

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
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IN RE:

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.

**LIQUIDATING TRUSTEE'S NINTH
POST CONFIRMATION APPLICATION FOR COMPENSATION**

Barry E. Mukamal, as liquidating trustee ("*Trustee*"), pursuant to Sections 326(a) and 330 of the United States Bankruptcy Code, files this Ninth Post Confirmation Application for Compensation ("*Application*") and states:

Background

1. On November 30, 2009, Palm Beach Finance Partners, L.P. ("*PBFT*") filed its Voluntary Petition for relief under chapter 11 of the United States Bankruptcy Code. [ECF No. 1]. On December 1, 2009, this case was jointly administered with the estate of *In re Palm Beach Finance II, L.P.* ("*PBFII*," and together with PBF, the "*Palm Beach Funds*"), Case No. 09-36396-PGH. [ECF No. 19].

2. On January 28, 2010, the Court entered its *Agreed Order Directing Appointment of Chapter 11 Trustee and denying the United States Trustee's Motion to Convert Cases to Cases under Chapter 7*. [ECF No. 100].

3. On January 29, 2010, the United States Trustee appointed the Trustee as chapter 11 trustee in both estates. [ECF No. 107].

4. On September 3, 2010, the Trustee and Geoffrey Varga, as Joint Official Liquidator of Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd. ("*Offshore Funds*"),

filed the *Second Amended Joint Plan of Liquidation of Barry Mukamal, as Chapter 11 Trustee of Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P., and Geoffrey Varga, as Joint Official Liquidator of Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd. (“Plan of Liquidation”)*. [ECF No. 245].

5. On October 21, 2010, this Court entered its *Order Confirming Second Amended Joint Plan of Liquidation* [ECF No. 444] (“*Confirmation Order*”), creating the PBF Liquidating Trust and PBF II Liquidating Trust, appointing the Trustee as liquidating trustee and Mr. Varga as Trust Monitor. November 1, 2010 was the Plan’s Effective Date. [ECF No. 465].

6. In December 2018, Mr. Varga resigned as Trust Monitor. [ECF No. 3551].

7. PBF I and PBF II are not substantively consolidated.

8. This Application covers the period from November 1, 2013 through March 31, 2020 (“*Application Period*”).

9. During the Application Period, the Trustee has made the following disbursements:

- a) PBF Liquidating Trust \$29,994,219.59¹; and
- b) PBF II Liquidating Trust \$141,140,948.53.²

10. Based on the compensation formula set forth in Section 326(a) of the Code, the Trustee seeks entry of an order awarding compensation as well as reimbursement of actual and necessary expenses, as detailed on attached Exhibit A as follows:

- a) Fee award of \$888,530.34 for the services rendered and \$3,157.51 for expenses incurred in the PBF Liquidating Trust; and
- b) Fee award of \$4,189,747.29 for the services rendered and \$14,384.20 for expenses incurred in the PBF II Liquidating Trust.

¹ Disbursement amount as reflected on the Trustee’s Quarterly Financial Reports from 10/01/13 through 03/31/20.

² Disbursement amount as reflected on the Trustee’s Quarterly Financial Reports from 10/01/13 through 03/31/20.

(“*Requested Relief*”).³

Financial Condition of the Palm Beach Funds’ Estates as of the Petition Date

11. As of the Trustee’s appointment as chapter 11 trustee, the Debtors’ estates had no available cash.

12. On the Petition Date, PBF had two bank accounts, each at U.S. Bank, N.A., and each (along with bank accounts of a number of other parties) frozen by Order of the District Court in the District of Minnesota in connection with Thomas Petters’ criminal proceedings. [Case No. 09-36379, ECF No. 48 (Summary of Schedules)]. One account held \$6.06 and the second held \$131,000. These funds were not released until CY 2017, after the court-appointed receiver for Mr. Petters and federal law enforcement concluded their forensic analysis and provided their consent. The Palm Beach Funds’ only other scheduled assets were limited unused pre-petition retainers that had been advanced to certain professionals and the promissory notes due from Petters Company, Inc. (“*PCI*”), a hopelessly insolvent criminal enterprise that had perpetrated a massive *Ponzi* scheme and defrauded the PBF and filed for bankruptcy in the district of Minnesota.⁴

