

Debtors’ (A) Application for Approval of (I) Expanded Scope of Employment of Paul Steven Singerman, Esq. and the Law Firm of Berger Singerman, P.A. to Include Prosecution of the Estates’ Preference Actions and (II) Contingency Fee Arrangement (the “Application”); and (B) Motion for Approval of Settlement Procedures and Settlement Terms for Preference Actions (the “Settlement Motion”).

By the Application and the Settlement Motion, the Debtors seek entry of orders (i) expanding the scope of the employment of Paul Steven Singerman, Esq. and the law firm of Berger Singerman, P.A. (collectively, “BSPA”) to include the prosecution of claims brought under Bankruptcy Code sections 547 and 550 for avoidance of preferential prepetition transfers (the “Preference Actions”); and (ii) approving settlement procedures and settlement terms relating to the Preference Actions (the “Settlement Procedures”).

A. The Application

On March 6, 2008, the Court entered a final order authorizing the Debtors to employ BSPA (the “BSPA Order”). Neither the application to employ BSPA, nor the BSPA Order, expressly refers to the prosecution of the Preference Actions. Therefore, the Debtors now seek entry of an order expanding BSPA’s retention to include the preparation, commencement and prosecution of the Preference Actions.

The Debtors believe their estates hold viable Preference Actions. Although the deadline to bring such actions is January 29, 2010, the Debtors believe it is appropriate to commence the Preference Actions at this time, while Debtors still employ personnel to assist in preparation and prosecution of such actions. The Debtors assert that retaining BSPA is in the best interest of their estates due to BSPA’s familiarity with the Debtors’ chapter 11 cases.

In addition, the Debtors seek approval of a contingency based compensation structure for BSPA’s services related to the preparation and prosecution of the Preference Actions. The proposed fees for additional services will be measured on a case-by-case basis as follows:

Stage of Litigation at Which Claim is Settled	Upon institution of a lawsuit and pre-answer date	Post-answer date, but pre-appeal	Post-judgment, if appellate litigation is involved
Portion of Recovery Payable to BSPA	27.5%	27.5% on first \$250,000; 30% on next \$750,000; 33% on amounts over \$1,000,000	37%

In addition to the compensation outlined above:

- a) BSPA will be compensated for any claim reduction if such reduction is the result of prosecution or settlement efforts in connection with the Preference Actions. However, to

the extent that, under a plan of reorganization, a reduced claim is assigned to a class receiving less than 100 cents on the dollar, BSPA will be paid the same percentage recovery as other claims in such class;

- b) BSPA shall be paid immediately from any recovery and will file a notice with the Court of fees withheld from recovery. Any interested party will have 10 days from the date of filing of the notice to object to the withheld fees; and
- c) The Debtors will be responsible for advancement or prompt reimbursement of all costs incurred by BSPA in connection with the Preference Actions.

B. The Settlement Motion

By the Settlement Motion, the Debtors seek entry of an order approving the Settlement Procedures, thereby allowing the Debtors flexibility to resolve many of the Preference Actions without incurring the additional expenses associated with motion practice and Court hearings. The Debtors believe that approval of the Settlement Procedures will permit the efficient prosecution and resolution of many of the anticipated Preference Actions. The proposed Settlement Procedures are as follows:

- a) For settlement of Preference Actions where the amount demanded is less than \$75,000, no further Court approval will be required.
- b) For settlements of Preference Actions where the amount demanded is between \$75,001 and \$150,000, no further Court approval will be required if the settlement amount is equal to or greater than 65% of the amount demanded.
- c) For settlements of Preference Actions where the amount demanded is between \$150,001 to \$500,000, approval to enter in such settlement agreement will be required from the liquidating trustee (or a similar fiduciary) installed pursuant to a plan of liquidation that may be confirmed by the Court, with no further Court approval; *provided, however*, if settlements are reached prior to confirmation of the Debtors' plan of liquidation, then the Debtors will seek Court approval thereof.
- d) For settlements of Preference Actions where the amount demanded is greater than \$500,001 Court approval shall be required.
- e) Whenever Court approval is required by the Settlement Procedures, such approval may be obtained in accordance with the applicable rules, including the Federal Rules of Bankruptcy Procedure and the local rules of the Court permitting the use of negative notice.

- f) Notwithstanding the foregoing, the Debtors may seek further Court approval of any settlement they consider to be in the best interests of the Debtors' estates.

A hearing on the Application and Settlement Motion has been scheduled for July 2, 2009, with an objection deadline of June 26, 2009.