

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

V.

Civil Action No. 3:17-cv-420-L

**PATRICK O. HOWARD;
HOWARD CAPITAL HOLDINGS, LLC;
and OPTIMAL ECONOMICS CAPITAL
PARTNERS, LLC,**

Defendants.

**RECEIVER'S UNOPPOSED MOTION TO RETAIN
REID COLLINS & TSAI LLP AS SPECIAL LITIGATION COUNSEL**

Receiver W. Craig Stokley (the “Receiver”) files this Unopposed Motion to Retain Reid Collins & Tsai LLP as Special Litigation Counsel and, in support, would respectfully show the Court as follows:

1. On February 14, 2017, the Securities and Exchange Commission (the “SEC”) initiated these proceedings and sought the appointment of a receiver. On that same day, the Court issued its Order Appointing Receiver (Docket No. 10), by which W. Craig Stokley was appointed as Receiver.

2. The Order Appointing Receiver provides in Paragraph 58 that “the Receiver is authorized to solicit persons and entities (‘Retained Personnel’) to assist him in carrying out the duties and responsibilities described in this Order.”

3. As stated in the Receiver's Fourth Quarterly Status Report (Docket No. 105), the Receiver has identified potential third-party claims which may be brought for the benefit and on behalf of the receivership estate. Accordingly, the Receiver seeks authority from the Court to

engage Reid Collins & Tsai LLP (“RCT”) as special litigation counsel to assist him in investigating and pursuing third-party claims pursuant to the engagement letter attached hereto as Exhibit A.¹

The engagement letter provides, *inter alia*, as follows:

- In exchange for its services, RCT will be paid a contingency fee equal to 33% of Gross Recoveries obtained by the Receiver and receivership estate with respect to the third-party claims.²
- RCT will advance out-of-pocket costs and expenses incurred with respect to the third-party claims, but RCT shall be reimbursed by the Receiver for such costs and expenses out of any Gross Recoveries obtained with respect to third-party claims.
- If no Gross Recoveries are obtained with respect to third-party claims, RCT will not be paid any contingency fee and shall not be reimbursed for any out-of-pocket expenses incurred with respect to third-party claims.

4. The lead RCT partners for this proposed engagement will be William T. Reid IV and Eric D. Madden, whose biographies are attached hereto as Exhibit B. They have significant experience representing receivers, bankruptcy trustees, and other court-appointed fiduciaries in pursuing third-party claims arising out of Ponzi schemes and other forms of financial fraud.

5. The Receiver believes that RCT is well-qualified for this proposed engagement. The Receiver, moreover, believes it is appropriate to retain RCT on a contingency-fee basis, particularly given: (a) the limited funds in the receivership estate to pursue the third-party claims on an hourly fee basis; and (b) the inherent risks of any litigation involving the third-party claims.

WHEREFORE, the Receiver respectfully requests that the Court: (a) enter the Unopposed Order Granting Receiver’s Unopposed Motion to Retain Reid Collins & Tsai LLP as Special

¹ The Receiver intends to seek leave of this Court prior to commencing any lawsuit regarding third-party claims, as required under Paragraph 43 of the Order Appointing Receiver.

² “Gross Recoveries” means the fair value of all monetary and non-monetary consideration obtained by the Receiver and the receivership estate in connection with any settlement, judgment, award, or other recovery related to the third-party claims.

Litigation Counsel; and (b) grant such other and further relief to which the Receiver may show himself justly entitled.

Dated: April 19, 2018.

Respectfully submitted,

/s/ Kimberly Sims

KIMBERLY M. J. SIMS

State Bar No. 24046167

ksims@palterlaw.com

PALTER STOKLEY SIMS PLLC

8115 Preston Road, Suite 600

Dallas, Texas 75225

(214) 888-3106 (telephone)

(214) 888-3109 (facsimile)

ATTORNEY FOR RECEIVER

W. CRAIG STOKLEY

CERTIFICATE OF CONFERENCE

On April 17, 2018, the undersigned conferred with Timothy S. McCole, counsel for the U.S. Securities and Exchange Commission, and on April 17-18, 2018, Phil Bezanson of Bracewell LLP, counsel for Defendant Patrick O. Howard, about the content of this Motion. Timothy S. McCole, counsel for the U.S. Securities and Exchange Commission, confirmed that he is unopposed to the relief requested by this Motion. Phil Bezanson of Bracewell LLP, counsel for Defendant Patrick O. Howard, takes no position on the Motion. Accordingly, the Motion is unopposed.