13. Similarly, on the Petition Date PBF II had two accounts at U.S. Bank, N.A., one with \$0 and the second with \$185,000. [Case No. 09-36396, ECF No. 19 (Summary of Schedules)]. Again, both accounts remained frozen through 2017. And as with PBF, the only other scheduled assets were unused retainers and promissory notes due from PCI.

14. To date, the Trustee has recovered in excess of \$217 million for the benefit of the estates.

³ Section 7.1.11 of the PBF Plan provides for the Trustee to submit invoices to the United States Trustee’s Office (and prior to his resignation, the Trust Monitor) and may be paid requested amounts absent objection, subject to the subsequent submission of fee applications. Pursuant to this procedure, the Trustee submitted invoices in April 2017 and February 2018 and received aggregate compensation of \$371,812.94 in PBF and \$1,467,316.61.

⁴ PCI pled guilty to its crimes. *See U.S.A. v. Petters Company, Inc.*, 08-364 (D. Minn.).

15. During the Application Period, the Trustee achieved numerous, significant accomplishments.

**Summary of Major Accomplishments in the
PCI Bankruptcy Case During the Application Period**

16. From the beginning of the Application Period through confirmation of the PCI Plan in April 2016, the Trustee served as a member of the Official Committee of Unsecured Creditors in the PCI Bankruptcy Case (defined below) (“*PCI Committee*”).

17. In January 2016, the Trustee participated in a two-day multi-party mediation between and among certain creditors in the PCI Bankruptcy Case, Douglas A. Kelley (“*PCI Trustee*”) as chapter 11 trustee of the Petters Company, Inc. et al., bankruptcy estates (“*PCI Bankruptcy Case*”), and others. The parties reached agreement. Thereafter, the Trustee was a co-proponent of a chapter 11 plan (“*PCI Plan*”) proposed in the PCI Bankruptcy Case. In April 2016, the Minnesota bankruptcy court confirmed the PCI Plan. [ECF No. 2810].

18. The PCI Plan revamped PCI’s corporate governance, appointing the Trustee as one of five members of the Liquidating Trust Committee (“*PCI Trust Committee*”) charged with managing all aspects of the PCI post-confirmation trust (“*PCI Trust*”).

19. The PCI Plan substantively consolidated Petters Group Worldwide (the Petters-affiliated debtor entity that held the bulk of the cash available for distribution to creditors) and PCI (the Petters-affiliated debtor entity that held the bulk of the claw-back claims), liquidated claims and consolidated the aggregate creditor body, facilitating distributions. While PBF’s and PBFII’s claims in the PCI Bankruptcy Case had been subject to multiple formal and informal claim objections since nearly the beginning of the PCI Bankruptcy Case that threatened to eliminate these claims in their entirety, the PCI Plan recognized and allowed in full 100% of the

Palm beach Funds' fraud claims. The PCI Plan also resolved all of the Palm Beach Funds' Chapter 5 avoidance exposure.

20. Following the Trustee's appointment to the PCI Trust Committee, the PCI Trust resolved numerous litigation claims that had been largely stagnant with little advancement since 2010. In some instances, motions to dismiss had yet to be resolved. While certain of the settlements are subject to confidentiality restrictions, the Trustee was personally involved in negotiations and mediated resolutions of litigation claims that yielded over \$100 million in recoveries to the PCI Trust.

21. Because of this and other actions taken by the PCI Trust and the PCI Trust Committee from 2016 forward, the Trustee has obtained over \$102 million in distributions from PCI for the benefit of the Palm Beach Funds (and expects to receive substantial more distributions in 2020).

**Summary of Major Accomplishments in the Palm Beach Funds'
Bankruptcy Cases During the Application Period**

22. During the Application Period, the Trustee made substantial progress advancing the Palm Beach Funds' bankruptcy cases.

