

**IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO. 07-43672 (CA 09)

STATE OF FLORIDA, OFFICE OF FINANCIAL
REGULATION,

Plaintiff,

v.

BERMAN MORTGAGE CORPORATION,
a Florida corporation, M.A.M.C. INCORPORATED,
a Florida corporation, DANA J. BERMAN,
as Owner and Managing Member,

Defendants.

and

DB ATLANTA, LLC, a Florida limited liability
company, et al.,

Relief Defendants.

**RECEIVER'S MOTION FOR AUTHORITY TO PAY
SPECIAL COUNSEL PURSUANT TO CONTINGENCY FEE AGREEMENT**

Michael I. Goldberg, the receiver (the "Receiver") for Defendants Berman Mortgage Corporation ("BMC"), M.A.M.C. Incorporated ("MAMC"), and Relief Defendants DB Atlanta, LLC, *et al.*, files this *Motion for Authority to Pay Special Counsel Pursuant to Contingency Fee Agreement* (the "Motion"). In support of this Motion, the Receiver states as follows:

1. On December 11, 2007, the State of Florida, Office of Financial Regulation ("OFR") filed a *Complaint for Temporary and Permanent Injunction and Appointment of Receiver*. The OFR alleged that BMC had brokered the funding of at least \$192 million in mortgage loans from approximately 700 private investors ("Lenders") by offering fractional

interests in short-term acquisition and/or construction mortgage loans. MAMC serviced the loans pursuant to servicing agreements entered into between the Lenders and MAMC.

2. On December 11, 2007, this Court (the "Receivership Court") appointed Michael Goldberg as the receiver for BMC, MAMC and the Relief Defendants to prevent the waste and dissipation of the Receivership Defendants' assets to the detriment of the Lenders.

3. On May 5, 2008, the Receivership Court entered an Order granting the Receiver's *Motion to Approve the Retention of David and Joseph P.L. as Special Litigation Counsel*, dated April 23, 2008 (the "Retention Motion"). David and Joseph, P.L., n/k/a Fuerst Ittleman David & Joseph, PL ("Special Counsel") was retained as special litigation counsel to recover monies for claims which may be covered under certain errors and omissions policies. A true and correct copy of the Retention Motion is attached hereto as Exhibit 1.

4. Pursuant to the Retention Motion, the Receiver agreed to pay Special Counsel from the proceeds recovered by Special Counsel, all costs incurred by Special Counsel and a contingency fee equal to 20% if the case is resolved prior to Special Counsel filing a complaint or a contingency fee equal to 33 1/3% if the case is resolved after a complaint is filed. Special Counsel will be entitled to an additional 5% of any recovery if a Notice of Appeal is filed or if post-judgment relief is required.

5. Special Counsel has engaged in the continuous representation of the Receiver to maximize the recovery. In November 2014, the litigation pertaining to the recovery forming the subject matter of Special Counsel's engagement was resolved by settlement. A confidential settlement agreement was approved by Order of the Receivership Court on January 26, 2015.

6. This Motion seeks permission from the Court to pay Special Counsel its earned fee from the proceeds of the recovery, upon the Receiver's receipt of such proceeds.

7. Here, Special Counsel litigated two actions, plus an appeal, in its efforts to procure a recovery on behalf of the Receiver. Accordingly, Special Counsel is entitled to a fee of 33 1/3% of any recovery made on behalf of the Receiver, *plus* an additional 5% of any recovery, as a result of the appeal and costs advanced and incurred in connection with the action. The Declaration of Allan A. Joseph in support of this Motion is attached hereto as Exhibit 2.

8. In an effort to increase the net proceeds available to the Lenders, Special Counsel has agreed to accept a reduced fee of 35% of the total recovery, which sum shall be inclusive of all costs and expenses due to Special Counsel. Since the amount of the settlement is confidential, the amount of Special Counsel's fees have been omitted from this Motion.

9. Notice of this Motion shall be provided by posting a copy (and the Notice of Hearing) on the Receivership website and sending a copy to the Lenders via e-mail.

WHEREFORE, Michael I. Goldberg, in his capacity as Receiver of BMC, MAMC and related entities, respectfully request this Court to enter an Order authorizing the Receiver to Fuerst Ittleman David & Joseph, PL pursuant to the contingent fee agreement and to grant such further relief as is just and proper.

