

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:

CHAPTER 11

PALM BEACH FINANCE PARTNERS, L.P.,
PALM BEACH FINANCE II, L.P.,

Case No. 09-36379-EPK
Case No. 09-36396-EPK
(Jointly Administered)

Debtors.

**TRUSTEE'S MOTION FOR APPROVAL OF SETTLEMENT WITH
GEOFFREY VARGA AND STONEHILL MASTER FUND, LTD.**

Barry E. Mukamal, as liquidating trustee ("**Trustee**") for the Palm Beach Finance Partners Liquidating Trust ("**PBF I Trust**") and the Palm Beach Finance Partners II Liquidating Trust ("**PBF II Trust**") and together with the PBF I Trust, the "**PBF Trusts**"), pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, seeks an Order from this Court approving a settlement of certain disputes with and potential claims against Geoffrey Varga, the Trust Monitor of the PBF II Trust ("**Mr. Varga**") and Stonehill Master Fund, Ltd. ("**Stonehill**"). In support, the Trustee states as follows:

Introduction

On May 9, 2018, the PCI Trustee (defined below) sued¹ Mr. Varga as well as Stonehill.² The PCI Trustee alleges that Mr. Varga deceived him, the Minnesota Bankruptcy Court and the

¹ A copy of the Counterclaim to Claim No. 103 and Complaint for Relief (without exhibits), Adversary Case No. 18-04064 in the U.S. Bankruptcy Court for the District of Minnesota, is attached as Exhibit 1 to the Motion to Approve PCI Settlement (defined below) ("**Varga Complaint**").

² Stonehill is the "**Participant**" which is defined at paragraph 12 of ECF No. 2118 *Joint Motion for Approval of Omnibus Supplemental Disclosure Filed by Kinetic Partners (Cayman) Ltd. and Levine Kellogg Lehman Schneider + Grossman LLP, as Consultant and Local Counsel*,

creditors in the Petters Bankruptcy Cases (defined below) including the Trustee into believing that he would not pursue a “protective” claim he filed early in the Petters Bankruptcy Cases in the amount of \$720 million. Based on the PCI Trustee’s allegations, along with the Trustee’s own investigation, the Trustee has considered potential claims he could bring against Mr. Varga and others.³

On July 31, 2018, the Trustee, Mr. Varga and Stonehill participated in a mediation with discussions continuing thereafter. Ultimately, on October 17, 2018, the parties executed a settlement agreement (“**Settlement Agreement**”). See Exhibit 1. This Motion seeks approval of the Settlement Agreement, which ensures that the claim filed by Mr. Varga will not dilute the PBF Trusts, other than as to the interests in the PBF II Trust held by Mr. Varga and the Participant themselves. In addition, Mr. Varga will resign as Trust Monitor and not be replaced. In effect, the Settlement Agreement neutralizes Mr. Varga.

In addition, after the July 31, 2018 mediation, the PCI Trustee, Mr. Varga and Stonehill conducted their own settlement discussions and reached a consensual resolution. This Settlement Agreement is conditioned upon the PCI Trustee, Mr. Varga and Stonehill executing a written settlement agreement. If such an agreement is not executed, with court approvals if any, obtained by final non-appealable order of the Minnesota Bankruptcy Court by December 31, 2018, then the Settlement Agreement shall be deemed null and void unless this condition is lifted by the Trustee, Mr. Varga and Stonehill.

*Respectively, to Geoffrey Varga, Liquidating Trust Monitor for Palm Beach Finance II, L.P. (“**Varga Disclosure**”).*

³ To ensure an efficient prosecution of his claims against Mr. Varga and others, the PCI Trustee requested that the Trustee enter into a Common Interest, Support and Sharing Agreement (“**PCI Settlement**”). The Trustee did so, subject to this Court’s approval (“**Motion to Approve PCI Settlement**”) [ECF No. 3475]. Because the Settlement Agreement renders the PCI Settlement moot, the Trustee has withdrawn the Motion to Approve PCI Settlement. [ECF No. 3533].

Jurisdiction, Venue and Legal Basis

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334.
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
3. The statutory predicates for the relief sought in this Motion are 11 U.S.C. § 105 and F.R.B.P. 9019.

Procedural Background

4. On October 8, 2008, Petters Company, Inc. (“**PCI**”) and Petters Group Worldwide, LLC (“**PGW**”) filed voluntary Chapter 11 petitions in the Bankruptcy Court for the District of Minnesota (“**Minnesota Bankruptcy Court**”). Thereafter, other affiliates filed voluntary Chapter 11 petitions (collectively, the “**Petters Bankruptcy Cases**”). The Petters Bankruptcy Cases are jointly administered under Case No. 08-45257-KHS. Douglas A. Kelley (“**PCI Trustee**”) was appointed as Chapter 11 trustee. PCI and its co-conspirators perpetrated a massive Ponzi scheme (“**PCI Ponzi Scheme**”) resulting in approximately \$2 billion in cash-on-cash losses.

5. Palm Beach Finance Partners, L.P. (“**PBF**”) and Palm Beach Finance II, L.P. (“**PBF II**,” and together with PBF, the “**PBF Funds**”) were lenders to PCI and victims of the PCI Ponzi Scheme. As a result, the PBF Funds filed proofs of claim in the Petters Bankruptcy Cases (“**PBF POCs**”).