23. The Trustee resolved all filed claw-back actions against limited partners.⁵

24. The Trustee resolved all but one of the remaining adversary proceedings against transferees of Frank Vennes and his entity Metro Gem, Inc.⁶ For the most part, these actions were resolved at mediations in concert with the PCI Trustee resulting in millions of dollars in recoveries to each of the Palm Beach Funds and PCI. The Trustee and the PCI Trustee continue

⁵ The Trustee has entered into tolling agreements with some limited partners based on special circumstances and hopes to resolve any claims without formal litigation.

⁶ The sole exception is the Trustee's adversary proceeding against the National Christian Foundation, which is presently on appeal.

to pursue potential tax refunds due to Vennes; a multi-week trial was recently concluded before the United States Tax Court and post-trial submissions are due in the near future.

25. The Trustee resolved and liquidated all proofs of claims and proofs of interest in each of PBF and PBFII without meaningful formal litigation.

26. Following a July 2014 mediation, the Trustee resolved substantial professional negligence claims against the Palm Beach Funds' pre-petition counsel.⁷

27. Following a two-day March 2015 mediation, the Trustee resolved complex litigation claims against BMO Harris Bank, PCI's primary depository institution, recovering \$16 million. [ECF Nos. 2670 and 2689].

28. In October 2015, without commencing litigation, the Trustee resolved potential claims against the Opportunity Finance parties for \$775,000. [ECF Nos. 3057 and 3081].

29. Following a November 2016 mediation, without formal litigation, the Trustee consensually resolved the applicability of Section 510(b) to claims in PBF and PBFII with the participation of all stakeholders who desired to participate, including the largest limited partner investor in PBF. [ECF Nos. 3135, 3137, 3178 and 3179].

30. In 2018, the Trustee investigated whether Mr. Varga committed misconduct related to the PCI Bankruptcy Case. Rather than litigate, the Trustee consensually resolved these issues, resulting in (among other things) Mr. Varga's resignation as Trust Monitor. The Trustee ensured through this resolution neither PBF nor PBFII would be financially injured by virtue of Mr. Varga's actions. [ECF Nos. 3543 and 3551].

31. In 2019, after approximately seven years of challenging litigation including more than seventy fact and expert depositions in cities and prisons throughout the country, the Trustee

⁷ This Application does not identify the settlement amount because of a provision in the settlement agreement that provides that "[t]he only reference to the amount of the Settlement Payment will be in this Stipulation." See ECF Nos. 2377 and 2417.

consensually resolved his claim against General Electric Company for \$49 Million. [ECF No. 3592].

32. The Trustee has made three interim distributions to stakeholders, distributing more than \$115 million.⁸ The Trustee has also distributed \$5.9 million to the Offshore Funds related to the settlement with Kaufman Rossin in 2010 and \$5.1 million to the PCI Trust in 2016 to resolve all Chapter 5 exposure. Moreover, the Trustee expects to make a meaningful distribution to stakeholders in CY 2020.

Conclusion

33. The Trustee is extraordinarily proud of the work he has performed during the Application Period and in these Bankruptcy Cases in general.

WHEREFORE, the Liquidating Trustee respectfully requests that this Court enter an Order granting this Application, awarding the Requested Relief, deeming any and all previously awarded post confirmation fees and expenses paid to the Liquidating Trustee as final awards pursuant to the Plan of Liquidation, and granting all such relief that this Court determines is just and proper.

I HEREBY CERTIFY that the foregoing is true and correct.

By: s/ Barry E. Mukamal (e-filed with consent)
Barry E. Mukamal, Liquidating Trustee

⁸ ECF Nos. 3419, 3260, 3583, 3584, 3668 and 3669.

I HEREBY CERTIFY that, pursuant to that certain Order Authorizing Professionals Employed by the Liquidating Trustee and Monitor to Provide Notice of their Post Confirmation Fee Applications for Compensation in Summary Form [ECF No. 648], a Notice of Filing, which will include a Certificate of Service for the foregoing, will be filed at a later date.