Respectfully submitted,

AKERMAN LLP

Counsel for the Receiver

Las Olas Centre II, Suite 1600

350 East Las Olas Boulevard

Fort Lauderdale, FL 33301-2229

Phone: (954) 463-2700/Fax: (954) 463-2224

Email: joan.levit@akerman.com

By: /s/ Joan Levit

Joan M. Levit, Esquire

Florida Bar No. 987530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of March, 2015, a true and correct copy of the forgoing was furnished to the parties on the attached Service List by U.S. mail, to the Lenders by e-mail and a copy of this motion will be posted on the receivership web-page.

/s/ Joan Levit

SERVICE LIST

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EXHIBIT 1

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN
AND FOR DADE COUNTY, FLORIDA

STATE OF FLORIDA, OFFICE OF FINANCIAL
REGULATION,

CASE NO.: 07-43672 CA 09

Plaintiff,

vs.

BERMAN MORTGAGE CORPORATION, a
Florida corporation, M.A.M.C.
INCORPORATED, a Florida corporation, DANA
J. BERMAN, as Owner and Managing Member,

Defendant.

and,

DB ATLANTA, LLC, a Florida Limited Liability
Company, **DB DURHAM, LLC**, a Florida
Limited Liability Company, **NORMANDY
HOLDINGS II, LLC**, a Florida Limited Liability
Company, **NORMANDY HOLDINGS III, LLC**,
a Florida Limited Liability Company,
ACQUISITIONS, LLC, a Florida Limited
Liability Company, **DBKN GULF
INCORPORATED**, a Florida Limited Liability
Company, **OCEANSIDE ACQUISITIONS,
LLC**, a Florida Limited Liability Company, **DB
BILOXI, LLC**, a Florida Limited Liability
Company, **DB BILOXI II, LLC**, a Florida
Limited Liability Company, **DB BILOXI III,
LLC**, a Florida Limited Liability Company, **DBDS
VERO BEACH, LLC**, a Florida Limited Liability
Company, **DB TAMPA, LLC**, a Florida Limited
Liability Company, **DB SIMPSONVILLE, LLC**,
a Florida Limited Liability Company, **DBDS
NORTH MIAMI, LLC**, a Florida Limited
Liability Company, **REDLANDS RANCH
HOLDINGS, LLC**, a Florida Limited Liability
Company, **DBDS BISCAYNE PARK, LLC**, a
Florida Limited Liability Company, **DB
CARROLL STREET, LLC**, a Florida Limited
Liability Company,

Relief Defendants.

BERGER SINGERMAN
attorneys at law

Boca Raton Fort Lauderdale Miami Tallahassee

200 South Biscayne Boulevard Suite 1000 Miami, Florida 33131-5308 Telephone 305-755-9500 Facsimile 305-714-4340

**RECEIVER'S MOTION TO APPROVE THE RETENTION OF
DAVID AND JOSEPH P.L. AS SPECIAL LITIGATION COUNSEL**

Michael I. Goldberg, as State Court Appointed Receiver over Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta LLC, et al., by and through undersigned counsel, hereby files this Motion to Approve the Retention of David and Joseph, P.L. ("David and Joseph") as Special Litigation Counsel, and states:

1. On December 11, 2007, this Court appointed Michael Goldberg (the "Receiver") to be the Receiver for the Defendants and the Relief Defendants. *See* Temporary Injunction and Agreed Order Appointing Receiver attached hereto as Exhibit "A."

2. The Receiver was specifically appointed by this Court to, among other things, preserve the receivership assets, including the assets of the Defendants and Relief Defendants:

The Receiver his hereby authorized to employ, without further order of the Court ... attorneys ... and other professionals ... as is necessary and proper for the collection [and] preservation ... of the Receivership Assets, including assets of which the Receiver is a shareholder, to furnish legal, accounting and other advice to the Receiver for such purposes as may be reasonable and necessary during the period of receivership.

See Exhibit "A," ¶19.

3. The Receiver now seeks to retain David and Joseph as special litigation counsel to represent the Receiver in the claims pertaining to relief under certain errors and omissions insurance policies.

4. The Receiver believes that such investigation and assessment relating to the errors and omissions insurance policies is necessary.

5. To the extent David and Joseph discover facts allowing the Receiver to seek relief under the errors and insurance policies, David and Joseph will pursue such relief on behalf of the Receiver.