6. The PBF Funds were managed by Palm Beach Capital Management, LLC (“**PBCM**”). PB Management’s controlling persons were Bruce Prevost and David Harrold.

7. Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd. (collectively, the “**Offshore Funds**”) loaned funds to PBF II. The Offshore Funds were also managed by PB Management.

8. While there is some overlap, in general, the limited partners in each of PBF I, PBF II and the Offshore Funds are different.

9. On or about November 8, 2008, the Offshore Funds were placed into insolvency proceedings before the Grand Court of the Cayman Islands and Mr. Varga was appointed official liquidator. Mr. Varga's role as liquidator is to maximize the return to the limited partners of the Offshore Funds. Those limited partners advanced funds to the Offshore Funds, which in turn loaned funds to PBF II, which in turn loaned funds to a PCI affiliate.

10. On November 30, 2009, the PBF Funds filed voluntary chapter 11 petitions ("**PBF Bankruptcy Cases**"). The two cases are jointly administered.

11. On January 29, 2010, the United States Trustee appointed the Trustee as chapter 11 trustee in both of the PBF Funds' estates.

12. On October 21, 2010, the Court entered its *Order Confirming Second Amended Plan of Liquidation*,⁴ creating the Trusts, appointing the Trustee as liquidating trustee for both Trusts, and appointing Mr. Varga as the trust monitor ("**Trust Monitor**") for the PBF II Trust.

13. The Plan was jointly proposed by the Trustee and Mr. Varga (given that the Offshore Funds are by far the largest creditors of PBF II). Mr. Varga holds an allowed claim against PBF II in the amount of approximately \$718 million, based on the monies the Offshore Funds loaned to PBF II ("**Varga PBF POC**").

14. As Trust Monitor, and as more fully set forth in the operative documents, Mr. Varga's three primary rights, responsibilities and powers are to review and approve of the Trustee's decisions on behalf of the PBF II Trust to: (i) pursue a particular litigation claim; (ii) retain additional professionals; and (iii) settle a particular litigation claim. To enable Mr. Varga

⁴ See ECF No. 444.

to fulfill his role as Trust Monitor, the PBF Plan and trust agreement provide for Mr. Varga to retain professionals to support his role, and for a common interest agreement to protect confidential communications regarding litigation strategy between the Trustee and Mr. Varga. Over the years, the Trustee has shared confidential strategies with Mr. Varga as a co-fiduciary along with his professionals, including as they relate to the Petters Bankruptcy Cases and the Trustee's efforts to seek allowance of the PBF POCs. Because nearly all of the litigation claims in these cases have been pursued jointly by both Trusts for their mutual benefit (with an 18%/82% allocation of fees and recoveries), the PBF Plan provides for the fees of Mr. Varga and his professionals to be allocated among both PBF Trusts (also 18%/82%).

15. Since the Trustee's appointment as Chapter 11 trustee in early 2010, one of the primary, if not the primary, shared goals among the Trustee, the Trust Monitor and their professionals has been to maximize the recovery that the PBF Funds (and the PBF Trusts as their successors) receive from the Petters Bankruptcy Cases. Beginning in 2010, the parties have had numerous confidential meetings and discussions in pursuit of this shared goal, including related to securing the Trustee's appointment as a member of the Official Committee of Unsecured Creditors in the Petters Bankruptcy Cases ("*Petters Committee*").

16. In 2009, Mr. Varga filed a claim in the Petters Bankruptcy Cases, on account of the same debt that gives rise to the Varga PBF POC ("*Varga PCI POC*"). The Varga PCI POC states it is a "protective claim" filed "in an abundance of caution."

17. While the communications between the Trustee and Mr. Varga and their respective professionals are subject to a common interest privilege and therefore not detailed in this Motion, over the years Mr. Varga and his counsel made clear to the Trustee that the Varga PCI POC was duplicative of the PBF POCs and would be disallowed in the event the PBF POCs were allowed.

18. On December 2, 2011, Asset Based Resource Group LLC (a/k/a Acorn and a lender to PCI) transferred its allowed claim (“*Acorn Claim*”) against PCI, in the amount of approximately \$141 million, to Greenpond South, LLC (“*Greenpond*”), an affiliate of Stonehill.

The Participation Agreement

19. On March 15, 2013, given its ownership of the Acorn Claim, Greenpond was made a non-voting member of the Petters Committee.

20. In October 2013, as set forth in the Varga Disclosure, Mr. Varga sold a participation interest in the Varga PBF POC to the Participant, also affiliated with Stonehill.

21. Michael Stern is a principal of Stonehill who acts on behalf of (i) Greenpond in the Petters Bankruptcy Cases and (ii) the Participant in the PBF Bankruptcy Cases.

22. Following the sale of the participation interest, Mr. Varga sought to preserve his role as Trust Monitor and his firm’s role as consultant to the Trust Monitor even though the participation agreement provides that Mr. Varga must take direction as Trust Monitor from Stonehill. As a result, the Trustee insisted that Mr. Varga publicly file the Varga Disclosure, which he then did, and this Court thereafter approved at ECF No. 2161. In an addendum to the Varga Disclosure,⁵ which was included because the Trustee required it upon reviewing the terms of the participation transaction, Mr. Varga retained the power to disregard any direction from the Participant that impacts or violates any duties he may have as Trust Monitor.

23. The Trustee contends that one such duty has always been, and remains, to seek to maximize the return the PBF Trusts receive from the Petters Bankruptcy Cases.