/s/ Kimberly Sims

KIMBERLY M. J. SIMS

CERTIFICATE OF SERVICE

On April 19, 2018, I electronically filed the Receiver's Unopposed Motion to Retain Reid Collins & Tsai LLP as Special Litigation Counsel via the Court's CM/ECF filing system, which will send a notice of electronic filing to all CM/ECF participants. I further certify that I served a true and correct copy of the foregoing document and the notice of electronic filing via UPS and electronic mail on all non-CM/ECF parties and/or their counsel.

/s/ Kimberly Sims

KIMBERLY M. J. SIMS

EXHIBIT A

Thanksgiving Tower
1601 Elm Street, 42nd Floor
Dallas, Texas 75201
Main: 214.420.8900
Fax: 214.420.8909
www.rctllegal.com

REID | COLLINS | TSAI LLP

Eric D. Madden | Partner
Direct: 214.420.8901
emadden@rctllegal.com

April 17, 2018

Via Electronic Mail

W. Craig Stokley
Palter Stokley Sims PLLC
8115 Preston Road, Suite 600
Dallas, Texas 75225
cstokley@palterlaw.com

Re: *Securities and Exchange Commission v. Patrick O. Howard, et al.*,
Civil Action No. 3:17-cv-00420-L (N.D. Tex.)

Dear Mr. Stokley:

Thank you for selecting Reid Collins & Tsai LLP ("RCT") to serve as special litigation counsel for you, solely in your capacity as the receiver (the "Receiver") in the above-referenced matter. We appreciate this opportunity and look forward to working with you. Consistent with the requirements of the State Bar of Texas and other applicable ethical and disciplinary rules, it is our practice to specify in writing our engagement arrangements with our clients, and that is the purpose of this Letter of Engagement and the *Additional Terms of Engagement* that are enclosed. If you have any questions about this letter, the *Additional Terms of Engagement*, or any aspect of this engagement of our firm or our relationship, please contact me immediately.

Subject to the Court's approval in the above-referenced matter, we have agreed that RCT shall provide legal representation to the Receiver under the following terms:

A. Nature and Scope of Representation. RCT shall serve as special litigation counsel to the Receiver in investigating and pursuing causes of action against third parties (collectively, the "Claims"). In addition, in any lawsuit threatened or filed by the Receiver with respect to the Claims, RCT shall defend the Receiver against any claims asserted against the Receiver. The scope of this representation shall not include any other claim or matter unless we agree to expand the representation to include additional claims or matters pursuant to a written amendment to this Letter of Engagement.

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Bill Reid and I shall serve as the lead RCT attorneys responsible for this representation, though other RCT attorneys, paralegals, and legal assistants shall participate in the representation from time to time in order to contribute particular expertise or efficiencies.

B. RCT's Obligations. RCT shall undertake the tasks that, in its judgment, are necessary to analyze and, if appropriate, to pursue the Claims in order to obtain a recovery for the Receiver and the receivership estate. Beyond that, RCT shall not perform any legal services not specified in this Letter of Engagement without consultation and authorization from the Receiver. RCT's obligations under this letter shall cease upon the earlier of: (1) a settlement of the Claims; (2) a final ruling, judgment, or award resolving the Claims; or (3) a termination of, or a withdrawal from, the representation pursuant to paragraphs G or H below.