Dated: April 24, 2020.

s/ Solomon B. Genet
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PBF Liquidating Trust, 09-36379-EPK
PBF II Liquidating Trust, 09-36396-EPK

Summary of Liquidating Trustee 326(a) Fees Due Through 03/31/20

	PBF	PBFII	Total
Total Disbursements 11/01/13 thru 03/31/20 (Based on TIP Reports):	\$ 29,994,219.59	\$ 141,140,948.53	\$ 171,135,168.12
Less Trustee Fees Paid 11/03/13 thru 03/31/20:			
04/29/14	\$ (6,754.23)	\$ (24,616.20)	\$ (31,370.43)
04/25/17	\$ (128,844.86)	\$ (673,985.64)	\$ (802,830.50)
03/16/18	\$ (240,942.57)	\$ (784,103.66)	\$ (1,025,046.23)
Total Fees Paid to Trustee 11/01/13 thru 03/31/20:	\$ (376,541.66)	\$ (1,482,705.50)	\$ (1,859,247.16)
Total Compensable Disbursements 11/01/13 thru 03/31/20:	\$ 29,617,677.93	\$ 139,658,243.03	\$ 169,275,920.96
326(a) Fees (Statutory 3% of Compensable Disbursements):	\$ 888,530.34	\$ 4,189,747.29	\$ 5,078,277.63
Total Trustee Fees Due for the period 11/01/13 thru 03/30/20:	\$ 888,530.34	\$ 4,189,747.29	\$ 5,078,277.63
Total Expenses for the period 11/01/13 thru 03/31/20:	\$ 3,157.51	\$ 14,384.20	\$ 17,541.71
Total Fees and Expenses for the period 11/01/13 thru 03/31/20:	\$ 891,687.85	\$ 4,204,131.49	\$ 5,095,819.34
Less Fees and Expenses Paid 04/25/17:	\$ (130,479.60)	\$ (681,432.79)	\$ (811,912.39)
Less Fees and Expenses Paid 03/16/18:	\$ (241,333.34)	\$ (785,883.82)	\$ (1,027,217.16)
Total Fees and Expenses Paid for the Period 11/01/13 thru 03/31/20:	\$ (371,812.94)	\$ (1,467,316.61)	\$ (1,839,129.55)
Total Unpaid Fees & Expenses for the period 11/01/13 thru 03/31/20	\$ 519,874.91	\$ 2,736,814.88	\$ 3,256,689.79

