

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.

**SUMMARY OF SECOND AND FINAL POST CONFIRMATION FEE
APPLICATION FOR JEROME M. HESCH AS EXPERT
TO CHAPTER 11 LIQUIDATING TRUSTEE**

| | | |
|---|---|---|
| 1. | Name of Applicant: | Jerome M. Hesch, Esq. |
| 2. | Role of Applicant: | Liquidating Trustee's Expert |
| 3. | Name of Certifying Professional: | Jerome M. Hesch, Esq. |
| 4. | Date case filed: | November 30, 2009 |
| 5. | Date of order approving employment: | April 5, 2017 [ECF No. 3201] <i>nunc pro tunc</i> to March 9, 2017 |
| IF INTERIM APPLICATION, COMPLETE 6, 7 AND 8 BELOW: | | |
| 6. | Period for this Application: | N/A |
| 7. | Amount of Compensation Sought: | N/A |
| 8. | Amount of Expense Reimbursement Sought: | N/A |
| IF FINAL APPLICATION, COMPLETE 9 AND 10 BELOW: | | |
| 9. | Total Amount of Compensation Sought during case: | \$10,098.00 |
| 10. | Total Amount of Expense Reimbursement Sought during case: | \$0.00 |
| 11. | Amount of Original Retainer(s) Please disclose both Fee Retainer and Cost Retainer if such a Retainer has been received: | \$0.00 |
| 12. | Current Balance of Retainer(s) remaining: | \$0.00 |
| 13. | Last monthly operating report filed (Month/Year and ECF No.): | PBF March 2019 [ECF No. 3591]; PBF II March 2019 [ECF No. 127 in 09-36396] |
| 14. | If case is Chapter 11, current funds in the Chapter 11 estate: | PBF \$11,514,395.48 a/o 03/31/19 PBFII \$12,295,688.83 a/o 03/31/19 |
| 15. | If case is Chapter 7, current funds held by Chapter 7 trustee: | N/A |

Fee Application

Jerome M. Hesch (“*Mr. Hesch*” or “*Applicant*”), having been approved by this Court as expert consultant for the Chapter 11 Liquidating Trustee, Barry E. Mukamal (“*Trustee*”), applies for allowance of final compensation for professional services rendered in this Chapter 11 proceeding between July 1, 2017 through July 31, 2017. This application is filed pursuant to 11 U.S.C. § 330 and Bankruptcy Rule 2016, and meets all of the requirements set forth in the Guidelines incorporated in Local Rule 2016-1(B)(1). The exhibits attached to this application, pursuant to the Guidelines, are:

Exhibits “1” - Fee Application Summary Chart;

Exhibit “2A” and “2B” - Summary of Professional and Paraprofessional Time;

Exhibit “3” – Summary of Requested Reimbursements of Expenses; and

Exhibit “4” – The applicant's complete time records, in chronological order, by activity code category, for the time period covered by this application. The requested fees are itemized to the tenth of an hour.

Background

1. On November 30, 2009, Palm Beach Finance Partners, L.P. (together with Palm Beach Finance II, L.P., the “*Debtors*”) 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.*, Case No. 09-36396-PGH [ECF No. 19].

2. On January 28, 2010, the Court entered the 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 Liquidating Trustee as Trustee in both estates [ECF No. 107].

4. On April 4, 2017, this Court entered an Order [ECF No. 3201] authorizing the Liquidating Trustee's retention of Jerome M. Hesch as expert consultant to the Liquidating Trustee, *nunc pro tunc* to March 9, 2017.

5. At the confirmation hearing held on October 19, 2010, the Court confirmed 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., dated September 3, 2010 [ECF No. 245] ("**Plan**") in the above referenced jointly administered bankruptcy proceeding. The Plan defines Confirmation Date as "the date on which the Bankruptcy Court enters the Confirmation Order on its docket." The Order Confirming Second Amended Joint Liquidating Chapter 11 Plan [ECF No. 444] ("**Confirmation Order**") was entered on the Court's docket on October 21, 2010.