6. The Receiver believes that the retention of David and Joseph is absolutely necessary for the Receiver ensure the preservation and/or recovery of receivership assets, and thereby prevent any further waste or dissipation.

7. In line with the Receiver's obligation to prevent the preserve and/or recover Receivership assets, to the extent this Court agrees to the Receiver's retention of David and Joseph, the Receiver and David and Joseph have agreed that David and Joseph will be retained on a contingency fee basis with the following reasonable terms and conditions:

- David and Joseph will advance all reasonable and necessary costs incurred during the course of the representation.
- The Receiver agrees to pay from the recovery of any proceeds recovered by David and Joseph on behalf of the Receiver, all costs incurred by or on behalf of David and Joseph during the course of representing the Receiver.
- David and Joseph will make every effort to keep these costs at an absolute minimum consistent with the requirements of the case.
- As compensation for their services, the Receiver agrees to pay David and Joseph a contingency fee equal to 20% if the case is resolved prior to David and Joseph filing a complaint in the action. If a complaint is filed, the Receiver agrees to pay David and Joseph a contingency fee equal to 33 1/3 % of any recovery made on behalf of the Receiver. David and Joseph will be entitled to an additional 5% of any recovery if a Notice of Appeal is filed, or if post-judgment relief or action is required for recovery or collection on a judgment. The Receiver understands that the Client is not liable pay the contingency attorneys' fees to David and Joseph unless and until a recovery is made.

See Authority to Represent Agreement and Statement of Client's rights attached hereto to as Exhibit "B."

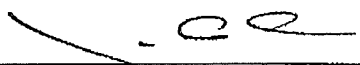
8. Additionally, David and Joseph has significant experience dealing with errors and omissions insurance policies, and thus can provide more than adequate counsel to the Receiver.

WHEREFORE, the Receiver moves this Court for entry of an Order Approving the Retention of David and Joseph as Special Litigation Counsel, and any other relief deemed necessary by this Court.

Respectfully Submitted,

BERGER SINGERMAN
Attorneys for Receiver
200 South Biscayne Boulevard
Suite 1000
Miami, Florida 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

By: _____


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GREGORY HAILE
Florida Bar No. 606421
E-MAIL: ghaile@bergersingerman.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail/Facsimile/Hand-Delivery and/or U.S. Mail on this 23rd day of April 2008, to: **Cristina Saenz, Assistant General Counsel**, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2nd Avenue, Suite N-708, Miami, Florida 33128; to **Alan M. Sandler, Esquire, Counsel for Defendants, Joel and Deborah Sokol, Darlene Levasser, Robert Dzimidas IRA, Lawrence Meyer IRA, Lawrence Meyer Roth IRA and Mary Joe Meyer SD IRA and Mary Joe Meyer Roth IRA**, of SANDLER & SANDLER, 117 Aragon Avenue, Coral Gables, Florida 33134; to **Allan A. Joseph, Esquire, Counsel for The Amid Companies and Amedia Family Investors**, DAVID AND JOSEPH, P.L., 1001 Brickell Avenue, Suite 2002, Miami, Florida

33131; to **Richard R. Robles, Esquire**, LAW OFFICES OF RICHARD ROBLES, P.A., *Counsel for the Four Ambassadors Association, Inc.*, 905 Brickell Bay Drive, Tower II, Mezzanine, Suite 228, Miami, Florida 33131; to **Daniel Kaplan, Esquire**, *Counsel for Deborah A. Berman*, at the LAW OFFICES OF DANIEL KAPLAN, P.A., Turnberry Plaza, Suite 600, 2875 N.E. 191st Street, Aventura, Florida 33180; to **Howard N. Kahn, Esquire**, *Attorneys for Intervenor, Ira Sukoff*, KAHN & CHENKIN, 2924 Davie Road, Suite 200, Davie, Florida 33314; to **Lawrence Shoot, Esquire**, *Attorneys for USA Funding*, 4830 SW 92nd Avenue, Miami, Florida 33165; and to **Charles Pickett, Esquire and Linda Dickhaus Agnant, Esquire**, *Attorneys for Johns Manville*, CASEY CIKLIN LUBITZ MARTENS & O'CONNELL, P.A., 515 North Flagler Drive, Suite 1900, West Palm Beach, Florida 33401.