C. Client's Obligations. The Receiver agrees to comply with all obligations set out herein, including, but not limited to, cooperating fully with RCT, keeping RCT informed of all matters necessary for RCT to fully represent the Receiver, and promptly responding to RCT's requests. The Receiver agrees to cooperate with RCT in the investigation and prosecution of the Claims; to produce relevant documents in his possession, custody, or control; and to comply with all of RCT's reasonable requests in connection with preparation and presentation of evidence related to the Claims. The Receiver further agrees that he shall not insist upon presenting any claim or defense that, in the opinion of RCT, is not warranted under existing law and cannot be supported by a good-faith argument for extension, modification, or reversal of existing law. In addition, the Receiver agrees not to insist that RCT pursue a course of conduct that is, in the opinion of RCT, illegal or unreasonable, or that is prohibited under applicable rules of professional conduct.

D. Compensation. In exchange for its services, RCT shall be paid a contingency fee equal to 33% of the Gross Recoveries obtained by the Receiver and the receivership estate with respect to the Claims (the "Contingency Fee"). "Gross Recoveries" means the fair value of all monetary and non-monetary consideration obtained by the Receiver and the receivership estate in connection with any settlement, judgment, award, or other recovery related to the Claims. Of course, if no Gross Recoveries are obtained, RCT shall not be paid any Contingency Fee.

E. Costs and Expenses. Certain out-of-pocket costs and expenses may be incurred with respect to the Claims, including, but not limited to, filing fees, expert witness fees and expenses, expenses related to electronically stored information, deposition costs, copying expenses, travel costs, delivery fees, and computerized research charges. RCT shall advance all such costs and expenses on behalf of the Receiver, but

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shall be reimbursed by the Receiver for such costs and expenses out of any Gross Recoveries obtained with respect to the Claims. Of course, if no Gross Recoveries are obtained, RCT shall not be paid any Contingency Fee.

F. Court Award of Attorney's Fees or Costs. RCT is authorized to apply to any court or tribunal for the maximum amount of compensation, attorney's fees, costs, pre- and post-judgment interest, and litigation expenses available by law. Any such fees and costs recovered on behalf of the Receiver shall be treated as Gross Recoveries under Letter of Engagement.

G. Client's Right to Terminate RCT's Representation. The Receiver may terminate RCT's representation under the following terms:

(1) **Termination of RCT.** The Receiver may terminate RCT with or without cause. In the event that the Receiver terminates RCT without cause, and the Receiver subsequently obtains Gross Recoveries with respect to the Claims, RCT shall receive its pro-rata of 33% of the Gross Recoveries based on the number of hours worked by RCT and the number of hours worked by any other lawyers working on the Claims after said termination.

(2) **Effect of Termination.** The Receiver understands and agrees that terminating RCT may result in the necessity to retain new counsel, which could have the effect of increasing the amount of the total fee paid to all attorneys.

H. RCT's Right to Withdraw from Representation. RCT reserves the right to withdraw from further representation in relation to one or more of the Claims in any of the following circumstances:

- (1) If the Receiver insists upon presenting any claim or defense that is not warranted under existing law and cannot be supported by a good-faith argument for an extension, modification, or reversal of existing law.
- (2) If the Receiver insists that RCT pursue a course of conduct that is illegal or unreasonable, or that is prohibited under applicable rules of professional conduct.
- (3) If RCT, in its discretion after conferring in good faith with the Receiver and prior to filing a lawsuit regarding the Claims, determines that one or more of the Claims lacks sufficient merit or value to justify the risk of continued pursuit.

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- (4) If the Receiver refuses to cooperate with RCT or follow RCT's advice on a material matter, after written notice of RCT's intent to withdraw and an opportunity for the Receiver to cooperate and follow RCT's advice.
- (5) In any circumstance in which RCT obtains the Receiver's written consent.