6. Article 7 of the Plan provides in pertinent part:

7.1.4 *PBF Liquidating Trust Management.* Barry Mukamal shall be PBF Liquidating Trustee with the power and authority set forth in the PBF Liquidating Trust Agreement.

7.1.5 *PBF Liquidating Trust Structure.* As more fully set forth in the PBF Liquidating Trust Agreement, the PBF Liquidating Trustee shall oversee and direct the PBF Liquidating Trust's operations and activities, including the retention of counsel.

7.1.7 *PBF II Liquidating Trust Monitor.* Geoffrey Varga, as Joint Official Liquidator for Offshore Funds shall be the PBF II Liquidating Trust Monitor with the power and authority set forth in the PBF II Liquidating Trust Agreement.

7.1.11 *Compensation of Professionals Retained by the Liquidating Trustees and the PBF II Liquidating Trust Monitor.* Professionals retained by the PBF II Liquidating Trust Monitor and the Liquidating Trustee shall be entitled to monthly interim compensation for fees and expenses incurred in carrying out their duties consistent with the Plan and the Liquidating Trust Agreements; provided, however, that the PBF II

Liquidating Trust Monitor or the Liquidating Trustee shall provide to the other, and the United States Trustee, notice of such requested fees and expenses on a monthly basis. Following such notice, if no objections to the fees and expenses set forth in the monthly statement are received in writing within 10 business days, 100% of such professional's fees and expenses shall be paid. Notice of objections to such fees and expenses shall be made via e-mail and/or facsimile. If objections to the fees and expenses are made and cannot be resolved, such objections will be heard and resolved by the Bankruptcy Court. Any such fees and expenses shall be payable from the Trust Asset of the Liquidating Trusts. The PBF II Liquidating Trust Monitor and the Liquidating Trustee shall, no less frequently than once every four (4) months, submit applications to the Bankruptcy Court for final approval of reimbursement of fees and expenses paid to their professionals.

7. This application is submitted pursuant to 11 U.S.C. § 330 for the allowance and payment to Mr. Hesch in the total amount of \$990.00 for fees between July 1, 2017 and July 31, 2017.

8. Mr. Hesch submitted invoices through July 31, 2017, which were paid in 2017 pursuant to the terms outlined in Article 7.1.11 of the Plan.

9. However, a fee application was not filed by Mr. Hesch as the aggregate amount requested was less than the \$3,500.00, and pursuant to the *Ex Parte* Order Granting Liquidating Trustee's Motion for Limited Modification to Compensation Procedures [ECF No. 2286], any professional may defer filing fee applications until the aggregate amount of fees and costs requested total at least \$3,500.00.

10. Nevertheless, because Applicant concluded his employment for services performed on behalf of the Trustee, Applicant now submits this final fee application.

11. All of the services rendered by Mr. Hesch were performed for and on behalf of the Liquidating Trustee.

Summary of Services Rendered

12. Mr. Hesch rendered varied services as expert consultant on behalf of the

Liquidating Trustee for the period of time from July 1, 2017 through July 31, 2017. Mr. Hesch is requesting \$990.00 in professional fees for services rendered. Mr. Hesch logged a total of 1.5 hours at an hourly rate of \$660 during the time period for which fees were required in this fee application.

13. Mr. Hesch devoted 1.5 hours, for a total fee request of \$990.00 for professional services in connection with the Trustee's action against The National Christian Foundation, Inc. Adversary Case No. 11-2940-EPK ("*NCF Adversary*").

14. Mr. Hesch believes that the requested fees of \$990.00 for 1.5 hours worked, is reasonable considering the nature, extent, and the value of such services, taking into account all relevant factors, including:

The time spent on such services.

15. The transcribed time records and details of services rendered by Mr. Hesch are attached as Exhibit 4. To preserve work product and maintain confidentiality, the records are redacted. Unredacted records have been shared with the Office of the U.S. Trustee and if the Court so requests, may be filed under seal. Mr. Hesch has devoted 1.5 hours in time in providing services to the Liquidating Trustee between July 1, 2017 through July 31, 2017.

