

**TOTAL PAGES: 3**  
RUSSELL W. REYNOLDS #138075  
COLEMAN & HOROWITT, LLP  
Attorneys at Law  
499 West Shaw, Suite 116  
Fresno, California 93704  
Telephone: (559) 248-4820  
Facsimile: (559) 248-4830  
E-Mail: reynolds@ch-law.com

Attorneys for James Edward Salven, Chapter 7 Trustee

IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

In re:

DANIEL M. CANCHOLA,

Debtor.

Case No. 17-11346-B-7  
Chapter 7

DC No.: RWR-5

Date: June 12, 2019

Time: 9:30 a.m.

Dept: B

Crm: 13, Fifth Floor

Location: 2500 Tulare Street

Fresno, CA

Judge: Honorable Rene Lastreto

**NOTICE OF HEARING ON TRUSTEE'S MOTION  
TO EMPLOY SPECIAL COUNSEL**

**TO: THE DEBTOR, DANIEL M. CANCHOLA AND HIS ATTORNEY OF  
RECORD, JERRY LOWE; AND ALL INTERESTED PARTIES:**

PLEASE TAKE NOTICE that on June 12, 2019, at 9:30 a.m. in Department B, Courtroom 13 of the United States Bankruptcy Court located at 2500 Tulare Street, Fresno, California, the undersigned counsel for James Edward Salven, Chapter 7 Trustee, will seek an order from the court authorizing employment of special counsel with respect to the prosecution of a bad faith and/or tortious injury claim against Infinity Insurance, and its agents and attorneys, who insured Debtor Mario Guerra, Bankruptcy Case No. 17-11365, and his employee, Debtor

Daniel Canchola in the instant bankruptcy.

PLEASE TAKE FURTHER NOTICE that the Motion to Employ Special Counsel was previously filed on March 28, 2019 as Docket Control Numbers RWR-3, bearing document numbers 45 through 50. A Motion to Employ Special Counsel was also filed in the Mario Guerra companion case. However, due to a clerical error the documents were not timely served to comply with Local Rule 9014-1(f)(1). To correct the prior error, the documents are being refiled and served in both this case and Guerra companion case to comply with the Local Rules.

The Chapter 7 Trustees seek an order employing Mr. Moeck as special counsel (effective March 27, 2019, the date of the Attorney-Client Contingent Fee Contract, and the day before filing of the first Motion to Employ Special Counsel), so he may prosecute the bad faith and/or tortious injury action on behalf of both estates. Filed concurrently herewith, as Docket Control No. RWR-4 in both Debtors' bankruptcies referenced above, the Trustees of both estates also seek approval of a motion approve an agreement allowing the estates to share in any settlement pursuant to the terms set forth in the agreement. In the event that no settlement is reached and the action goes to trial then the estates agree that the verdict or decision shall dictate as to what monies shall go to which estate.

This motion is being filed pursuant to Local Rule 9014-1(f)(1). Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Clerk of the Court, on the undersigned, and the Chapter 7 Trustees and any other party requesting special notice by the responding party at least fourteen (14) calendar days preceding the date or continued date of the hearing. Opposition, if any, shall be served upon the following:

Russell W. Reynolds Attorneys for James E. Salven 499 W. Shaw Ave., Ste. 116 Fresno, California 93704	James E. Salven Chapter 7 Trustee P.O. Box 25970 Fresno, California 93729
----------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------

Opposition shall be accompanied by evidence establishing its factual allegations. A responding party who has no opposition to the granting of the motion may serve and file a statement to that effect, specifically designating the motion in question. Without good cause, no

1 party shall be heard in opposition to a motion at oral argument if written opposition to the motion  
2 has not been timely filed. Failure of the responding party to timely file written opposition may be  
3 deemed a waiver of any opposition to the granting of the motion or may result in the imposition  
4 of sanctions.

5 UNLESS WRITTEN OPPOSITION AND SUPPORTING EVIDENCE IS FILED WITH  
6 THE CLERK AND SERVED ON THE MOVING PARTY, THE COURT MAY RESOLVE  
7 THE MATTER WITHOUT ORAL ARGUMENT.

8 This motion will be based on this Notice of Motion, Declaration of James E. Salven and  
9 Declaration of David Moeck and accompanying exhibits, served and filed herewith, and on all of  
10 the records and documents filed in the above-entitled matter and on such oral and documentary  
11 evidence as may be presented at the hearing on the motion.

12 PLEASE TAKE NOTICE that you are able to review any tentative ruling or pre-hearing  
13 dispositions by checking the court's website at [www.casb.uscourts.gov](http://www.casb.uscourts.gov) after 4:00 p.m. the day  
14 before the hearing. Parties appearing telephonically must view the pre-hearing dispositions prior  
15 to the hearing.