24. Through the Varga Disclosure, Mr. Varga disclosed to the Court and parties-in-interest as follows:

⁵ ECF No. 2118-1 at page 25 of 26.

The essence of the [Participation] Agreement provides that, in exchange for the consideration received by the Offshore Funds, the Participant will receive certain distributions to be made from the PBF II Liquidating Trust and will be actively involved in the PBF II bankruptcy case, subject to the restrictions contained in the Agreement to ensure that the Monitor maintains an **independent role** in the PBF II bankruptcy case.⁶

(emphasis added).

The Petters Mediation and Plan

25. Of the approximately \$2 billion in total cash-on-cash losses in the PCI Ponzi Scheme, over 90% was concentrated among six hedge fund lenders: (1) Lancelot Investor Funds Ltd. and its affiliates (“**Lancelot**”) (approximately \$764 million); (2) the PBF Funds (approximately \$651 million); (3) Ritchie Capital Management LLC (“**Ritchie**”) (approximately \$163 million); (4) Acorn as succeeded by Greenpond (approximately \$141 million); (5) Ark Discovery II, LP (“**Ark**”) (approximately \$107 million); and (6) Interlachen Harriet Investments Limited (“**Interlachen**”) (\$60 million).

26. On September 2 and 3, 2015, the Trustee participated in a mediation in Minneapolis (“**Petters Mediation**”) regarding the major issues related to the Petters Bankruptcy Cases including claims allowance and treatment as well as corporate governance with the PCI Trustee and three of the five other major creditors: (1) Greenpond; (2) Ronald R. Peterson as Chapter 7 Trustee for Lancelot (“**Lancelot Trustee**”); and (3) Interlachen.⁷ Thereafter, the Trustee, the PCI Trustee, the Lancelot Trustee and Greenpond, as co-plan proponents, jointly proposed a Chapter 11 Plan of Liquidation (“**PCI Plan**”), which the Minnesota Bankruptcy Court confirmed on April 15, 2016.⁸ Following the mediation, Ark and Ritchie supported the PCI Plan.

⁶ ECF No. 2118, ¶12.

⁷ See ECF No. 2862, *Order Granting Liquidating Trustee’s Motion for Authority with Respect to the Chapter 11 Plan of Liquidation for Petters Company, Inc. et al.*, PBF Bankruptcy Cases.

⁸ ECF No. 2873, PBF Bankruptcy Cases and ECF No. 3263 in Petters Bankruptcy Cases.

27. The PCI Plan appointed Mr. Kelley as liquidating trustee. A five-person Committee, consisting of the Trustee, the Lancelot Trustee, Mr. Stern, Lance Breiland of Interlachen, and Charles Cremens (an outside director), by majority vote renders decisions on behalf of the PCI Liquidating Trust.

28. The PCI Trustee, represented by Foley & Lardner as special counsel, has challenged the Varga PCI POC on a number of bases, filing an amended objection on December 17, 2016 and then on May 9, 2018 the Varga Complaint.

The PCI Trustee Sues Varga and Stonehill

29. The Varga Complaint brings a counterclaim to the Varga PCI POC as well as claims against third parties, including Mr. Varga, seeking, among other things, compensatory and punitive damages. The Varga Complaint seeks to disallow the Varga PCI POC and to equitably subordinate the Acorn claim that Greenpond acquired. The Minnesota Bankruptcy Court has ordered the PCI Trustee to withhold distributions to Greenpond pending the resolution of the Varga Complaint.⁹

30. The Varga Complaint makes detailed allegations which followed the PCI Trustee's discovery taken in the Varga PCI POC contested matter. For illustrative purposes, the Trustee summarizes some of the allegations relative to Mr. Varga:

a) In June 2010, Mr. Varga joined the Trustee's first in-person meeting with the PCI Trustee in Minneapolis and stated that he filed the Varga PCI POC in an abundance of caution in case for any reason the PBF POCs were not allowed.¹⁰

b) Thereafter, Mr. Varga continued to communicate to the Trustee that he was not pursuing a competing claim in the Petters Bankruptcy Cases but rather working with the Trustee to maximize the value of the PBF POCs in the Petters Bankruptcy Cases.

⁹ See ECF No. 4081 in Case 08-45257 in the U.S. Bankruptcy Court for the District of Minnesota.

¹⁰ While the PBF POCs were filed in 2009, they were the subject of a formal objection by the PCI Trustee in 2010, informal objections by other parties-in-interest, and only finally allowed in 2016 when the PCI Plan was confirmed.

c) Mr. Varga's Rule 2014 disclosures filed in this Court neither referenced, nor stated an intent to pursue, the Varga PCI POC, and thereby dilute a major recovery source of the Trustee.

d) Through confirmation of the PBF Plan in the PBF Bankruptcy Cases, other than sharing in a one-time recovery from the auditors for the PBF Funds, Mr. Varga agreed not to pursue tort claims against targets of the PBF II Trust. Instead, as Trust Monitor, Mr. Varga would cooperate with the Trustee in his recovery efforts and only (with limited exceptions) participate in recoveries obtained by the PBF II Trust. The Trustee notes that consistent with this, Mr. Varga did not participate in the Trustee's recoveries from any parties that settled claims asserted against them by the Trustee, including but not limited to Messrs. Prevost and Harrold, Frank Vennes and Metro Gem Inc., transferees of Mr. Vennes and Metro Gem Inc., M&I Bank, Costco Wholesale Corporation, Fredrikson & Byron, the Sabes family and the Sims Moss Kline & Davis LLP law firm. Nor did Mr. Varga sue General Electric Capital Corporation, even though three other creditors of PCI -- including Greenpond -- did.