16. Applicant recorded the time expended in the rendition of professional services for the Liquidating Trustee by recording a detailed description of such professional services rendered.

The rates charged for such services.

17. Mr. Hesch logged a total of 1.5 hours at an hourly rate of \$660 during the time period for which fees were required in this fee application. The hourly rate charged is Mr. Hesch's customary fee for services of the type rendered herein.

18. The applicant represents that the fees applied for are in conformity with the fees allowed in similar proceedings for similar services rendered and results obtained. Mr. Hesch respectfully requests that the Court take notice of the awards which have been made in similar proceedings.

Whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of the case.

19. Mr. Hesch was retained by the Liquidating Trustee as an advisor providing consulting services and possible expert testifying services in contested matters or one or more adversary proceedings commenced by the Liquidating Trustee on issues relating to litigation and lending-related issues, as well as other related or similar analyses that the Liquidating Trustee deems necessary. The services provided by Mr. Hesch were necessary to the administration of, and beneficial to the estates at the time at which the services were rendered as well as towards the completion of the case.

Whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed.

20. Mr. Hesch submits that the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue and tasks addressed.

With respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field.

21. Mr. Hesch has substantial experience in the type of services required under this engagement. The quality of work performed by Mr. Hesch in this proceeding attests to his experience, reputation and ability.

22. Jerome M. Hesch is a tax and estate planning consultant for lawyers throughout the country. A Former tax partner with the national law firm of Greenberg Traurig (Miami,

Florida), Mr. Hesch is a member of the America College of Trust and Estate Counsel (ACTEC), and an Adjunct Professor at the University of Miami School of Law (Graduate Programs in Estate Planning and Taxation) and Florida International University School of Law.

23. An accomplished author, Mr. Hesch has published numerous articles, several Tax Management Portfolios, and co-authored a law school casebook on Federal Income Taxation, now in its third edition.

24. Mr. Hesch submits that he has the requisite experience, seniority and skills necessary to effectively and efficiently meet the requirements of the tasks required. Mr. Hesch believes he has demonstrated the requisite, substantial expertise to skillfully provide his services.

Whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.

25. The amount requested by Mr. Hesch is reasonable in terms of awards in cases of similar magnitude and complexity. The compensation which Mr. Hesch is requesting comports with the mandate of the Bankruptcy Code, which directs that services be evaluated in light of comparable services performed in non-bankruptcy cases in the community. The fees requested by Mr. Hesch in the amount of \$990.00 for 1.5 hours of services is entirely appropriate.

26. Mr. Hesch considers the reasonable value of services rendered to this estate to be not less than \$990.00 for services rendered for the Fee Period.

Allocation Between Debtors' Estates

27. The Liquidating Trustee requests that 18% of the fee awarded be allocated to Palm Beach Finance Partners, L.P. ("**PBF**") and 82% of the fee awarded be allocated to Palm Beach Finance II, L.P. ("**PBF II**"). Section 1.76, entitled "Pro Rata Allocation Formula," of the Second Amended Joint Plan of Liquidation dated September 3, 2010 [ECF No. 245] provides for a *pro rata* allocation formula derived from the Compiled Financial Statements, dated April 30,

2008, for each of the Debtors by Kaufman Rossin & Co. The data contained therein supports an 18%/82% allocation between PBF and PBF II, respectively, based upon the total assets of each entity as of the date of such compilations. Based on the circumstances and since the services provided by Mr. Hesch were performed on behalf of and benefitted both estates, the Liquidating Trustee believes that this formula is the proper methodology to allocate certain fees and expenses between the two estates and respectfully requests the Court approve the allocation of fees requested in this Application as follows:

| Estate / Percentage | Fees | Costs |
|---|-------------|--------------|
| Palm Beach Finance Partners, L.P. (18%) | \$ 178.20 | \$ 0.00 |
| Palm Beach Finance II. L.P. (82%) | \$ 811.80 | \$ 0.00 |
| TOTAL FEES AND COSTS: | \$ 990.00 | \$ 0.00 |

Request for Final Approval

28. Pursuant to Article 7.1.11 of the Plan: “The PBF II Liquidating Trust Monitor and the Liquidating Trustee shall, no less frequently than once every four (4) months, submit applications to the Bankruptcy Court for final approval of reimbursement of fees and expenses paid to their professionals.”