Respectfully submitted,

By: 

JAMES D. GASSENHEIMER

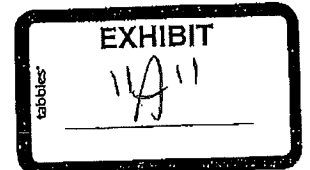
cc: The Honorable Thomas Wilson, Jr. *(via hand-delivery)*
The Investor Group *(via email)*
Michael I. Goldberg, Receiver *(via email)*

1052458-1

AUTHORITY TO REPRESENT AGREEMENT

Michael Goldberg, as Court Appointed Receiver for Berman Mortgage Corporation, M.A.M.C Incorporated, and "Relief Defendants" described in Case No.: 07-43672 CA (09), the undersigned client (referred to herein as the "Client"), does hereby retain and employ the law firm of DAVID AND JOSEPH, P.L. (the "Firm"), to represent the Client in the claims pertaining to relief under certain errors and omissions insurance policies.

The Firm agrees to advance all reasonable and necessary costs incurred during the course of the representation. However, in addition to the fees set forth below, the Client expressly agrees to pay from the recovery of any proceeds recovered by the Firm on behalf of the Client, all costs incurred by or on behalf of the Firm during the course of representing the Client under the terms of this Agreement. The Client authorizes the Firm to undertake and/or incur such costs as they may deem necessary from time to time. These costs include, but are not limited to such items as police reports, photographs, filing fees, costs of serving summonses and subpoenas, fee-based legal research such as Lexis and/or WestLaw legal research, court reporting fees, professional fees, jury lists, exhibits, state records, investigation expenses, expert witness fees and expenses, including fees for trial testimony and fees for conferences, witness fees, postage, photocopying, mileage, parking, certified copies, courier services, facsimile, long distance calls, recording fees, all travel expenses (including but not limited to transportation, room, board) and graphics fees and expenses. The Client expressly understands that experts may be retained in connection with prosecuting the lawsuit, and agrees to reimburse the Firm for these costs from the recovery obtained. The Firm will make every effort to keep these costs at an absolute minimum consistent with the requirements of the case. The



Client agrees the first payments to be disbursed from any recovery shall be to satisfy the costs incurred in connection with the representation of the Client under the terms of this Agreement.

As compensation for their services, the Client agrees to pay the Firm a contingency fee equal to 20% if the case is resolved prior to the Firm filing a complaint in the action. If a complaint is filed, the Client agrees to pay the Firm a contingency fee equal to 33 1/3 % of any recovery made on behalf of the Client. The Firm will be entitled to an additional 5% of any recovery if a Notice of Appeal is filed, or if post-judgment relief or action is required for recovery or collection on a judgment. The Client understands that the Client is not liable pay the contingency attorneys' fees to the Firm unless and until a recovery is made.

As permitted by law, an award of legal fees and/or costs may be sought from the opposing party, depending on whether there is a contractual or statutory right to recover attorneys' fees and/or costs. Likewise, the Client understands and acknowledges that if the Client does not prevail, the Client may be liable to pay attorneys' fees and costs to the opposing party. If the Court awards attorneys' fees to the Client, the Firm shall be entitled to either the above contingency fee on the entire amount recovered (which would include the recovery of court-awarded attorneys' fees), or the court-awarded fee, whichever is higher. The Client expressly agrees that for purposes of this paragraph, the current rates charged by the Firm, which are subject to change, are as follows: The fee for services is based upon the hourly rate of \$350.00 for partners, \$150.00 to \$325.00 for associates, and \$75.00 to \$125.00 for paralegals, depending upon the nature of the work performed.

The Client expressly understands and acknowledges that there have been no guarantees made regarding the disposition of any phase of this case. All expressions which relate to the possible results in the case, to the extent any such representations were made, are and were based strictly on

opinion and further, the Client acknowledges and understands that any such opinions are and were made without having the benefit of a full review of the facts or the opponent's position, and cannot in any way be relied upon by the Client. Accordingly, the Client acknowledges that the Firm has not in any way induced the Client into entering into this Agreement or commencing an action based on promises or representations. To the contrary, the Firm has expressly advised that there are risks associated with bringing litigation, including the possibility that the Client may not prevail in the action. Likewise, it is impossible to determine in advance the amount of time needed to complete the case, and thus the Client acknowledges and understands that no representations have been made to the Client by the Firm as to the length of time to complete this case. The Client further acknowledges and understands that the total costs to be expended in the case cannot be anticipated and no assurances of what those will ultimately be have been made.

