawyers in our firm and Peck, the United States Trustee, other persons employed by the Office of the United States Trustee, and those persons and entities who are defined as disinterested persons in Section 101(14) of the Bankruptcy Code, are based on the results of my review of our firm’s conflict check index system. Specifically, I have caused to be conducted (i) 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 Peck. 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

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, none of which impairs my or our firm's disinterestedness or constitutes any conflict of interest:

a) There are numerous creditors or parties in interest of the Debtors and Peck 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: *American Express, BankUnited, N.A., Cheney Brothers, Inc., Internal Revenue Service, Mercury Printing, TD Bank and Clifford Chance, LLP.*

b) Individuals by the names of *A. France, R. Jacobs and M. Martens* (collectively, the "Individuals") are listed as creditors or parties in interest of the Debtors and/or Peck. Berger Singerman has represented third parties in a wholly unrelated matter whose interests may have been adverse to the Individuals. It is impossible for our firm to confirm with certainty that *A. France, R. Jacobs and M. Martens*, the individuals associated with the third party representations, are the same as the *A. France, R. Jacobs and M. Martens* that are listed as creditors or parties in interest of the Debtors and/or Peck.

c) Berger Singerman represents one of the principals of 1295 Associates, LLC, a secured creditor in the Peck case. The issues with regard to 1295 Associates, LLC have been resolved. If a disputed issue arises with regard to 1295 Associates, LLC, the Trustee will obtain conflict counsel.

d) 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 Debtors and Peck may be creditors of one or more of our firm's Non-Debtor Clients. However,

to the best of my knowledge, those matters are unrelated to the instant bankruptcy case. Berger Singerman's representation of the Non-Debtor Clients does not preclude approval of the Trustee's application to retain Berger Singerman as counsel in this case.

5. Other than as set forth above, Berger Singerman neither holds nor represents any interest adverse to the Debtors and Peck and is a "disinterested person" within the scope and meaning of Section 101(14) of the Bankruptcy Code.

6. 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.

7. The professional fees and costs incurred by Berger Singerman in the course of its representation of the Trustee in this case shall be subject in all respects to the application and notice requirements of 11 U.S.C. §§ 327, 330 and 331 and FRBP 2014 and 2016.

8. The current hourly rates for the attorneys at Berger Singerman range from \$250.00 to \$670.00. The current hourly rate of Leslie Gern Cloyd, the attorney who is principally responsible for Berger Singerman's representation of the Trustee, is \$610.00, and the current hourly rates of the associates, partners and of-counsel attorneys who work on this matter range from \$250.00 to \$510.00 per hour. The current hourly rates for the legal assistants and paralegals at Berger Singerman range from \$85.00 to \$225.00. Berger Singerman typically adjusts its hourly rates annually on January 1st.

9. There is no agreement of any nature, other than the shareholder agreement of Berger Singerman, 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. Except as set forth herein and in the *Application for Approval of Employment of Berger Singerman LLP as Counsel to Deborah C. Menotte, Interim Chapter 7 Trustee, Nunc Pro Tunc to August 28, 2012* [ECF No. 19] (the "Employment Application"), no attorney in our firm has any other connection with the Debtors, Peck, the United States Trustee or any employee of that office or any other parties in interest.

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

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

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

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 or Peck 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 or Peck in connection with the offer, sale or issuance of a security of the Debtors within three years before the filing of the petition.

16. Except as set forth herein and in the Employment Application, no attorney in our firm has had or presently has any connection with the Debtors, Peck, 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, 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' and Peck's creditors in matters unrelated to this case.

17. This concludes my Declaration.

28 U.S.C § 1746 Declaration

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 6, 2014.

/s/ Leslie Gern Cloyd
Leslie Gern Cloyd

EXHIBIT "B"

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
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In re: Case No. 12-30081-EPK
Chapter 7
CLSF III IV, INC., et al., (Substantively Consolidated)
Debtors.

_____/ In re: Case No.: 14-14507-EPK
DEBORAH CATHERINE PECK, Chapter 7
Debtor.
_____ /

ORDER GRANTING TRUSTEE'S MOTION TO AMEND (I) APPLICATION FOR APPROVAL OF EMPLOYMENT OF BERGER SINGERMAN LLP, AS COUNSEL TO DEBORAH C. MENOTTE, INTERIM CHAPTER 7 TRUSTEE, *NUNC PRO TUNC* TO AUGUST 28, 2012 [ECF NO. 19] AND (II) ORDER GRANTING APPLICATION FOR APPROVAL OF EMPLOYMENT OF BERGER SINGERMAN LLP, AS COUNSEL TO DEBORAH C. MENOTTE, INTERIM CHAPTER 7 TRUSTEE, *NUNC PRO TUNC* TO AUGUST 28, 2012 [ECF NO. 47]

THIS MATTER came before the Court on the _____ day of November, 2014 at _____ a.m. in West Palm Beach, Florida, upon the *Trustee's Motion to Amend (I) Application for Approval of Employment of Berger Singerman LLP, as Counsel to Deborah C.*

Menotte, Interim Chapter 7 Trustee, Nunc Pro Tunc to August 28, 2012 [ECF No. 19] and (II) Order Granting Application for Approval of Employment of Berger Singerman LLP, as Counsel to Deborah C. Menotte, Interim Chapter 7 Trustee, Nunc Pro Tunc to August 28, 2014 [ECF No. 47] [ECF No. _____] (the “Motion”). The Court, having considered the Motion, having heard the argument of counsel and being otherwise fully advised in the premises, does thereupon

ORDER as follows:

1. The Motion is **GRANTED**.
2. The *Application for Approval of Employment of Berger Singerman LLP, as Counsel to Deborah C. Menotte, Interim Chapter 7 Trustee, Nunc Pro Tunc to August 28, 2012 [ECF No. 19]* and *Order Granting Application for Approval of Employment of Berger Singerman LLP, as Counsel to Deborah C. Menotte, Interim Chapter 7 Trustee, Nunc Pro Tunc to August 28, 2012 [ECF No. 47]* are amended to provide that Berger Singerman LLP is authorized to represent the Trustee, Deborah C. Menotte (the “Trustee”), in the Chapter 7 case of Deborah Catherine Peck (Case No. 14-14507-BKC-EPK), effective August 13, 2014, the date of the appointment of the Trustee as Successor Trustee for the estate of Deborah Catherine Peck.

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Submitted by:

Leslie Gern Cloyd, Esq.
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Copy furnished to:

Leslie Gern Cloyd, Esq.
(Attorney Cloyd is directed to serve a conformed copy of this Order upon all interested parties, and to file a Certificate of Service).