If RCT elects to withdraw this representation, RCT shall notify the Receiver in writing. In the event RCT decides to withdraw from pursuit of one or more of the Claims for a reason other than the Receiver's breach of this Letter of Engagement, then RCT shall not be entitled to any Contingency Fee hereunder in relation to the Claims at issue. RCT, however, shall retain its right to be reimbursed for costs and expenses pursuant to paragraph E above. In the event RCT elects to withdraw because of the Receiver's breach of this Letter of Engagement, and the Receiver subsequently obtains Gross Recoveries with respect to the Claims, RCT shall receive its pro-rata share of 33% of the Gross Recoveries based on the number of hours worked by RCT and the number of hours worked by any other lawyers working on the Claims after said withdrawal. RCT shall retain its right to be reimbursed for costs and expenses pursuant to paragraph E above. The Receiver agrees to sign all necessary documents to facilitate the withdrawal of RCT from any pending lawsuit immediately after receiving written notification of RCT's intention to withdraw pursuant to the provisions of this Letter of Engagement. The Receiver understands and acknowledges that if RCT withdraws, the Receiver may have to retain other counsel, and that the total fees paid to all attorneys may therefore be greater than the total amount that would have been paid had RCT not withdrawn.

I. No Guarantees. The Receiver acknowledges that RCT has made no guarantees regarding the outcome of the Claims or any other matter related to this representation, and that any and all expressions about possible outcomes are only preliminary opinions.

J. Severability. In case any one or more of the provisions in this Letter of Engagement shall be found unenforceable in any respect, the parties have agreed that such unenforceability shall not affect any other provision, and that all other provisions of this letter shall remain valid and enforceable.

K. Integration/Amendment. This Letter of Engagement constitutes the final and only agreement of the parties hereto regarding RCT's representation of the Receiver, and it supersedes any prior written or oral understandings or agreements between the parties regarding that subject. This letter may not be modified, amended, or replaced

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except in a writing signed by the parties hereto, or their successors or assigns.

L. Execution in Counterparts. It is understood and agreed that this Letter of Engagement may be signed in a number of identical counterparts, each of which shall be deemed an original for all purposes, but all of which shall constitute one and the same agreement.

M. Governing Law. This Letter of Engagement shall be construed in accordance with the laws of the State of Texas, without regard for its conflict of laws rules.

N. Availability of ADR. The parties hereto are fully cognizant of the fact that various ADR (alternative dispute resolution) techniques and procedures may be available and/or required by law to resolve the Claims and other matters arising out of RCT's representation of the Receiver. These techniques and procedures include mediation, non-binding arbitration, mini-trial, summary jury trial, and early case evaluation. During the progress of the representation, RCT shall provide guidance to the Receiver concerning the availability and potential use of ADR to promote resolution.

O. Determination of Fairness and Reasonableness. The Receiver acknowledges that: (1) RCT did not act as the Receiver's counsel in preparing or negotiating this Letter of Engagement; (2) the Receiver has made sufficient investigation and inquiry to determine that this letter is fair and reasonable; (3) this letter was the product of an arm's length negotiation between the Receiver and RCT; (4) the Receiver has had ample opportunity to review the letter independently and, to the extent that the Receiver has chosen to do so, with separate counsel; and (5) the Receiver is entering into this Letter of Engagement freely and voluntarily.

P. Court Approval. The terms of this Letter of Engagement are expressly subject to the approval of the Court in the above-referenced matter.

We sincerely appreciate the opportunity to represent you. We look forward to working with you to achieve the best possible results in this matter. If this Letter of Engagement accurately reflects our agreement, please sign and return this letter to me at your earliest convenience.

Very truly yours,



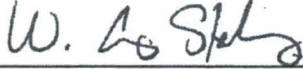
Eric D. Madden, Partner
REID COLLINS & TSAI LLP

Enclosure

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AGREED AND ACCEPTED:

W. CRAIG STOKLEY, AS RECEIVER FOR PATRICK O. HOWARD;
HOWARD CAPITAL HOLDINGS, LLC; AND
OPTIMAL ECONOMICS CAPITAL PARTNERS, LLC



By: W. Craig Stokley
Title: Receiver
Date: 4-17-18

ADDITIONAL TERMS OF ENGAGEMENT

These are the *Additional Terms of Engagement* incorporated into and made a part of our Letter of Engagement. Because they are an integral part of our agreement to provide legal services, we ask that you review this document carefully and retain it for your files. If you have any questions after reading it, please contact us promptly.