The undersigned Client has, before signing this contract, received and read the Statement of Client's Rights and understand each of the rights set forth therein. The undersigned Client has signed the Statement and received a signed copy to refer to while being represented by the Firm.

This contract may be canceled by written notification by the client to the attorney at any time within three (3) business days of the date the contract was signed, as shown below, and if canceled the client shall not be obligated to pay any fees to the attorneys for the work performed during that time. If the attorneys have advanced funds to others in representation of the Client, the attorneys are entitled to be reimbursed for such amounts as they have reasonably advanced on behalf of the Client.

IT IS AGREED and understood that this employment is based upon a contingent fee basis, and if no recovery is made, the Client will not be indebted to the Firm for any additional sums whatsoever as attorneys' fees for services provided in this action.

The Client acknowledges being supplied with the "Statement of Clients Rights," has read same, understands it, and signed it simultaneously herewith.

DATED this ____ day of _____, 2008.

By: _____
MICHAEL GOLDBERG, Receiver

address:

work phone number:

cellular phone number (optional):

home phone number (optional):

email address:

The above employment is hereby accepted upon the terms stated above.

DAVID AND JOSEPH, P.L.
1001 Brickell Bay Drive
Suite 2002
Miami, Florida 33131
Telephone: (786) 364-7990
Facsimile: (786) 364-7995

ALLAN A. JOSEPH

cc: Bookkeeping
(Statement of Client's Rights begins on the following page)

STATEMENT OF CLIENT'S RIGHTS

Before you, the prospective client, arrange a contingent fee agreement with a lawyer, you should understand this statement of your rights as a client. This statement is not a part of the actual contract between you and your lawyer, but, as a prospective client, you should be aware of these rights:

1. There is no legal requirement that a lawyer charge a client a set fee or a percentage of money recovered in a case. You, the client, have the right to talk with your lawyer about the proposed fee and to bargain about the rate or percentage as in any other contract. If you do not reach an agreement with one lawyer you may talk with other lawyers.

2. Any contingent fee contract must be in writing and you have three (3) business days to reconsider the contract. You may cancel the contract without any reason if you notify your lawyer in writing within three (3) business days of signing the contract. If you withdraw from the contract within the first three (3) business days, you do not owe the lawyer a fee although you may be responsible for the lawyer's actual costs during that time. If your lawyer begins to represent you, your lawyer may not withdraw from the case without giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. Often, your lawyer must obtain court approval before withdrawing from a case. If you discharge your lawyer without good cause after the three (3)-day period, you may have to pay a fee for work the lawyer has done.

3. Before hiring a lawyer, you, the client, have the right to know about the lawyer's education, training, and experience. If you ask, the lawyer should tell you specifically about his or her actual experience dealing with cases similar to yours. If you ask, the lawyer should provide

information about special training or knowledge and give you this information in writing if you request it.

4. Before signing a contingent fee contract with you, a lawyer must advise you whether the lawyer intends to handle your case alone or whether other lawyers will be helping with the case. If your lawyer intends to refer the case to other lawyers, the lawyer should tell you what kind of fee sharing arrangement will be made with the other lawyers. If lawyers from different law firms will represent you, at least one (1) lawyer from each law firm must sign the contingent fee contract.

5. If your lawyer intends to refer your case to another lawyer or counsel with other lawyers, your lawyer should tell you about that at the beginning. If your lawyer takes the case and later decides to refer it to another lawyer or to associate with other lawyers, you should sign a new contract that includes the new lawyers. You, the client, also have the right to consult with each lawyer working on your case and each lawyer is legally responsible to represent your interests and is legally responsible for the acts of the other lawyers involved in the case.

6. You, the client, have the right to know in advance how you will need to pay the expenses and the legal fees at the end of the case. If you pay a deposit in advance for costs, you may ask reasonable questions about how the money will be or has been spent and how much of it remains unspent. Your lawyer should give a reasonable estimate about future necessary costs. If your lawyer agrees to lend or advance you money to prepare or research the case, you have the right to know periodically how much money your lawyer has spent on your behalf. You also have the right to decide, after consulting with your lawyer, how much money is to be spent to prepare a case. If you pay the expenses, you have the right to decide how much to spend. Your lawyer should also inform

you whether the fee will be based on the gross amount recovered or on the amount recovered minus the costs.