16 To appear at the hearing by telephone, contact Court Call Conference Service at (866)  
17 582-6878. See also CourtCall.com. The telephone appearance must be arranged twenty-four  
18 (24) hours in advance. A Court Call fee applies. Individuals using Court Call are cautioned they  
19 do so at their own risk. The hearing will not be rescheduled due to a missed connection.

20 Requests for further information or for copies of the motion and supporting papers should  
21 be directed to the undersigned.

22  
23 Respectfully submitted,

24 COLEMAN & HOROWITZ, LLP

25  
26 Dated: May 8, 2019. By: /s/ Russell W. Reynolds  
27 RUSSELL W. REYNOLDS  
28 Attorneys for James E. Salven, Chapter 7  
Trustee

**TOTAL PAGES: 4**  
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Attorneys at Law  
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Telephone: (559) 248-4820  
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E-Mail: rreynolds@ch-law.com

Attorneys for James Edward Salven, Chapter 7 Trustee

IN THE UNITED STATES BANKRUPTCY COURT  
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In re:

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Crmn: 13, Fifth Floor

Location: 2500 Tulare Street  
Fresno, CA

Judge: Honorable Rene Lastrero II

**TRUSTEE'S MOTION TO EMPLOY SPECIAL COUNSEL**

Comes now James E. Salven, Chapter 7 Trustee, respectfully represents as follows:

**I. INTRODUCTION**

James E. Salven is the duly appointed, qualified and acting Chapter 7 Trustee of the bankruptcy estate of Daniel M. Canchola. For purposes of this motion there is a related case, In re: Guerra, Case number 17-11365. Peter L. Fear is the qualified and acting Chapter 7 Successor Trustee following the resignation of Trudi G. Manfredo as the acting Trustee of the Guerra case.

Mr. Salven is now performing his duties as set forth in 11 U.S.C. § 704.

Among the assets in this case which need to be administered is a bad faith claim held by the Debtor. The claim of bad faith and related tortious injuries arises out of a traffic accident and the Debtor's insurance company's alleged failure to tender the proper policy limits. This

situation arose prior to the Debtor filing for bankruptcy protection. At the present time, Trustee is in need of the assistance of legal counsel to prosecute the above-referenced claims.

**II. BACKGROUND**

This motion to employ special counsel involves two separate bankruptcy proceedings. Mario Alberto Guerra is the owner of Guerra Produce. Mr. Guerra had in his employ an individual by the name of Daniel M. Canchola. On December 11, 2013, a Complaint was filed in the Fresno County Superior Court that alleges Canchola and Guerra (along with other Defendants) negligently caused a traffic accident resulting in the wrongful death and serious injuries of several persons. The Debtors, Guerra and Canchola, had insurance coverage but a dispute arose over the amount of coverage. It is contended that Infinity Insurance under-insured the Guerra vehicle as a matter of law and that Infinity Insurance may be obligated to honor a policy limit of \$750,000.

A trial was set to begin on April 24, 2017, in the Fresno County Superior Court. A Good Faith Settlement Hearing was set for April 13, 2017. On April 12, 2017, Mario Alberto Guerra filed a Chapter 7 bankruptcy in this court bearing case number 17-11365. Trudi G. Manfredo serves as the acting Chapter 7 Trustee in the Guerra case. On the same date, Daniel M. Canchola filed a Chapter 7 bankruptcy case in this court bearing case number 17-11346. James E. Salven serves as the acting Chapter 7 Trustee in the Canchola case. The Plaintiffs in the state court litigation sought and obtained relief from stay in the bankruptcy cases. Trustee is informed that the Plaintiffs reached an agreement with Debtor's insurance company that paid to Plaintiffs the lower policy limits without restricting Plaintiffs' future recovery should they successfully bring a bad faith claim to recover the full amount of the alleged policy limits. The unusual agreement regarding a potential future bad faith claim was facilitated by the insurance company. Given the nature of the unusual agreement, the Debtors' claims against the insurance company will more than likely be a bifurcated claim, separate from the bad faith claim that the Plaintiffs may have, and will seek recovery for injuries suffered by the Debtors and not the Plaintiffs. Thus, by virtue of this agreement, Infinity Insurance paid the Plaintiffs the lower policy limit, dismissed the lawsuit and preserved the rights of the parties to bring their perceived bad faith claims.