Who Will Provide the Legal Services?

In most cases, one attorney will be your principal contact. From time to time, that attorney may delegate parts of your work to other lawyers or to legal assistants or non-legal professionals in the Firm. We do this in order to involve those with special knowledge or experience in an area and/or to provide service to you in a timely and efficient manner.

The Scope of the Representation

As lawyers, we undertake to provide representation and advice on the legal matters for which we are engaged, and it is important that we both have a clear understanding of the legal services that the Firm has agreed to provide. In our Letter of Engagement, we specify the matter in which we will provide representation and the scope of the services we will provide. If there are any questions about the terms of engagement, including the scope of the representation that we are to provide in the matter, please raise those questions promptly with your principal contact at the Firm.

We cannot guarantee the outcome of any matter. Any expression of our professional judgment regarding your matter or the potential outcome is, of course, limited by our knowledge of the facts and based on the law at the time of expression. It is also subject to any unknown or uncertain factors or conditions beyond our control.

Who Is Our Client?

It is our policy to represent only the person or entity identified in our Letter of Engagement and not any affiliates. For example, unless otherwise specifically stated in our Letter of Engagement, if you are a corporation or partnership, our representation does not include any parents, subsidiaries, employees, officers, directors, shareholders, or partners of the corporation or partnership, or commonly owned corporations or partnerships; if you are a trade association, our representation excludes members of the trade association; if you are an individual, our representation does not include your employer, partners, spouse, siblings, or other family members.

Your Cooperation

To enable us to provide effective representation, you agree to: (1) disclose to us, fully and accurately and on a timely basis, all facts and documents that are or might be material or that we may request; (2) keep us apprised on a timely basis of all developments relating to the representation that are or might be material; (3) attend meetings, conferences, and other proceedings when it is reasonable to do so; and (4) otherwise cooperate fully with us.

Our Relationships With Others

Our Firm represents various companies and individuals. In some instances, the applicable rules of professional conduct may limit our ability to represent clients with conflicting or potentially conflicting interests. Those rules of conduct often allow us to exercise our independent judgment in determining whether our relationship with one client prevents us from representing another. In other situations, we may be permitted to represent a client only if the other clients consent to that representation.

If a controversy unrelated to the subject matter of the representation develops between you and any other client of the Firm, we will follow the applicable rules of professional responsibility to determine whether we may represent either you or the other client in the unrelated controversy. In making this determination, we will consider your agreement to the Conflicts of Interest provisions in these *Additional Terms of Engagement*.

We have professional and personal relationships with many other attorneys and law firms, often because of our participation in bar associations and other professional organizations. We believe that these relationships with other attorneys do not adversely affect our ability to represent any client and, in some circumstances, may enhance our representation. Your acceptance of our Letter of Engagement means you consent to any such relationships between our Firm and other lawyers or law firms, even counsel who may be representing a party that is adverse to you in the matter that is the subject of this engagement or in some other matter.

Conflicts of Interest

Conflicts of interest greatly concern both lawyers and clients. We attempt to identify actual and potential conflicts at the outset of any engagement, and may request that you sign a conflict waiver before we accept an engagement from you. Occasionally, other clients or prospective clients may ask us to seek a conflict waiver from you so that we can accept an engagement on their behalf. Please do not take such a request to mean that we will represent you less zealously; rather, that we take our professional responsibilities to all clients and prospective clients very seriously.

Unfortunately, conflicts sometimes arise or become apparent after work begins on an engagement. When that happens, we will do our best to address and resolve the situation in the manner that best serves the interests of all of our affected clients.

We may be asked to represent someone whose interests may be adverse to yours. We are accepting this engagement on the understanding that our representation of you will not preclude us from accepting any other engagement from any existing or new client provided that (i) such engagement is not substantially related to the subject matter of any services we are providing to you, and (ii) in accepting such other engagement we would not impair the confidentiality of proprietary, sensitive, or otherwise confidential communications you have made to us.