e) In 2014, to advance plan discussions in the Petters Bankruptcy Cases, Greenpond prepared and distributed its own financial model and waterfall to the PCI Trustee and the other major creditors. The model provided that the Varga PCI POC would receive nothing.

f) In 2015, the Petters Committee's financial advisor worked with Greenpond to prepare a detailed financial model and waterfall. This model reflected the Varga PCI POC would receive nothing.

g) In August 2015, one week before the Petters Mediation, the Trustee, the Lancelot Trustee and Greenpond met in Miami at the Trustee's counsel's office. They agreed on the liquidated amounts for major claims and the waterfall to creditors. Again, the Varga PCI POC would receive nothing.

h) At the conclusion of the two-day September 2015 Petters Mediation, the PCI Trustee and the major creditors agreed to liquidate major claims and agreed on a final waterfall. Mr. Varga attended in-person. The Trustee showed and discussed a printed version of the final agreed waterfall which set forth the names of creditors with their projected distributions. Mr. Varga approved the waterfall, which reflected that the Varga PCI POC would receive nothing.

i) The PCI Trustee submitted, and the Minnesota Bankruptcy Court approved, a Disclosure Statement which projected \$1.9 billion in claims and a 10-14% recovery. The claims body and projected recovery was based on the Varga PCI POC receiving nothing. Greenpond and its counsel reviewed and approved of the draft Disclosure Statement with these projections. On February 25, 2016, the Minnesota Bankruptcy Court approved the

Disclosure Statement¹¹ and thereafter it was distributed to creditors and victims of the PCI Ponzi Scheme who relied on the veracity of the projections.

j) Greenpond solicited major creditors such as Ritchie Capital to support the PCI Plan, communicating to them the projections in the Disclosure Statement, knowing they were premised on the Varga PCI POC receiving nothing. Around this time-period, Greenpond had communications with its co-plan proponents which ratified and reinforced in writing the group's understanding that the Varga PCI POC would receive nothing.

k) The Trustee sought this Court's approval ("**Approval Order**") to be a co-proponent of the PCI Plan and on February 24, 2016 testified (through counsel's proffer) to this Court that based on the Plan and Disclosure Statement the allowed PBF POCs were expected to constitute one third of the creditor body.¹² Mr. Varga knew this was premised on the Varga PCI POC receiving nothing. Despite serving as a compensated fiduciary in the PBF Bankruptcy Cases, Mr. Varga did not advise this Court, the Trustee, the Office of the U.S. Trustee, creditors or interest holders that this statement was incorrect or that he intended to pursue the Varga PCI POC.

l) On March 2, 2016, prior to the April 12, 2016 PCI Plan confirmation hearing, the PCI Trustee's counsel requested that either Mr. Stern or the Trustee speak with Mr. Varga about withdrawing the Varga PCI POC. While Mr. Stern stated he would, the Varga Complaint alleges Mr. Varga accepted an instruction not to withdraw the claim and sent to the PCI Trustee's counsel emails scripted for him to mislead that due to Mr. Varga's schedule he could not respond immediately and to "deceive [PCI Trustee's counsel] into believing nothing was amiss."

m) Per the PCI Trustee's allegations in the Varga Complaint, in responding to the PCI Trustee's counsel, Mr. Varga "deliberately concealed" that he was taking direction from Stonehill and had been instructed to "play possum."

n) Post confirmation, Mr. Varga refused to withdraw the Varga PCI POC and instead asserted it should be allowed in full. This would substantially dilute recoveries to all PCI creditors including the Trusts.

o) In June 2017, in an effort to divest himself of the authority to withdraw the Varga PCI POC (*i.e.*, a form of self-created impossibility), Mr. Varga executed a Rule 3001 notice purporting to transfer title to the Varga PCI POC to an offshore Stonehill affiliate.

31. In addition, during the contested matter litigation between Mr. Varga and the PCI Trustee regarding the Varga PCI POC, Mr. Varga executed and filed with the Minnesota

¹¹ ECF No. 3142 in the Petters Bankruptcy Cases.

¹² ECF No. 2862 in the PBF Bankruptcy Cases.

Bankruptcy Court a declaration pursuant to 28 U.S.C. §1746 (“*Varga Declaration*”) that states: “*I have never indicated to anyone in any way that Offshore did not intend to fully pursue the [Varga PCI POC].*”¹³ Mr. Varga also represented in a court paper that “*Varga and [the Offshore Funds] have never wavered, by word or deed, from pursuing [the Varga PCI POC].*”¹⁴ The Trustee has informed Mr. Varga that the Varga Declaration is false.

The Stakeholder Structure of the PBF Trusts

32. The PBF I Trust holds an allowed claim against the PCI Liquidating Trust in the amount of \$85,995,411. The PBF II Trust holds an allowed claim against the PCI Liquidating Trust in the amount of \$570,850,364.

33. The stakeholder body of the PBF I Trust and their relative priorities for distribution purposes is set forth in ECF Nos. 3135, 3178, 3241 and 3260.