Expenses

Expenses reflected on invoice dated April 2017	\$ 1,634.74	\$ 7,447.15	\$ 9,081.89
Expenses reflected on invoice dated February 2018	\$ 390.77	\$ 1,780.16	\$ 2,170.93
3/14/2018 COPY & POSTAGE	\$ 0.08	\$ 0.39	\$ 0.47
04/06/18 COPY & POSTAGE	\$ 3.35	\$ 15.25	\$ 18.60
04/11/18 COPY & POSTAGE	\$ 2.27	\$ 10.33	\$ 12.60
4/19/18 COPY & POSTAGE	\$ 0.86	\$ 3.94	\$ 4.80
05/04/18 MISC. SUPPLIES	\$ 2.15	\$ 9.80	\$ 11.95
07/01/18 CLOUD STORAGE EXPENSE	\$ 53.99	\$ 245.96	\$ 299.95
07/02/18 COPY & POSTAGE	\$ 0.25	\$ 1.16	\$ 1.41
07/16/18 COPY & POSTAGE	\$ 0.08	\$ 0.39	\$ 0.47
08/21/18 COPY & POSTAGE	\$ 2.54	\$ 11.56	\$ 14.10
08/22/18 COPY & POSTAGE	\$ 0.97	\$ 4.43	\$ 5.40
10/31/18 AIRFARE	\$ 118.51	\$ 539.87	\$ 658.38
11/05/18 TRANSPORTATION	\$ 6.99	\$ 31.83	\$ 38.82
11/06/18 MEALS	\$ 13.04	\$ 59.39	\$ 72.43
12/06/18 COPY & POSTAGE	\$ 3.02	\$ 13.78	\$ 16.80
01/31/19 AIRFARE	\$ 46.85	\$ 213.45	\$ 260.30
02/11/19 MISC. SUPPLIES	\$ 2.16	\$ 9.84	\$ 12.00
02/11/19 AIRFARE	\$ 24.89	\$ 113.41	\$ 138.30
02/11/19 MEALS	\$ 22.84	\$ 104.04	\$ 126.88
02/11/19 TRANSPORTATION	\$ 5.04	\$ 22.94	\$ 27.98
02/12/19 TRANSPORTATION	\$ 0.92	\$ 4.21	\$ 5.13
02/12/19 TRANSPORTATION	\$ 6.35	\$ 28.95	\$ 35.30
02/12/19 PARKING & TOLLS	\$ 5.40	\$ 24.60	\$ 30.00
02/12/19 TRANSPORTATION	\$ 9.60	\$ 43.75	\$ 53.35
2/14/2019 MILEAGE	\$ 14.62	\$ 66.58	\$ 81.20
3/22/2019 AIRFARE	\$ 89.33	\$ 406.93	\$ 496.25
04/02/19 MEALS	\$ 8.28	\$ 37.73	\$ 46.01
04/09/19 MEALS	\$ 5.08	\$ 23.14	\$ 28.22
04/27/19 MEALS	\$ 44.58	\$ 203.07	\$ 247.65
05/02/19 TRANSPORTATION	\$ 1.11	\$ 5.05	\$ 6.16
05/02/19 TRANSPORTATION	\$ 3.96	\$ 18.04	\$ 22.00
05/02/19 TRANSPORTATION	\$ 3.06	\$ 13.94	\$ 17.00
05/02/19 PARKING & TOLLS	\$ 1.44	\$ 6.56	\$ 8.00

EXHIBIT A

9/7/2019 TRANSPORTATION	\$	6.50	\$	29.61	\$	36.11
9/7/2019 LODGING	\$	79.99	\$	364.41	\$	444.40
9/7/2019 TRANSPORTATION	\$	1.69	\$	7.69	\$	9.38
9/7/2019 TRANSPORTATION	\$	3.78	\$	17.22	\$	21.00
9/8/2019 LODGING	\$	64.61	\$	294.31	\$	358.92
9/8/2019 MEALS	\$	1.36	\$	6.18	\$	7.54
9/8/2019 TRANSPORTATION	\$	0.54	\$	2.46	\$	3.00
9/9/2019 MEALS	\$	2.01	\$	9.15	\$	11.16
9/10/2019 TRANSPORTATION	\$	10.80	\$	49.20	\$	60.00
11/19/2019 AIRFARE	\$	150.23	\$	684.36	\$	834.59
11/19/2019 LODGING	\$	178.89	\$	814.97	\$	993.86
11/19/2019 TRANSPORTATION	\$	7.54	\$	34.36	\$	41.90
11/20/2019 MEALS	\$	3.96	\$	18.04	\$	22.00
11/21/2019 PARKING & TOLLS	\$	6.12	\$	27.88	\$	34.00
11/21/2019 TRANSPORTATION	\$	17.09	\$	77.83	\$	94.92
01/30/2020 TRANSPORTATION	\$	8.64	\$	39.36	\$	48.00
1/30/2020 LODGING	\$	18.03	\$	82.16	\$	100.19
1/30/2020 TRANSPORTATION	\$	3.96	\$	18.04	\$	22.00
2/22/2020 MEALS	\$	16.05	\$	73.11	\$	89.16
2/22/2020 MEALS	\$	46.59	\$	212.26	\$	258.85
Total Expenses for the period 11/01/13 thru 03/31/20	\$	3,157.51	\$	14,384.20	\$	17,541.71