1 The Debtors, Guerra and Canchola had insurance coverage but a dispute arose over the  
2 amount of coverage. It is contended that Infinity Insurance under-insured the Guerra vehicle as a  
3 matter of law and that Infinity Insurance may be obligated to honor a policy limit of \$750,000.00.  
4 It is believed that Guerra and Canchola have a bad faith claim and related claims for tortious  
5 injuries suffered as a result of such bad faith against the insurance carrier, its agents and  
6 attorneys, and special counsel is necessary to prosecute that action. Special Counsel is willing to  
7 represent both Debtors' estates in one action. An application to employ special counsel is being  
8 filed concurrently in both bankruptcy cases. Prior to her resignation as Trustee, Ms. Manfredo as  
9 the acting Trustee of this estate and Mr. Salven, on behalf of the Conchola bankruptcy estate,  
10 reached an agreement to share any proceeds from the bad faith litigation. Mr. Fear, as the  
11 Successor Trustee and Mr. Salven will be seeking approval of that agreement by separate motion.

### 12 III. APPLICATION TO EMPLOY SPECIAL COUNSEL

13 Trustee wishes to employ David M. Moeck, Esq., who is duly admitted to practice law in  
14 the California courts. Trustee seeks to have said firm represent him as special counsel in this  
15 case with respect to the prosecution of the above-described claim. Trustee has selected David M.  
16 Moeck, Esq., for the reason that he has experience in these types of litigation matters, and is  
17 willing to represent Trustee on a contingency-fee basis with respect to the prosecution of the  
18 above claim. Trustee believes that his employment of David M. Moeck, Esq., is in the best  
19 interest of the bankruptcy estate in that prosecution of the claims is likely to involve significant  
20 attorney time and effort. Moreover, the outcome of the case is very uncertain; Trustee has no  
21 funds with which he can employ an attorney at an hourly rate; Trustee is unsure of whether any  
22 benefit to Debtor's bankruptcy estate will ultimately be derived, and employment of counsel on a  
23 contingency-fee basis is a way in which the downside risk of such litigation may be minimized,  
24 while allowing the bankruptcy estate to pursue claims, which at the present time Debtor believes  
25 are valid and substantial, and, in the event of a recovery, simply share the benefit of such  
26 recovery with the attorney(s) who are willing to prosecute the claims.

27 **Trustee previously filed a Motion to Employ Special Counsel and supporting**  
28

TRUSTEE'S MOTN TO EMP SPECIAL COUNSEL

1 documents, bearing docket control number RWR-3, on March 28, 2019 at Docket 45  
2 through 50. However, due to a clerical error, the documents were not timely served.  
3 Trustee respectfully requests that should the Court approve Special Counsel's employment,  
4 that it approve his employment as of the date of the Attorney-Client Contingent Fee  
5 Contract, which was executed on March 27, 2019.

6 The professional services that David M. Moeck, Esq., is to render are fully described in  
7 the Attorney-Client Contingent Fee Contract ("Agreement"), a copy of which is included in the  
8 accompanying Exhibit Documents as Exhibit "A".

9 To the best of the Trustee's knowledge, David M. Moeck, Esq., did not represent either  
10 Debtor Guerra or Debtor Conchola, or any creditor or other party in the bankruptcy case. David  
11 M. Moeck, Esq., has no connection with any of the Debtor's other creditors, or any other party in  
12 interest, or their respective attorneys or accountants, or the United States Trustee, or any person  
13 employed in the office of the United States Trustee, except as disclosed in the declaration of  
14 David M. Moeck, Esq., submitted in support thereof, and is disinterested as that term is defined  
15 in 11 U.S.C. § 327 and Rule 2014 of the Federal Rules of Bankruptcy Procedure.

16 WHEREFORE, Trustee prays that his employment of David M. Moeck, Esq., under the  
17 terms specified to represent him as special counsel in this Chapter 7 bankruptcy proceeding be  
18 approved and for such other and further relief as is just and proper.

19 COLEMAN & HOROWITT, LLP

20 Dated: May 8, 2019.

21 By: /s/ Russell W. Reynolds  
22 RUSSELL W. REYNOLDS  
23 Attorneys for James E. Salven, Chapter 7  
24 Trustee  
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TRUSTEE'S MOTN TO EMP SPECIAL COUNSEL

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RUSSELL W. REYNOLDS #138075  
COLEMAN & HOROWITZ, LLP  
Attorneys at Law  
499 West Shaw, Suite 116  
Fresno, California 93704  
Telephone: (559) 248-4820  
Facsimile: (559) 248-4830  
E-Mail: reynolds@ch-law.com

Attorneys for James Edward Salven, Chapter 7 Trustee

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In re:

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Debtor.

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Chapter 7

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Chrm: 13, Fifth Floor  
Location: 2500 Tulare Street  
Fresno, CA

Judge: Honorable Rene Lastreto II

**DECLARATION OF JAMES E. SALVEN IN SUPPORT OF  
TRUSTEE'S MOTION TO EMPLOY SPECIAL COUNSEL**

I, James E. Salven, hereby declare as follows:

1. I am an adult person over the age of eighteen (18), competent to testify about the matters set forth herein. I am the duly appointed, qualified and acting Trustee of the estate of Daniel M. Canchola. If called upon to testify to the facts set forth in this declaration, I can and would do so.