34. The stakeholder body of the PBF II Trust and their relative priorities for distribution purposes is set forth in ECF Nos. 3137, 3179, 3391 and 3419.

35. In sum, Mr. Varga has no right to any distributions from the PBF I Trust. However, Mr. Varga has the right to over 95% of the distributions from the PBF II Trust.

36. As a result, in the event that the Varga PCI POC were to be allowed, over 80% of the dilution in distributions from the PCI Liquidating Trust to the PBF Trusts would be incurred by Mr. Varga and the Participant themselves. The balance of the dilution would be suffered by (i) the PBF I Trust and (ii) the beneficial interest holders of the PBF II Trust other than Mr. Varga

¹³ PCI Bankruptcy Case, ECF No. 3744-16, pg. 3 ¶10.

¹⁴ PCI Bankruptcy Case, ECF No. 3744, pg. 1. That court paper further states that since 2009, Mr. Varga did not “suggest by word or deed that he would not pursue [the Varga PCI POC].” *Id.*, pg. 24.

(“*Non-Varga PBF II Stakeholders*”). Given these economics, the Trustee has been mindful of the cost-benefit analysis of litigating with Mr. Varga or others.

The Trustee May Have Certain Claims

37. The Trustee has informed Mr. Varga that he may (i) assert certain claims against him on behalf of the PBF Trusts for breach of fiduciary duty; (ii) seek disgorgement of fees; and (iii) seek his removal as Trust Monitor. The Trustee could also potentially assert claims against Stonehill. If so, then pursuant to the Participation Agreement or otherwise, Mr. Varga may potentially assert certain indemnification or other claims against Stonehill.

38. When the PCI Trustee filed the Varga Complaint, the Trustee promptly requested that Mr. Varga meet to discuss the allegations. When Mr. Varga failed to respond, on May 29, 2018, the Trustee served a Fed.R.Bank.P. 2004 notice for oral examination and document production upon Mr. Varga [ECF Nos. 3494, 3498]. Mr. Varga responded (through counsel) by stating that he would seek protection and resist being examined under oath.

39. Ultimately, the primary damage claim that the PBF Trusts may have against Mr. Varga is the potential dilution to their recoveries from the Petters Bankruptcy Cases.

40. Mr. Varga has expressed his view that the fees incurred by the Trustee to investigate his conduct should be borne by the PBF I Trust with little if any allocated to the PBF II Trust. Mr. Varga has also communicated that the Trustee and his counsel should have incurred less professional time (i) reviewing his conduct; and (ii) cooperating with the PCI Trustee in opposing the Varga PCI POC related litigation. Mr. Varga has complained that ultimately over 80% of these fees are borne by Mr. Varga and the Participant. The Trustee believes Mr. Varga's positions are simply an effort to shield his conduct from scrutiny. Pursuant to the Settlement Agreement, Mr.

Varga and the Participant waive the right to challenge the allocation of fees among the Trusts and the devotion of PBF II Trust's resources to these functions.

Mediation

41. On July 31, 2018, the Trustee, Mr. Varga¹⁵ and Stonehill participated in a mediation in Miami facilitated by C. Edward Dobbs, Esq. of Parker Hudson Rainer & Dobbs LLP. Thereafter, negotiations continued culminating in the Settlement Agreement.

42. The Settlement Agreement ensures that the Varga PCI POC will not dilute the PBF Trusts (other than to the interests in the PBF Trusts held by Mr. Varga and/or the Participant themselves). In addition, Mr. Varga will resign as Trust Monitor and not be replaced.

Relief Requested

43. The Trustee seeks entry of an order approving the Settlement Agreement.

Basis For Relief Requested

Bankruptcy Rule 9019

44. Bankruptcy Rule 9019(a) provides in relevant part that "[o]n motion ... and after notice and a hearing, the court may approve a compromise or settlement."

45. Approval of a compromise or settlement in a bankruptcy case is within the discretion of the Court. *In re Arrow Air*, 85 B.R. 886, 890-91 (Bankr. S.D. Fla. 1988).

46. The standards for approval are well-settled and require the Court to inquire into the reasonableness of the proposed compromise or settlement. *See, e.g., Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *Florida Trailer and Equip. Co. v. Deal*, 284 F.2d 567, 571 (5th Cir. 1960). The inquiry need only determine whether the compromise or settlement

¹⁵ Mr. Varga elected not to appear in-person but rather through counsel with delegated authority.

falls below the lowest point of the range of reasonableness. *See W.T. Grant Co.*, 699 F.2d at 608; *see also In re Martin*, 91 F.3d 389 (3rd Cir. 1996); *In re Louise's Inc.*, 211 B.R. 798, 801 (D. Del. 1997) (considerations by the Court for approval of a compromise or settlement include: (i) the probability of success in litigation, (ii) the likely difficulties in collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (iv) the paramount interest of the creditors) (citing *Protective Comm.*, 390 U.S. at 424).

A. The Agreement Should Be Approved

47. Based upon the above legal principles, the Trustee asserts that the Settlement Agreement falls above the lowest point of the range of reasonableness and should be approved.

