

**Number of 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

Attorneys for Peter L. Fear, Chapter 7 Successor Trustee

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

In re:

MARIO ALBERTO GUERRA,  
 Debtor.

Case No. 17-11365-B-7  
 Chapter 7

DC No.: RWR-3

Date: April 24, 2019  
 Time: 9:30 a.m.  
 Dept: B  
 Ctrm: 13, Fifth Floor  
 Location: 2500 Tulare Street  
 Fresno, CA

Judge: Honorable Rene Lastreto II

**EXHIBIT "A" SUPPORT OF TRUSTEE'S MOTION TO  
 EMPLOY SPECIAL COUNSEL**

<b><u>EXHIBIT</u></b>	<b><u>TITLE</u></b>	<b><u>PAGE</u></b>
A	Attorney-Client Contingent Fee Contract	2

Respectfully submitted,  
 COLEMAN & HOROWITT, LLP

Dated: March 28, 2019.

By: /s/ Russell W. Reynolds  
 RUSSELL W. REYNOLDS  
 Attorneys for Peter L. Fear, Chapter 7  
 Successor Trustee

QUINLAN, KERSHAW & FANUCCHI, LLP  
2125 Merced Street, Fresno, California 93721  
(559) 268-8771

ATTORNEY-CLIENT CONTINGENT FEE CONTRACT

This ATTORNEY-CLIENT CONTINGENT FEE CONTRACT (the "Agreement") is between DAVID M. MOECK, 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 employee, Debtor Daniel M. Canchola ("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 Canchola arising out of a motor vehicle accident which occurred on June 12, 2013, and in particular, Fresno County Superior Court Action No. 13CECG03811. In that action it was alleged the negligence of Canchola and Guerra caused a motor vehicle accident which resulted in death and serious personal injuries. On April 12, 2017 both Guerra and Canchola 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 Canchola to the underlying Plaintiffs. Guerra and Canchola were not parties to the agreement and did not consent to any of its terms. Canchola 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 Canchola 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 Canchola 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.

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 & FANUCCHI, LLP

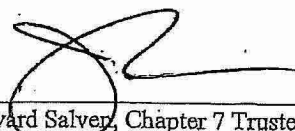
By

  
David M. Moeck, Esq.

We have read and understood the foregoing terms and agree to them, as of the date QUINLAN, KERSHAW & FANUCCHI, LLP first provide services. If more than one party signs below, we agree to be liable, 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:

3/28/19

  
James Edward Salver, Chapter 7 Trustee  
of the bankruptcy estate of Daniel M. Canchola

Dated:

3/27/19

  
Peter J. Fear, Chapter 7 Trustee  
of the bankruptcy estate of Mario A. Guerra