2. Daniel M. Canchola filed a petition for relief under Chapter 7 of the United States Bankruptcy Code on April 12, 2017. I am the duly appointed Chapter 7 Trustee. I have reviewed and analyzed the Debtor's petition, schedules, Statement of Financial Affairs and numerous other documents filed as part of the Debtor's Chapter 7 case. I also questioned the

Debtor at the First Meeting of Creditors. I have used the information learned from these documents and my conversations with the Debtor and with my counsel to justify the exercise of my business judgment.

3. I learned that prior to filing his petition, Mr. Canchola worked for Mr. Guerra and at least on one occasion drove a truck to deliver produce for Mr. Guerra's produce business. There was a terrible accident that involved the death of one individual and at least two other individuals were injured.

4. Following the automobile accident, a lawsuit was filed against Mr. Guerra and Mr. Canchola. It was learned that the insurance policy on the vehicle had a \$25,000 per occurrence limit. It is believed that a commercial vehicle in California is required to have a \$750,000 minimum liability coverage.

5. Prior to the case going to trial, Mr. Guerra and Mr. Canchola filed bankruptcy. The Plaintiffs in the state court litigation filed motions for relief from stay to pursue the case limiting any recovery to the Debtor's insurance. I have been informed and I believe that Plaintiffs counsel demanded the commercial liability limit but the carrier offered only the consumer limit as stated in the policy. Thereafter the insurance carrier entered into an agreement with the Plaintiffs that in the event a bad faith claim was brought and the Plaintiffs prevailed, certain assumptions would be made as to what damage verdicts would be made.

6. I have consulted with an attorney familiar with insurance bad faith claims. After this consultation, I have formed the belief that Mr. Canchola may have a bad faith and/or tortious injury claim stemming from any such bad faith against the insurance carrier, its agents and attorneys. I have discussed this matter with Mr. Fear, the Successor Trustee in the Guerra case, and he believes that Mr. Guerra may also have a bad faith and/or tortious injury claim against the insurance carrier. These bad faith claims and/or tortious injury claims arise out of the same set of facts and the same legal issues apply to both Debtors. The Debtors do not have claims that are adverse to one another and their claims against the insurance company are similarly situated.

7. I wish to employ David Moeck as special counsel in this case to prosecute a bad faith and/or tortious injury claim against the Debtor's insurance carrier. I have chosen Mr.

DEC OF JAMES E. SALVEN

DEC OF JAMES E. SALVEN

1 Moeck for this case because he has experience in bad faith litigation and has tried over fifteen  
2 (15) cases to verdict. He has taken the time to familiarize himself with the facts in this case and  
3 he is willing to represent the estate on a contingency-fee basis to prosecute this bad faith claim.

4 8. It is my belief that the employment of Mr. Moeck is in the best interest of the  
5 bankruptcy estate in that the prosecution of the claim is likely to involve significant time and  
6 effort. Further, the outcome of the case is uncertain and the estate has no funds with which to  
7 pay an attorney an hourly rate. While I believe that a bad faith and/or tortious injury claim exists,  
8 I cannot be sure that any benefit to the bankruptcy estate will eventually be derived. The  
9 employment of counsel on a contingency-fee basis is a way in which the downside risk of such  
10 litigation may be minimized, while allowing the bankruptcy estate to pursue claims that are  
11 believed to be valid and substantial. In the event there is a recovery, the estate is willing to share  
12 the recovery with the attorney who was willing to take the case on a contingency and advance the  
13 necessary costs.

14 9. The professional services that Mr. Moeck is to render is fully described in the  
15 Attorney-Client Contingent Fee Contract ("Agreement") that is included in the accompanying  
16 exhibit documents as Exhibit "A". Mr. Fear, the trustee in the Guerra case, is also seeking the  
17 employment of Mr. Moeck so that the two Debtors' cases can be pursued together. Prior to Ms.  
18 Manfredo's resignation as acting Trustee in the Guerra case, she and I entered into an agreement  
19 regarding the sharing of any litigation proceeds between the two bankruptcy estates. Following  
20 her resignation, I have reviewed the terms of the agreement with Mr. Fear, who has also agreed  
21 to the terms of said agreement. It is anticipated that this motion to employ special counsel will  
22 be heard at the same time as Mr. Fear's motion to employ special counsel and the motion to  
23 compromise the settlement between the two bankruptcy estates.

24 I declare under penalty of perjury that the foregoing is true and correct.  
25 Executed this 21 day of May, 2019, at Fresno, California.