7. You, the client, have the right to be told by your lawyer about possible adverse consequences if you lose the case. Those adverse consequences might include money that you might have to pay to your lawyer for costs, and liability you might have for attorney's fees, costs, and expenses to the other side.

8. You, the client, have the right to receive and approve a closing statement at the end of the case before you pay any money. The statement must list all of the financial details of the entire case, including the amount recovered, all expenses, and a precise statement of your lawyer's fee. Until you approve the closing statement you need not pay any money to anyone, including your lawyer. You also have the right to have every lawyer or law firm working on your case sign this closing statement.

9. You, the client, have the right to ask your lawyer at reasonable intervals how the case is progressing and to have these questions answered to the best of your lawyer's ability.

10. You, the client, have the right to make the final decision regarding settlement of a case. Your lawyer must notify you of all offers of settlement before and after the trial. Offers during the trial must be immediately communicated and you should consult with your lawyer regarding whether to accept a settlement. However, you must make the final decision to accept or reject a settlement.

11. If at any time you, the client, believe that your lawyer has charged an excessive or illegal fee, you, the client, have the right to report the matter to the Florida Bar, the agency that oversees the practice and behavior of all lawyers in Florida. For information on how to reach the

Florida Bar, call 850-561-5600, or contact the local bar association. Any disagreement between you and your lawyer about a fee can be taken to court and you may wish to hire another lawyer to help you resolve this disagreement. Usually fee disputes must be handled in a separate lawsuit, unless your fee contract provides for arbitration. You can request, but may not require, that a provision for arbitration (under Chapter 682, Florida Statutes, or under the fee arbitration rule of the Rules Regulating The Florida Bar) be included in your fee contract.

DAVID AND JOSEPH, P.L.

By: _____
MICHAEL GOLDBERG, Receiver
Date:

ALLAN A. JOSEPH
Date:

EXHIBIT 2

**IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

STATE OF FLORIDA,
OFFICE OF FINANCIAL REGULATION,

CASE NO.: 07-43672 CA (09)

Plaintiff,

v.

BERMAN MORTGAGE CORPORATION, *et al.*

Defendants.

DECLARATION OF ALLAN A. JOSEPH

I, ALLAN A. JOSEPH, hereby declare under penalties of perjury:

1. My name is Allan A. Joseph and I make this Declaration in support of the Receiver's Motion to Disburse Fees to Fuerst Ittleman David & Joseph, PL.

2. Since 1991, I have been a member of the Florida Bar and have always been a member in good standing.¹

3. In or about April 2008, I had discussions with Michael Goldberg, the Receiver in the above-styled action, over whether I would be interested in representing the Receivership in pursuing claims which would be compensated by certain insurance policies. The Receiver explained to me that because of the limited receivership resources, if I agreed to take on the representation, the representation would need to be a contingency fee engagement. I agreed and I prepared and submitted a contingency fee agreement to the Receiver.

4. On April 23, 2008, the Receiver petitioned the Court to engage my firm, David and Joseph, P.L. (now known as Fuerst Ittleman David & Joseph, PL) ("FIDJ") as the Receiver's special litigation counsel to recover monies for claims which may be covered under certain errors and

¹ I am also a member in good standing of several other state, federal district and appellate court bars.

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Case No.: 07-43672 CA (09)

omissions policies. That Motion is attached to the Receiver's Motion as Exhibit A, and includes the specific terms of the Engagement.

5. On May 5, 2008, this Court granted the Motion. The order granting the Motion is attached to the Receiver's Motion as Exhibit B.

6. Succinctly, the Receiver agreed to pay from the insurance recoveries 20% of the total recovery if the recovery was made pre-suit; 33 1/3% of the total recovery if the recovery was made after a lawsuit was filed; and an additional 5% if appellate proceedings were initiated. All costs incurred by FIDJ would be advanced by FIDJ, and repaid only in the event of a recovery.

7. Since that time, FIDJ has engaged in the continuous representation of the Receiver to maximize the recovery. FIDJ engaged in substantial efforts engaged in pre-suit investigations and negotiations with the insurance carrier.