Rules concerning conflicts of interest vary with the jurisdiction. In order to avoid any uncertainty, our policy is that the Texas Disciplinary Rules of Professional Conduct will be applicable to the representation. Your acceptance of our Letter of Engagement means you agree with that policy, unless the Letter of Engagement specifically states that some other rules of professional responsibility will govern our attorney-client relationship.

How We Set Our Fees

The basis for determining our fee for legal services is set forth in the Letter of Engagement. If you are unclear about the basis for determining your fee, please contact the attorney responsible for your representation. Clients frequently ask us to estimate the fees and other charges they are likely to incur in connection with a particular matter. We are pleased to respond to such requests whenever possible with an estimate based on our professional judgment. This estimate always carries the understanding that, unless we agree otherwise in writing, it does not represent a maximum, minimum, or fixed-fee quotation. The ultimate cost frequently is more or less than the amount estimated.

Charges for Other Expenses and Services

As an adjunct to providing legal services, we may incur and pay a variety of charges on your behalf or charge for certain ancillary support services. Whenever we incur such charges on your behalf or charge for such ancillary support services, we will bill them to you as part of your monthly invoice. Accordingly, our invoices usually will include amounts not only for legal services rendered, but also for other expenses and services. Examples include charges for photocopying, postage, facsimiles, long-distance telephone calls, travel and conference expenses, delivery charges, computerized research, and facsimile and other electronic transmissions. Outside expenses will generally be billed at cost, while some in-house expenses (e.g., copying, telecopying, computer services, and in-house research) will include a reasonable allocation of overhead. Travel expenses also are billed at cost, including the cost of business-class travel on flights longer than two

hours. In appropriate cases, reimbursable expenses will also include overtime charges for secretaries and other staff.

You authorize us to retain third parties, such as consultants, experts, and investigators, as may be necessary to the representation. Although we advance third-party disbursements in reasonable amounts, we will ask you to pay directly larger third-party invoices (usually those over \$250). Because we often have ongoing professional relationships with the persons who render such services, we ask that you pay such bills promptly and send us notice of your payment.

We generally make and retain copies of all documents generated or received by us in the course of your representation. Should you request documents from us at the conclusion of our representation of you (other than your original documents), you agree that we may generate copies for our files at your expense, including both the reproduction charges and professional fees for time expended in reviewing files to be returned to you.

Termination

Because our Firm has been engaged to provide legal services in connection with the representation in the matter, as specifically defined in our Letter of Engagement, the attorney-client relationship terminates upon our completion of our services related to the representation in the matter. After completion of the representation, however, changes may occur in the applicable laws or regulations that could affect your future rights and liabilities in regard to the matter. Unless we are actually engaged after the completion of the representation to provide additional advice on such issues, the Firm has no continuing obligation to give advice with respect to any future legal developments that may relate to the matter.

If you later retain us to perform further or additional services, our attorney-client relationship will be subject to the terms of engagement agreed to at that time.

We look forward to the opportunity to complete our representation of you in the specified matter. You may, however, terminate our representation at any time, with or without cause, by notifying us in writing. Further information regarding your right to terminate the representation, and the effect of such termination, is set forth in the Letter of Engagement.

We will return your papers and other property to you promptly upon receipt of your request for those materials, unless they are appropriately subject to a lien. You agree that we will own and retain our own files pertaining to the matter or case, including, for example, Firm administrative records, time and expense reports, personnel and staffing materials, credit and accounting records, and internal lawyers' work product such as

drafts, notes, internal memoranda, legal and factual research, and investigative reports, prepared by or for the internal use of lawyers.

Document Retention

At the conclusion of the representation, we generally return to the client the client's original documents and any other documents that are specifically requested to be returned. As to any original documents so returned, we may elect to keep, at our expense, a copy of the documents in our stored files. Should you request other documents from us at the conclusion of our representation of you, you agree that we may generate copies for our files at your expense, including both the reproduction charges and professional fees for time expended in reviewing files to be returned to you.