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JAMES E. SALVEN

DEC OF JAMES E. SALVEN

1 TOTAL PAGES: 3

2 RUSSELL W. REYNOLDS #138075

3 COLEMAN & HOROWITT, LLP

4 Attorneys at Law

5 499 West Shaw, Suite 116

6 Fresno, California 93704

7 Telephone: (559) 248-4820

8 Facsimile: (559) 248-4830

9 E-Mail: reynolds@cb-law.com

10 Attorneys for James Edward Salven, Chapter 7 Trustee

11 IN THE UNITED STATES BANKRUPTCY COURT

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14 Chapter 7

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19 Ctcm: 13, Fifth Floor

20 Location: 2500 Tulare Street

21 Fresno, CA

22 Judge: Honorable Rene Lastrero II

23 DECLARATION OF DAVID MOECK IN SUPPORT OF

24 TRUSTEE'S MOTION TO EMPLOY SPECIAL COUNSEL

25 I am an adult person over the age of 18 and competent to testify about the matters set forth  
26 herein. If called upon to testify to the facts set forth in this declaration I can and would do so. I am  
27 an attorney at law, licensed to practice law within the state of California. I was admitted to the  
28 California State Bar in 1999. During that time, I have tried over 15 cases to verdict and am a  
member of ABOTA and currently serve as the ABOTA Membership Chair.

The proposed lawsuit, which is the subject of this motion, would be an action for tortious  
injuries suffered as result of bad faith by Infinity Insurance Company. Infinity provided Commercial  
Liability Insurance for Debtor, Mario Alberto Guerra ("Debtor Guerra") and by reason of additional  
insured provisions in the policy, provided coverage for Debtor, Daniel M. Canchola ("Debtor

DEC OF DAVID MOECK

1 Canchola").

2 I am fully familiar with bad faith litigation and the issues raised by the instant action,  
3 regarding the refusal of the Debtor's insurer, Infinity, to resolve the underlying litigation in an  
4 amount that would have resulted in a dismissal with prejudice of the underlying action against the  
5 Mr. Canchola and Mr. Guerra and eliminated any threat of judgment against them.

6 After my review of the facts and discussion with general counsel, it is my belief that the  
7 Debtor has a valid claim for tortious injuries and potentially contractual damages suffered as a result  
8 of bad faith by the insurer. It is my understanding that the trustees of the respective bankruptcy  
9 estates have formed an agreement to split the net recovered proceeds between the bankruptcy estates.

10 I have not represented any creditor or other party in either the bankruptcy cases of Debtor  
11 Guerra or Debtor Canchola.

12 I have reviewed the list of creditors of both Debtors and confirm I have no business,  
13 professional or personal relationship or connection in any manner to the Debtors, any listed creditors,  
14 or any other party in interest, their respective attorneys or accountants, or the United States Trustee,  
15 or any person employed in the office of the United States Trustee.

16 I have reviewed the provisions of 11 U.S.C. § 327 and Rule 2014 of the Federal Rules of  
17 Bankruptcy Procedure and confirm I am a disinterested person as that term is defined therein.

18 I have reviewed the Attorney-Client Contingent Fee Contract ("Agreement") attached as  
19 Exhibit "A" to the Exhibit Documents and confirm it is a true and correct copy of the Agreement for  
20 my professional services as requested by this motion and confirm it accurately represents the terms  
21 and conditions for my employment.

22 I understand and acknowledge that payment of my fees following settlement or verdict, of  
23 any claims pertaining to the bankruptcy estate will be subject to Bankruptcy Court approval.

24 I am not aware of nor do I anticipate any conflict of interest between my simultaneous  
25 representation of Debtor Canchola and Debtor Guerra. This evaluation is based upon the following:

26 1. There will be unlimited insurance proceeds available in light of the allegation that  
27 Infinity's alleged bad faith "opens up" the policy thus not limiting it to the stated policy limits.  
28 Accordingly, Debtor Canchola and Debtor Guerra will not be competing for a certain "share" of

DEC OF DAVID MOECK

1 available proceeds at trial.

2 2. The claims of Debtor Canchola and Debtor Guerra are not adverse to one another.

3 3. The interests of Debtor Canchola and Debtor Guerra were aligned as to the underlying  
4 accident and are aligned as to the insurer's conduct giving rise to the action.

5 4. The claims of Debtor Canchola and Debtor Guerra are personal as to each and are not  
6 dependent on the viability or credibility of other claim.