8. When it became evident that one of the carriers would not settle the case, FIDJ, with the express permission of the Receivership Court, brought a putative Class Action lawsuit in the name of the Receiver, suing on behalf of all of the Receivership-lender creditors, and Jerilynn Gidney, against Dana Berman and Mitchell Morgan, both of whom were covered "insureds" under the non-settling insurer's policy. FIDJ's class action efforts were substantial.

9. The insurer responded to the class action lawsuit by filing a declaratory action in federal court. FIDJ engaged in substantial efforts seeking the dismissal of that action. That action was dismissed.

10. The insurer filed another declaratory action in state court.

11. After the federal declaratory judgment was dismissed, and while the Class Action was pending, Dana Berman filed for protection in bankruptcy court. This caused FIDJ to litigate certain issues in the bankruptcy court. Ultimately, FIDJ procured stay relief from the bankruptcy court over the opposition from the bankruptcy trustee. Substantial effort was incurred by FIDJ in that action.

State of Florida vs. Berman Mortgage Co.
Case No.: 07-43672 CA (09)

12. Ultimately, the state court declaratory judgment action was allowed to proceed. That case was zealously litigated and lasted almost five years.² FIDJ took the lead in defending against the claims brought by the insurer in that action.

13. FIDJ advanced tens of thousands in cost expenditures in the multiple proceedings.

14. After three (3) years of declaratory judgment related litigation, the Court entered summary judgment in favor of the insurer on the issue of notice. If left to stand, the substantive efforts by FIDJ, plus the costs advanced by FIDJ, would have been for naught, as there would have been no recovery. The putative class action would not have continued as there would not have been a likelihood of recovery even if a judgment was entered. Hundreds of thousands of dollars in time and tens of thousands of costs advanced would have remained unrecovered.

15. FIDJ noticed the appeal of the action, and took lead in preparing the appellate papers. Substantial efforts were incurred by FIDJ in connection with the appeal. Indeed, if the appeal was not successful, there would have been no recovery.

16. In 2014, the Third District entered its decision which found that notice was in fact timely made under the terms of the policy. The insurer filed several motions in the appellate court seeking to clarify and even reconsider the decision. FIDJ incurred substantial efforts engaged in post-appeal motion practice. Ultimately, the Third District's opinion remained unchanged and the case was remanded to finish litigating the remaining, substantial issues.

17. On remand, the insurer then sought to amend the pleadings to change the scope of the case (and even the actual policy giving rise to the declaratory action). FIDJ incurred substantial efforts responding to the motion, which the Court ultimately denied.

² Likewise, during these proceedings, FIDJ additionally monitored the related *Revitz* action which was pending (although stayed as a result of the Receivership injunction), before Judge Thornton.

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18. The remaining matters left to be decided were then scheduled for final hearing by this Court. FIDJ expended substantial efforts preparing for the final arguments to be made on the pending summary judgment motions.

19. However, in November 2014, the parties engaged in substantive settlement discussions, participated in a second round of mediation over several days, and all litigation pertaining to the recovery of insurance proceeds was resolved by settlement. That settlement was approved by the Court on January 26, 2015.³

20. All of the work by FIDJ in all of these intertwined actions was performed under the scope of its engagement as approved by this Court.

21. Under the terms of the engagement expressly approved by this Court, FIDJ is entitled to be paid its earned fee and reimbursed its costs from the sums recovered. Specifically, FIDJ is entitled to receive as its fee according to the terms of the engagement approved by the Court the sum of 33 1/3% of the total recovery, *plus* an additional 5% of the recovery as a result of the appeal, for a total of **38 1/3%** of the recovery. In addition, FIDJ is entitled to receive all of the costs which it advanced pursuant to the terms of its Court-approved engagement.

22. Notwithstanding its entitlement, in an effort to increase the net proceeds available to the Receiver (and of course the creditors), FIDJ has offered to the Receiver the agreement to accept a reduced fee equal to **35%** of the total recovery, which sum shall be inclusive of all costs and expenses which are due.

23. I verily agree that based on the foregoing, FIDJ has earned this fee.

I declare under penalty of perjury, under the laws of the United States and the State of Florida, that the foregoing is true and accurate.

³ The terms of the settlement are confidential.

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Executed this 27th day of February, 2015, in Broward County, Florida.

/s/ Allan A. Joseph

ALLAN A. JOSEPH

Florida Bar No. 893137