Probability of success

48. As mentioned above, the primary damages that Mr. Varga attempted to impose upon the PBF Trusts (to which he owed a fiduciary duty) was to dilute and reduce their recoveries from the Petters Bankruptcy Cases by over 25%, or well over \$20 million, through his deceit. By virtue of the Settlement Agreement, the PBF I Trust will not suffer any dilution in connection with its stake in the Petters Bankruptcy Cases. And for the PBF II Trust, only the interests of Mr. Varga and the Participant will be diluted; the Non-Varga PBF II Stakeholders are protected. Mr. Varga's efforts to injure and dilute the stakeholders other than the Participant will have failed. While the Trustee believes he would have a high likelihood of success if required to litigate, none of Mr. Varga, Stonehill or any of their respective agents or affiliates admit to any wrongdoing and the settlement achieves the primary result the Trustee would pursue if he were to litigate without the accompanying time, delay and expense.

49. The consulting firms that employ Mr. Varga have been paid an aggregate of approximately \$1,687,839 from the Trusts (approximately \$312,372.80 from the PBF I Trust and

\$1,423,031.64 from the PBF II Trust). The PBF Trusts could seek disgorgement of fees from Mr. Varga's consulting firms for, among other things, inadequate Rule 2014 disclosures. *See e.g.*, 11 U.S.C. § 328(c).

50. The Trustee believes there is a high likelihood he would succeed if he litigated the accuracy and adequacy of these Rule 2014 disclosures. However, absent subordination of the Varga PBF POC to any such recovery, the economic benefits may be limited. Given Mr. Varga and the Participant's stake in the PBF II Trust, over 95% of any disgorgement from the PBF II Trust would potentially be distributed back to Mr. Varga and the Participant. Therefore, the primary beneficiaries of disgorgement would be the stakeholders in the PBF I Trust. However, given the amount that could be sought (approximately \$312,372.80) and the costs likely required to achieve that result, the Trustee believes the settlement is reasonable and appropriate.

51. Further, while Mr. Varga's retained legal professionals have been paid additional amounts from the PBF Trusts, the Trustee has not contended that they engaged in any wrongdoing or would otherwise be subject to a claim for disgorgement.

Collectability

52. This is not an issue with respect to the Agreement.

Complexity of litigation and attendant expense, inconvenience and delay

53. The Settlement Agreement's purpose (in material part) is to address the potential injury to the PBF Trusts by virtue of Mr. Varga's misconduct and avoid the expense and distraction of litigating with him and potentially others.

54. Mr. Varga has claimed that he has never suggested "*in word or deed*" that he did not intend to fully pursue the Varga PCI POC. To disprove this and other false statements by Mr. Varga, and to fully litigate the Trustee's claims, the Trustee would be required to rely in part on

communications exchanged among the Trustee and Mr. Varga and their professionals. Because Mr. Varga sat in the position of Trust Monitor, these confidential communications are largely protected from public disclosure by common interest or other privileges. Litigating with Mr. Varga and proving that he made false statements under oath and in court papers, while simultaneously protecting the confidential nature of privileged communications, would be challenging and expensive.

55. While subordination of the Varga PBF POC may be a possibility, the subordination would likely be limited to any potential dilution, which is eliminated by the Settlement Agreement. And the limited economic benefits of seeking disgorgement from Mr. Varga are addressed above.

56. This is a significant consideration that militates in favor of approval of the settlement.

Paramount interest of creditors

57. For all these reasons, approval of the Settlement Agreement is in the paramount interest of creditors. The Settlement Agreement: (1) thwarts Mr. Varga's efforts to harm the PBF Trusts; (2) avoids the costs and distraction of litigation; (3) assures that confidential communications between the Trustee and Mr. Varga and their respective professionals remain protected; (4) removes Mr. Varga from any ongoing fiduciary role; and (5) avoids the need for the PBF Trusts to incur further resources addressing Mr. Varga's conduct.

58. And while Mr. Varga will retain his fees paid to date, neither he nor his firm have been paid any fees in 2018 and the vast majority of the fees he received were paid before his post-PCI Plan confirmation prosecution of the Varga PCI POC.

59. In his business judgment, the Trustee asserts that the Agreement should be approved under Rule 9019.

WHEREFORE, the Liquidating Trustee respectfully requests that this Court enter an Order (similar in form to the Order attached as Exhibit 2) (i) approving the Settlement Agreement; and (ii) granting such other relief this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on October 18, 2018, via the Court's Notice of Electronic Filing upon the Registered Users listed on the attached Exhibit 3, via Regular U.S. Mail upon the parties listed on the Court's Manual Notice List attached as Composite Exhibit 4, the Court's Matrices in Case No. 09-36379-BKC-EPK and Case No. 09-36396-BKC-EPK attached as Composite Exhibit 5¹⁶, and those additional addresses set forth on Composite Exhibit 6.

Dated: October 18, 2018.

s/ Michael S. Budwick
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Attorneys for the Liquidating Trustee

¹⁶ "ADDL" means these additional parties served as a courtesy. See Composite Exhibit 6.

"BAD" means that it is a known bad address; hence, no service by mail.

"DUP" means that the address appears more than once on this exhibit and is only being served one time by mail.

"INC" means that the Matrix contains an incomplete addresses; hence, no service by mail.

"NEF" means that service was made by Notice of Electronic Filing as set forth on Exhibit 3 and is not being additionally served by mail.

"NNR" means no notice is required. Examples are professionals retained.

"N-WD" means no notice required as such party has filed a Notice of Withdrawal with this Court.

"PBFP" means that entity appears on both matrices and only being served once.

¹⁶ See footnote 1.