29. Applicant submits this application for final approval of reimbursement of fees paid and further requests that this Court deem any and all previously awarded post confirmation interim fees and expenses paid to Applicant as final awards pursuant to Article 7.1.11 of the Plan which is consistent with other orders awarding fees to the Trust Monitor’s professionals. Those awards are set forth in the attached Exhibit 1.

WHEREFORE, Mr. Hesch respectfully requests that he be allowed the full compensation sought under this application as a final award in the sum of \$990.00 for fees incurred between July 1, 2017 and July 31, 2017 and approve the allocation of fees between the

estates. Mr. Hesch further requests that this Court deem any and all previously awarded post confirmation interim fees and expenses paid to Applicant as final awards pursuant to Article 7.1.11 of the Plan and for such other and further relief this Court deems just and proper.

CERTIFICATION

1. I (the “*Applicant*”) am the professional with responsibility in this case for compliance with the “Guidelines for Fee Applications for Professionals in the Southern District of Florida in Bankruptcy Cases” (“*Guidelines*”).

2. I have read the Applicant's application for compensation and reimbursement of expenses (“*Application*”). The application complies with the Guidelines, and the fees and expenses sought fall within the Guidelines, except as specifically noted in this certification and described in the application.

3. The fees and expenses sought are billed at rates and in accordance with practices customarily employed by the Applicant and generally accepted by the Applicant's clients.

4. In seeking reimbursement for the expenditures described on Exhibit 4, the Applicant is seeking reimbursement only for the actual expenditure and has not marked up the actual cost to provide a profit or to recover the amortized cost of investment in staff time or equipment or capital outlay (except to the extent that the Applicant has elected to charge for in-house photocopies and outgoing facsimile transmissions at the maximum rates permitted by the Guidelines).

5. In seeking reimbursement for any service provided by a third party, the Applicant is seeking reimbursement only for the amount actually paid by the Applicant to the third party.

6. The following are the variances with the provisions of the Guidelines, the date of each court order approving the variance, and the justification for the variance: none.

I HEREBY CERTIFY that the foregoing is true and correct.

Jerome M. Hesch
21113 N.E. 38th Avenue
Aventura, FL 33180

By: s/ Jerome M. Hesch (e-filed w/ consent)
Jerome M. Hesch

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: May 6, 2019.

s/ Michael S. Budwick
Michael S. Budwick, Esquire
Florida Bar No. 938777
mbudwick@melandrussin.com
MELAND RUSSIN & BUDWICK, P.A.
200 South Biscayne Boulevard
Suite 3200
Miami, Florida 33131
Phone: (305) 358-6363
Facsimile: (305) 358-1221

Attorneys for the Liquidating Trustee

| Exhibit 1 - FEE APPLICATION SUMMARY CHART | | | | | | | | | | | | |
|---|-------|------------------|----------------|--------------------|--------------------|-------|---------------|-------------------|-------------|---------------|---------------|-------------------|
| REQUEST | | | | | APPROVAL | | | | PAID | | HOLDBACK | |
| Date Filed | ECF # | Period Covered | Fees Requested | Expenses Requested | Date Order Entered | ECF # | Fees Approved | Expenses Approved | Fees Paid | Expenses Paid | Fees Holdback | Expenses Holdback |
| 8/28/2017 | 3336 | 3/9/17 - 6/30/17 | \$ 9,108.00 | \$ - | 10/10/2017 | 3370 | \$ 9,108.00 | \$ - | \$ 9,108.00 | \$ - | \$ - | \$ - |
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| TOTALS: | | | \$ 9,108.00 | \$ - | | | \$ 9,108.00 | \$ - | \$ 9,108.00 | \$ - | \$ - | \$ - |