7 I declare under penalty of perjury that the foregoing is true and correct.

8 Executed this 6 day of May, 2019, at Fresno, California.

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DAVID MOROCK

DEC OF DAVID MOROCK

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RUSSELL W. REYNOLDS #138075  
COLEMAN & HOROWITT, LLP  
Attorneys at Law  
499 West Shaw, Suite 116  
Fresno, California 93704  
Telephone: (559) 248-4820  
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EXHIBIT "A" SUPPORT OF TRUSTEE'S MOTION TO  
EMPLOY SPECIAL COUNSEL

EXHIBIT	TITLE	PAGE
A	Attorney-Client Contingent Fee Contract	2

Respectfully submitted,  
COLEMAN & HOROWITT, LLP

Dated: May 8, 2019.  
By: /s/ Russell W. Reynolds  
RUSSELL W. REYNOLDS  
Attorneys for James E. Salven, Chapter 7  
Trustee

EXH DOC

QUINLAN, KERSHAW & FANUCCHI, LLP  
2125 Morset Street, Fresno, California 93721  
(559) 268-3771

ATTORNEY-CLIENT CONTINGENT FEE CONTRACT

This ATTORNEY-CLIENT CONTINGENT FEE CONTRACT (the "Agreement") is between DAVID M. MORCK, ESQ. and QUINLAN, KERSHAW & FANUCCHI, LLP, ("Attorney") and JAMES E. SALVEN, CHAPTER 7 TRUSTEE OF THE BANKRUPTCY ESTATE OF DANIEL M. CANCHOLA and PETER FEAR, CHAPTER 7 TRUSTEE OF THE BANKRUPTCY ESTATE OF MARIO ALBERTO GUERRA ("Clients").

1. **CONDITIONS.** This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until Clients and Attorney sign this Agreement.

2. **SCOPE AND DUTIES.** Clients are hiring Attorney to represent Clients regarding an action for bad faith against Infinity Insurance Company. Infinity provided Commercial Liability Insurance for Debtor Mario Alberto Guerra ("Guerra") and by reason of additional insured provisions in the policy, provided coverage for Guerra's employer, Debtor Daniel M. Cancchola ("Canchola"). The bad faith action arises out of Infinity's bad faith in relation to its failure to settle a lawsuit filed against Guerra and Cancchola arising out of a motor vehicle accident which occurred on June 12, 2013, and in particular, Fresno County Superior Court Action No. 13CFC003811. In that action it was alleged the negligence of Cancchola and Guerra caused a motor vehicle accident which resulted in death and serious personal injuries. On April 12, 2017 both Guerra and Cancchola filed for bankruptcy.

3. The state court case was thereafter settled by way of a stipulated agreement in October 2017, wherein Infinity agreed that if a court later found breach of contract and bad faith, it agreed to pay the underlying plaintiffs damages in the amount of \$2,778,698.44 plus court awarded costs. The Agreement also purported to, in essence, assign the contractual rights of Guerra and Cancchola to the underlying Plaintiffs. Guerra and Cancchola were not parties to the agreement and did not consent to any of its terms. Cancchola and Guerra have personal claims (emotional distress and punitive damages) against Infinity, arising in part over their having to file bankruptcy to protect their interests as a result of Infinity's unreasonable refusal to settle. The underlying Plaintiffs have asserted claims against both estates. As such, Guerra and Cancchola may also have contractual rights against Infinity, with regard to the claims now pending within the bankruptcy estates, depending upon the interpretation and application of the agreement reached between Infinity and the underlying Plaintiffs regarding contractual claims. It is understood and agreed, that this agreement will pertain to all claims pertaining to the bankruptcy estates of the debtors.

4. Claims may also be brought against the insurance broker who sold the subject policy to Debtor Guerra as well as potential claims against Attorney Joseph Cooper, and the Law Firm of Cooper & Cooper, LLP, arising out of his conduct in conjunction with the defense of the debtors in the underlying action.

5. Attorney and Clients hereby acknowledge that they are not currently aware of any conflicts of interests involved with the simultaneous representation of claims on behalf of Cancchola and Guerra. If at any point any party to this agreement determines that any such conflict of interests exists or a potential for such conflict exists, full disclosure and appropriate waivers will be obtained or retention of separate counsel will be pursued.

6. Attorney will provide those legal services reasonably required to represent Clients, and will take reasonable steps to inform Clients of progress and to respond to Clients' inquiries. Attorney will represent Clients in any court action until a settlement or judgment, by arbitration or trial, is reached, and in connection with any appropriate post trial motions.

EXHIBIT "A"