AGREEMENT

WHEREFORE, the “*Parties*” are: (1) Barry Mukamal, as the Liquidating Trustee (“*Trustee*”) of the Palm Beach Finance Partners Liquidating Trust (“*PBFI Trust*”) and the Palm Beach Finance II Liquidating Trust (“*PBFII Trust*,” and together with PBFI Trust, “*Trusts*”); (2) Stonehill Master Fund, Ltd. (“*Stonehill*”); and (3) Geoffrey Varga, in his individual capacity, in his capacity as Joint Official Liquidator of Palm Beach Offshore Ltd. and Palm Beach Offshore II Ltd., and in his capacity as the Liquidating Trust Monitor of the PBFII Trust (collectively, “*Mr. Varga*”).¹

WHEREFORE, the Parties (either directly or through counsel) participated in a mediation with mediator C. Edward Dobbs, Esq. on July 31, 2018 with discussions continuing thereafter (“*Mediation*”).

WHEREFORE, the topics and matters considered at the Mediation included (1) any potential claims by the Trusts against Mr. Varga and Stonehill, including for damages for any common law claim, disallowance or subordination of any claim held by Stonehill or any of its affiliates and disgorgement of fees paid to Mr. Varga (“*Trusts’ Potential Claims*”); (2) any potential issues, claims, objections, that could be asserted by Mr. Varga, Stonehill or the Varga/Stonehill Affiliates (defined below) as to the manner or quality in which the Trustee and his professionals have administered the Trusts, including the devotion of resources, incurrence of professional fees and expenses, and the allocation of such fees and expenses by and between the Trusts (“*Varga/Stonehill Potential Claims*”).

WHEREFORE, the Parties intend for this agreement (“*Agreement*”) to fully, completely and universally resolve any and all disputes between them as of the date of its execution.

The Parties agree as follows:

1. This Agreement is subject to Bankruptcy Court approval.
2. None of Mr. Varga, Stonehill or any of their respective agents or affiliates admit to any wrongdoing.
3. This Agreement is subject to Stonehill and Mr. Varga entering into a written settlement agreement with the PCI Liquidating Trust. In the event that an agreement is not executed, with court approvals if any, obtained by final non-appealable order of the Minnesota Bankruptcy Court on or before December 31, 2018, then the Parties shall determine whether to remove this condition, failing which this Agreement shall be rendered null and void in its entirety and the Parties shall be deemed to have retained and be entitled to pursue all rights and remedies that they held prior to the execution of this Agreement.

¹ For the avoidance of doubt, Mr. Varga is not entering into this Agreement in any other capacity, including, without limitation, in his capacity as Official Liquidator of Lancelot Investors Fund Ltd.

4. Within 5 calendar days of the Bankruptcy Court entering an Order approving this Agreement Mr. Varga shall resign as Trust Monitor² and will not be replaced. Upon execution of this Agreement, subject to the approval of the Bankruptcy Court, Mr. Varga shall abate his role as Trust Monitor.
5. In the event that PB Offshore Holdings Ltd. (or any successor holder of the Varga PCI POC) ("**Claim Holder**") receives a distribution or any consideration whatsoever on account of the Varga PCI POC (whether due to allowance of the claim, settlement of the claim or otherwise) then within 10 calendar days of receiving that distribution or consideration, Stonehill shall pay to the Trusts the following:
 - i. An amount equal to 100% of any actual reduction, dilution or diminution in the amount of distributions to the beneficial interest holders of the PBFII Trust other than the Offshore Funds ("**Non-Offshore Stakeholders**") caused by or on on account of any distributions made to the Claim Holder, with such amounts to be distributed by the Trustee solely to the Non-Offshore Stakeholders ("**PBFII Share**").
 - ii. An amount equal to 100% of any actual reduction, dilution or diminution in the amount of distributions to the PBFI Trust caused by or on account of any distributions made to the Claim Holder ("**PBFI Share**").

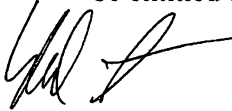
Alternatively, the Trustee may elect to withhold from a distribution to the Offshore Funds an amount equal to the aggregate of the PBFI and PBFII Shares and then distribute that money in the appropriate amounts directly to the Non-Offshore Stakeholders and the PBFI Trust beneficiaries.

The Parties' agree that their intent is to ensure that in the event the Varga PCI POC for any reason receives any distribution whatsoever, that the Non-Offshore Stakeholders and the PBFI Trust beneficiaries will receive the exact same distributions from the Trustee as they would have received had the Varga PCI POC been disallowed in its entirety.

6. Neither Mr. Varga nor Stonehill will challenge the allocation of fees between the PBFI and PBFII Trusts through the date of execution of this Agreement.
7. The Varga PBF POC will not be subordinated, challenged or disallowed, and the Trustee and the Trusts will (a) not take any action that would cause the Varga PBF POC to be subordinated, challenged or disallowed and (b) take such actions as are necessary to cause the Offshore Funds to receive distributions pursuant to ECF No. 444 (the Order confirming the Second Amended Plan) consistent with the Trustee's obligations pursuant to the Second Amended Plan [ECF No. 245] and the Liquidating Trust Agreements.

² Capitalized terms not defined in this document shall have the same meaning as set forth in the Trustee's Motion For Authority To Enter Into Agreement With Douglas Kelley, As Liquidating Trustee For The PCI Liquidating Trust [ECF No. 3475] ("**Trustee's Motion For Agreement**").