| Invoicing Date: | Billing Period: | Fees and expenses requested: | | Amount paid absent objection: | |
|------------------------|-------------------------------|-------------------------------------|----------|--------------------------------------|----------|
| 8/18/2017 | March 9, 2017 - June 30, 2017 | \$ | 9,108.00 | \$ | 9,108.00 |
| 11/28/2017 | July 1, 2017 - July 31, 2017 | \$ | 990.00 | \$ | 990.00 |

Summary of Professional and Paraprofessional Time Total
per Individual for this Period Only
(EXHIBIT "2-A")

[If this is a final application, and does not cumulate fee details from prior interim applications, then a separate Exhibit 2-A showing cumulative time summary from all applications is attached as well]

| Name | Title | Year Licensed | Total Hours | Hourly Rate | Fee |
|-----------------|-------|---------------|-------------|-------------|----------|
| Jerome M. Hesch | | | 1.5 | \$660.00 | \$990.00 |

CUMULATIVE

| Name | Title | Year Licensed | Total Hours | Hourly Rate | Fee |
|-----------------|-------|---------------|-------------|-------------|------------|
| Jerome M. Hesch | | | 13.8 | \$660.00 | \$9,108.00 |

Summary of Professional and Paraprofessional Time by
Activity Code Category for this Time Period Only
(EXHIBIT "2-B")

| Professional Services | | | | |
|------------------------------|-----------------|-------------|--------------|------------------|
| <u>Title</u> | <u>Name</u> | <u>Rate</u> | <u>Hours</u> | <u>Fees</u> |
| | Jerome M. Hesch | \$660.00 | 1.50 | \$ 990.00 |
| CATEGORY SUBTOTAL: | | | 1.50 | \$ 990.00 |

Summary of Requested Reimbursement Of Expenses
for this Time Period Only
"EXHIBIT 3"

[If this is a final application which does not cumulate prior interim applications, a separate summary showing cumulative expenses for all applications is attached as well]

| | |
|--|---------------|
| 1. Filing Fees | \$0.00 |
| 2. Process Service Fees | \$0.00 |
| 3. Witness Fees | \$0.00 |
| 4. Court Reporter Fees and Transcripts | \$0.00 |
| 5. Lien and Title Searches: | \$0.00 |
| 6. Photocopies: | |
| (a) In-house copies (at \$0.15/page) | \$0.00 |
| (b) Outside copies (\$) | \$0.00 |
| 7. Postage | \$0.00 |
| 8. Overnight Delivery Charges | \$0.00 |
| 9. Outside Courier/Messenger Services | \$0.00 |
| 10. Long Distance Telephone Charges | \$0.00 |
| 11. Long Distance Fax Transmissions (@ \$1/page) | \$0.00 |
| 12. Computerized Research | \$0.00 |
| 13. Out-of-Southern-District-of-Florida Travel: | |
| (a) Transportation | \$0.00 |
| (b) Lodging | \$0.00 |
| (c) Meals | \$0.00 |
| 14. Other: | \$0.00 |
| TOTAL: | \$0.00 |

CUMULATIVE

N/A

Jerome Hesch, Esq.
 21113 NE 38th Avenue
 Aventura, Florida 33189
jhesch62644@gmail.com

Date: November 28, 2017

To: Liquidating Trustee, Barry Mukamal
 Palm Beach Finance Partners, L.P.
 Palm Beach Finance II, L.P.

| DATE | DESCRIPTION | HOURS |
|---------------|-------------------------------|-----------------|
| July 11, 2017 | | 0.80 |
| July 12, 2017 | | 0.70 |
| | TOTAL HOURS: | <u>1.50</u> |
| | Billable Rate: \$660 per hour | |
| | INVOICE AMOUNT: | \$990.00 |