7. After judgment, Attorney will not represent Clients on any appeal, or in any proceedings designed to execute on the judgment, without such additional compensation as Attorney and Clients may agree on in a separate Agreement.
8. **INSURANCE DISCLOSURE.** Attorney maintains errors and omissions coverage. Attorney is insured for legal malpractice.
9. **CLIENT'S DUTIES.** Clients agree to be truthful with Attorney, to cooperate, and assist Attorney in the prosecution of the case, and to keep Attorney informed of developments, to abide by this Agreement.
10. **LEGAL FEES, COSTS, AND BILLING PRACTICES.** Attorney will be compensated for legal services rendered only if a recovery is obtained for Clients. If no recovery is obtained, Clients will not be obligated to pay costs, or expenses, as described below.
  11. The fees to be paid by Clients to Attorney for all recovery, whether in the form of settlement, arbitration award or judgment, will be (40 %) Forty percent of the net recovery. (The term "net recovery" means the total of all amounts received by settlement, arbitration award, or judgment, from which will be subtracted all costs and disbursements.)
  12. In the event of discharge or withdrawal of Attorney, Clients agree that Attorney shall be entitled to be paid by Clients, on payment of the settlement, arbitration award, or judgment in favor of Clients, a reasonable fee for the legal services provided by Attorney to Clients and costs advanced by Attorney.
  13. **NEGOTIABILITY OF FEES.** The fees set forth above are not set by law, but are negotiable between Attorney and Clients.
14. **COSTS AND EXPENSES.** It is agreed and understood that all costs, disbursements, and litigation expenses will advance by attorney. Clients will reimburse Attorney for such advance of costs and expenses on settlement, arbitration award, or judgment, to be paid back out of any recovery. These items include, but are not limited to, court fees, service of process charges, photocopying services, notary fees, computer-assisted legal research, long distance telephone charges, messenger and delivery fees, postage, in-office photocopying, facsimile charges, parking, mileage, investigation expenses, consultants' fees, expert witness fees, and other similar items. Clients authorize Attorney to incur all reasonable costs and to hire any investigators, consultants, or expert witnesses reasonably necessary in Attorney's judgment.
15. **DISCHARGE AND WITHDRAWAL.** Clients may discharge Attorney at any time, on written notice and Attorney will immediately, after receiving such notice cease to render additional services. Such a discharge does not, however, relieve Clients of the obligation to pay any costs incurred prior to such termination, and Attorney has the right to recover from you the reasonable value of Attorney's legal services rendered from the effective date of the Agreement to the date of discharge.
16. Attorney may withdraw from representation of Clients (a) with Client's consent, (b) on court approval, or (c) if no court action has been filed, on reasonable notice to the Clients.
17. **CONCLUSION OF SERVICES.** When Attorney's services conclude, other than by discharge or withdrawal, all unpaid charges will immediately become due and payable. After Attorney's services conclude, Attorney will, on Client's request, deliver Clients' file to Clients, along with any Client funds or property in Attorney's possession. Attorney will render an accounting of the recovery as to its disbursements.

18. **DISCLAIMER OF GUARANTEE.** Nothing in this Agreement and nothing in Attorney's statements to Clients will be construed as a promise or guarantee about the outcome of the Clients' matter. Attorney makes no such promises or guarantees. There can be no assurance that Clients will recover any sum or sums in this matter. Attorney's comments about the outcome of Clients' matter are expressions of opinion only.
19. **ARBITRATION OF DISPUTES.** In the event of a dispute between the parties with respect to any provision of this agreement including but not limited to, the amount of fees and costs due Attorney, Clients and Attorney agree to arbitrate any such dispute. Arbitration shall be conducted by an arbitrator mutually selected by the parties.
20. **APPROVAL OF BANKRUPTCY COURT.** Attorney understands and acknowledges that any settlement and payment of fees under this agreement is subject to approval of the Bankruptcy Court.

QUINLAN, KERSHAW & FANUCCIEL, LLP

By   
David M. Moeck, Esq.

We have read and understood the foregoing terms and agree to them, as of the date QUINLAN, KERSHAW & FANUCCIEL, LLP first provide services. If more than one party signs below, we agree to be jointly, each and both, for all obligations under this Agreement. By signing this Agreement, we acknowledge receipt of a fully executed duplicate of this Agreement.

Dated: 3/22/19

James Richard Salvendy, Chapter 7 Trustee  
of the bankruptcy estate of Daniel M. Candelola

Dated: 3/22/19

  
Daniel A. Guerra, Chapter 7 Trustee  
of the bankruptcy estate of Mario A. Guerra

TOTAL PAGES: 4

RUSSELL W. REYNOLDS #138075  
COLEMAN & HOROWITT, LLP  
Attorneys at Law  
499 West Shaw, Suite 116  
Fresno, California 93704  
Telephone: (559) 248-4820  
Facsimile: (559) 248-4830  
E-Mail: rreynolds@ch-law.com

Attorneys for James Edward Salven, Chapter 7 Trustee

IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

In re:

DANIEL M. CANCHOLA,

Debtor.

Case No. 17-11346-B-7  
Chapter 7

DC No.: RWR-5

Date: June 12, 2019

Time: 9:30 a.m.

Dept: B

Ctrm: 13, Fifth Floor

Location: 2500 Tulare Street  
Fresno, CA

Judge: Honorable Rene Lastrero II

CERTIFICATE OF SERVICE

I declare that I am a citizen of the United States and a resident of the County of Fresno. I am over the age of eighteen (18) years and not a party to the within action. My business address is 499 West Shaw, Suite 116, Fresno, California 93704.