8. The Trustee releases Mr. Varga, Stonehill and their respective agents and affiliates including, but not limited to, Duff & Phelps (Cayman) Ltd. f/k/a Kinetic Partners (Cayman) Ltd., Duff & Phelps LLC, Campbells Law Firm, Gair Eberhard Nelson Dedinas Ltd., Levine Kellogg Lehman Schneider + Grossman LLP, Reed Smith LLP, Michael Stern, individually, Stonehill Capital Management LLC, Stonehill Institutional Partners, L.P., Greenpond South LLC and PB Offshore Holdings Limited ("*Varga/Stonehill Affiliates*") from any claims related to the Trusts' Potential Claims.
9. Mr. Varga and Stonehill release the Trustee, the Trusts and their agents from any claims related to the Varga/Stonehill Potential Claims, except for the Varga PBF POC. Neither Duff & Phelps nor Kinetic Partners shall seek any further fees from the Trusts and waive any right to seek payment for any unpaid fees. Mr. Varga's attorneys shall not charge the Trusts for any fees or costs associated with the negotiation or approval of this Agreement or representation of Mr. Varga or any of his affiliated entities in connection with the Trusts' Potential Claims.
10. The Bankruptcy Court for the Southern District of Florida shall have exclusive jurisdiction to resolve any disputes arising from this Agreement.
11. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs at both the trial and appellate levels.



Stonehill Master Fund, Ltd.

By Stonehill Capital Management LLC, its Investment Advisor

Geoffrey Varga, individually


Geoffrey Varga, as Joint Official Liquidator of Palm Beach Offshore Ltd. and Palm Beach Offshore II Ltd.

Geoffrey Varga, as Liquidating Trust Monitor of the PBF II Trust

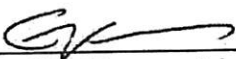
Barry Mukamal, as Liquidating Trustee

8. The Trustee releases Mr. Varga, Stonehill and their respective agents and affiliates including, but not limited to, Duff & Phelps (Cayman) Ltd. f/k/a Kinetic Partners (Cayman) Ltd., Duff & Phelps LLC, Campbells Law Firm, Gair Eberhard Nelson Dedinas Ltd., Levine Kellogg Lehman Schneider + Grossman LLP, Reed Smith LLP, Michael Stern, individually, Stonehill Capital Management LLC, Stonehill Institutional Partners, L.P., Greenpond South LLC and PB Offshore Holdings Limited ("*Varga/Stonehill Affiliates*") from any claims related to the Trusts' Potential Claims.
9. Mr. Varga and Stonehill release the Trustee, the Trusts and their agents from any claims related to the Varga/Stonehill Potential Claims, except for the Varga PBF POC. Neither Duff & Phelps nor Kinetic Partners shall seek any further fees from the Trusts and waive any right to seek payment for any unpaid fees. Mr. Varga's attorneys shall not charge the Trusts for any fees or costs associated with the negotiation or approval of this Agreement or representation of Mr. Varga or any of his affiliated entities in connection with the Trusts' Potential Claims.
10. The Bankruptcy Court for the Southern District of Florida shall have exclusive jurisdiction to resolve any disputes arising from this Agreement.
11. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs at both the trial and appellate levels.

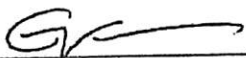
Stonehill Master Fund, Ltd.
By Stonehill Capital Management LLC, its Investment Advisor



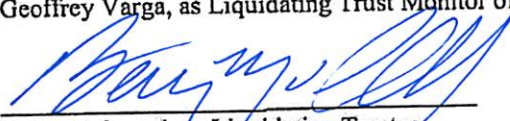
Geoffrey Varga, individually



Geoffrey Varga, as Joint Official Liquidator of Palm Beach Offshore Ltd. and Palm Beach Offshore II Ltd.



Geoffrey Varga, as Liquidating Trust Monitor of the PBF II Trust



Barry Mukamal, as Liquidating Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:

CHAPTER 11

PALM BEACH FINANCE PARTNERS, L.P.,
PALM BEACH FINANCE II, L.P.,

Case No. 09-36379-EPK
Case No. 09-36396-EPK
(Jointly Administered)

Debtors.

**ORDER GRANTING TRUSTEE'S MOTION FOR APPROVAL OF SETTLEMENT
WITH GEOFFREY VARGA AND STONEHILL MASTER FUND, LTD.**

THIS CAUSE came before the Court on ____ at ____ on the *Trustee's Motion for Approval of Settlement with Geoffrey Varga and Stonehill Master Fund, Ltd.* [ECF No. ____] (the "**Motion**").¹ The Court reviewed the Motion, heard argument of counsel and is otherwise duly advised in the premises. Accordingly, it is:

ORDERED as follows:

¹ All capitalized terms not defined in this Order shall have the meaning ascribed to such term as set forth in the Motion.

1. The Motion is **GRANTED**.
2. The Settlement Agreement is **APPROVED**.
3. Geoffrey Varga shall resign as Trust Monitor within five days and shall not be replaced.
4. The Court retains jurisdiction to enforce the terms of the Settlement Agreement.

###

Submitted By:

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Attorneys for the Liquidating Trustee

Copies Furnished To:

Michael S. Budwick, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.

Mailing Information for Case 09-36379-EPK**Electronic Mail Notice List**

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

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Case 09-36379-EPK
Southern District of Florida
West Palm Beach
UPDATED 05/21/18

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