At the close of any matter, we usually send the pertinent parts of our files in that matter to a storage facility for safekeeping at our expense. However, we do not store voluminous papers at our expense. The attorney closing the file will determine what part of the file is sent to storage and how long we will maintain the files in storage. Documents we choose not to store will be returned to you or destroyed.

Disclaimer

By signing the Letter of Engagement or otherwise indicating your acceptance of the Letter of Engagement, you acknowledge that our Firm has made no promises or guarantees to you about the outcome of the representation, and nothing in these terms of engagement shall be construed as such a promise or guarantee of any specific result. Either at the commencement or during the course of the representation, we may express opinions or beliefs about the matter or various courses of action and the results that might be anticipated. Any expressions on our part concerning the outcome of the representation, or any other legal matters, are based on our professional judgment and are not guarantees.

Our Professional Responsibility

The code of professional responsibility to which we are subject lists several types of conduct or circumstances that require or allow us to withdraw from representing a client. These include, for example, nonpayment of fees or charges, misrepresentation or failure to disclose material facts, action contrary to our advice, and conflict of interest with another client.

We try to identify in advance and discuss with our clients any situation that may lead to our withdrawal. If withdrawal ever becomes necessary, we give our client written notice as soon as practicable.

Under rules of the Texas Supreme Court and the State Bar of Texas, we advise our clients of the contents of the Texas Lawyer's Creed, a copy of which is enclosed. In addition, we advise clients that the State Bar of Texas investigates and prosecutes complaints of professional misconduct against attorneys licensed in Texas. A brochure entitled *Attorney Complaint Information* is available at all of our offices and is likewise available upon request. A client having any questions about the State Bar's disciplinary process should call the Office of the General Counsel of the State Bar of Texas at this toll-free number: (800) 932-1900.

Modification of Our Agreement

The Letter of Engagement, including these *Additional Terms of Engagement*, reflects our entire agreement on the terms of this engagement. These written terms of engagement are not subject to any oral agreements or understandings, and any change in these terms can only be made in a written instrument signed by both the Firm and you.

In Conclusion

We look forward to a long and mutually satisfying relationship with you. Again, if at any time you have a question or concern, please feel free to bring it to the attention of your principal contact at our Firm.



THE TEXAS LAWYER'S CREED — A Mandate for Professionalism

The Texas Supreme Court and the Texas Court of Criminal Appeals adopted this Creed, with the requirement that lawyers advise their clients of its contents when undertaking representation.

I am a lawyer; I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that Professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this Creed for no other reason that it is right.

I. OUR LEGAL SYSTEM. A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism. I am passionately proud of my profession. Therefore, "My word is my bond." I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life. I commit myself to an adequate and effective pro bono program. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed. I will always be conscious of my duty to the judicial system.

II. LAWYER TO CLIENT. A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest. I will advise my client of the contents of this Creed when undertaking

representation. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice. I will advise my client that civility and courtesy are expected and are not a sign of weakness. I will advise my client of proper and expected behavior. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party. I will advise my client that we will not pursue tactics which are intended primarily for delay. I will advise my client that we will not pursue any course of action which is without merit. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. LAWYER TO LAWYER. A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and

mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct. I will be courteous, civil, and prompt in oral and written communications. I will not quarrel over matters of form or style, but I will concentrate on matters of substance. I will identify for other counsel or parties all changes I have made in documents submitted for review. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are canceled. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by

unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence. I will not arbitrarily schedule a deposition, Court appearance, or hearing until a good faith effort has been made to schedule it by agreement. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party. I will refrain from excessive and abusive discovery. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable. I will

not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

IV. LAWYER AND JUDGE. Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol. I will conduct myself in court in a professional

manner and demonstrate my respect for the Court and the law. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility. I will be punctual. I will not engage in any conduct which offends the dignity and decorum of proceedings. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage. I will respect the rulings of the Court. I will give the issues in controversy deliberate, impartial and studied analysis and consideration. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.

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