On May 8, 2019, I served the following documents described as:

1. NOTICE OF HEARING ON TRUSTEE'S MOTION TO EMPLOY SPECIAL COUNSEL;
2. TRUSTEE'S MOTION TO EMPLOY SPECIAL COUNSEL;
3. DECLARATION OF JAMES E. SALVEN IN SUPPORT OF TRUSTEE'S MOTION TO EMPLOY SPECIAL COUNSEL;
4. DECLARATION OF DAVID MOECK IN SUPPORT OF TRUSTEE'S MOTION TO EMPLOY SPECIAL COUNSEL; and

CERT OF SERVICE

5. EXHIBIT TO TRUSTEE'S MOTION TO EMPLOY SPECIAL COUNSEL

on the interested parties as follows:

David M. Moeck Esq.  
QUINLAN KERSHAW & FANUCCHI  
2125 Merced Street  
Fresno, CA 93721

PLEASE SEE THE ATTACHED MAILING MATRIX

☒ BY MAIL - by placing a true and correct copy in a sealed envelope with postage thereon fully prepaid in the firm's outgoing mail. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. It is deposited with United States Postal Service on that same day in the ordinary course of business.

☐ BY CALIFORNIA OVERNIGHT - by placing ☐ a true and correct copy ☐ the original thereof enclosed in a sealed envelope for delivery via California Overnight next day delivery to the addressee noted above.

☐ BY HAND DELIVERY - by delivering by hand and leaving a true copy with the person and at the address shown above.

☐ BY ELECTRONIC TRANSMISSION - by causing a true copy thereof to be electronically transmitted to the parties indicated above, by using their e-mail address.

☐ STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ FEDERAL: I declare that I am employed in the office of a member of the bar of this court at whose direction service was made.

Executed on May 8, 2019, at Fresno, California.

/s/ Stacey Johnson  
STACEY JOHNSON

CERT OF SERVICE

Label Matrix for local noticing

Case 17-11346	1st Cnd Srvc	Tori Abby	(u)Miley Abby, a Minor, by and through her G	End of Label Matrix
0972-1	377 Boes Lane	c/o Riley C. Walter	c/o Riley C. Walter	20
Eastern District of California	Frederickway NW 08854-4138	205 E. River Park Circle #410	205 E. River Park Circle #410	7
Fresno		Fresno, CA 93720-1572	Fresno	27

Wed May 8 13:34:10 PDT 2019	Cal Labouc, et al.	Daniel M. Canabola		
CM Labouc	Cornwell & Sample, LLC	1005 3rd Street		
205 E. River Park Circle #410	70445 N. Fruit Ave	Orange Cove, CA 93646-2412		
Fresno, CA 93720-1572	Fresno CA 93711			

Shore Cornwell	Grant Mercantile Age	Handy Jobe		
7045 N Fruit Ave	49099 Road 426	c/o Riley C. Walter		
Fresno, CA 93711-0761	Oakhurst CA 93644-9486	205 E. River Park Circle #410		
		Fresno, CA 93720-1572		

Jay Labouc	Indus Labouc	Berry R. Lowe		
c/o Riley C. Walter	c/o Riley C. Walter	2344 N. Shaw Ave., Ste. 116		
205 E. River Park Circle #410	205 E. River Park Circle #410	Fresno, CA 93721-2235		
Fresno, CA 93720-1572	Fresno, CA 93720-1572			

Mark P Robinson Jr	Office of the U.S. Trustee	Russell W. Reynolds		
ROBINSON CALAGNIZ ROBINSON SHAPIRO	United States Courthouse	439 N. Shaw Ave., Ste. 116		
19 Corporate Plaza Drive	2500 Tulare Street, Room 1401	Fresno, CA 93704-2516		
Report Beach CA 92660-7904	Fresno, CA 93721-1326			

Richard A Belandrelli	James Edward Salven	Sergio's Safety Council		
GEORGE AND BELANDRELLI	PO Box 25970	PO Box 638		
7060 N Fresno Street Ste 250	Fresno, CA 93725-5970	Oakhurst, CA 93644-0658		
Fresno CA 93720-2984				

Stephen R Cornwell	Riley C. Walter	Michael J. Wilhelm		
CORNWELL SAMPLE LLP	205 E. River Park Circle, Ste. 410	205 E. River Park Circle, Suite 410		
7045 N Fruit Avenue	Fresno, CA 93720-1572	Fresno, CA 93720-1572		
Fresno CA 93711-0761				

The following recipients may be/ have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u) Miley Abby, a Minor, by and through her G	(u) Tori Abby	(u) Wendy Jobe
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(u) Cal Labouc	(u) Jay Labouc	(u) Indus Labouc
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