

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., Case No. 09-36379-BKC-PGH
a Delaware limited partnership, *et al.*,¹
Debtors. Jointly Administered

**LIQUIDATING TRUST MONITOR'S
APPLICATION FOR APPROVAL OF EMPLOYMENT OF
LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP,
AS LOCAL COUNSEL, NUNC PRO TUNC TO NOVEMBER 1, 2010**

Pursuant to this Court's Order Confirming Second Amended Joint Plan of Liquidation, the Liquidating Trust Agreement for Palm Beach Finance II, L.P., 11 U.S.C. §327, Fed. R. Bankr. P. 2014 and Local Rule 2014-1, Geoffrey Varga, the Joint Official Liquidator for Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd., in his capacity as the Liquidating Trust Monitor for Palm Beach Finance II, L.P. (the "Monitor"), respectfully requests that the Court enter an Order substantially in the form attached hereto as **Exhibit "A,"** approving the employment of Robin J. Rubens, Esq. ("Rubens") and the law firm of Levine Kellogg Lehman Schneider + Grossman LLP ("LKLSG") (collectively, the "Applicant") as local counsel to the Monitor, *nunc pro tunc* to November 1, 2010, the date services were first rendered. In support of this Application, the Monitor submits the Affidavit of Robin J. Rubens (the "Rubens Affidavit"),

¹ The address and last four digits of the taxpayer identification number for each of the Debtors follows in parenthesis: (i) Palm Beach Finance Partners, L.P., 3601 PGA Blvd., Suite 301, Palm Beach Gardens, FL 33410 (TIN 9943); and (ii) Palm Beach Finance II, L.P., 3601 PGA Blvd., Suite 301, Palm Beach Gardens, FL 33410 (TIN 0680).

which is attached hereto as **Exhibit “B.”** In further support of this Application, the Monitor states as follows:

1. On November 30, 2009, Palm Beach Finance Partners, L.P. (“PBF I”) and Palm Beach Finance II, L.P. (“PBF II”) (collectively, the “Debtors”), through their Chief Restructuring Officer, Kenneth A. Welt, each filed a voluntary Chapter 11 bankruptcy petition in this Court and by Order dated December 1, 2009, the Court approved the joint administration of the Debtors’ cases.

2. On February 2, 2010, upon motion filed by the U.S. Trustee, the Court entered an Order approving the selection of Barry Mukamal as the Chapter 11 Trustee for both Debtors.

3. Geoffrey Varga is the Joint Official Liquidator (“JOL”) of Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd. (the “Offshore Funds”), which are in formal liquidation proceedings in the Cayman Islands. The Offshore Funds represent substantially all of the creditors of PBF II, both having loaned money to PBF II, which issued demand promissory notes to the Offshore Funds with an aggregate amount of principal and interest due and owing in excess of \$700 million.

4. On September 3, 2010, the JOL and the Chapter 11 Trustee, as Co-Plan Proponents, filed the Second Amended Joint Plan of Liquidation [ECF No. 245] (“Plan”), which the Court approved by Order Confirming Second Amended Joint Plan of Liquidation dated October 19, 2010 [ECF No. 444] (the “Confirmation Order”).

5. Paragraph 7.1.7 of the confirmed Plan states that the JOL shall be the Monitor with the power and authority set forth in the Liquidating Trust Agreement for Palm Beach Finance II, L.P. (the “PBF II Liquidating Trust Agreement”).

6. Paragraph 7.1.11 of the confirmed Plan contains the following provisions regarding the process for, and payment of, compensation to the Monitor’s professionals (hereinafter referred to as “Liquidating Trust Compensation Provisions”): (i) the professionals retained by the Monitor

shall be entitled to monthly interim compensation for fees and expenses incurred in carrying out their duties consistent with the confirmed Plan and Liquidating Trust Agreements, as long as notice of the fees and expenses are provided on a monthly basis to the Liquidating Trustee and United States Trustee; (ii) if no written objections to the fees and expenses sought are received within 10 business days, then 100% of the professional's fees and expenses shall be paid by the Liquidating Trustee from Trust Assets of the Liquidating Trusts; (iii) if objections to the fees and expenses are timely made by e-mail or facsimile and cannot be resolved amicably, then the Court will hear and resolve the objections; (iv) professionals are required to submit applications to the Court for final approval of reimbursement of fees and expenses previously paid to them, no less than once every four (4) months; and (v) per paragraph 7.1.11 of the confirmed Plan, which designates the Monitor's local counsel as LKLSG, LKLSG's professionals are to be compensated 100% of LKLSG's standard billing rates.

7. The effective date of the Plan occurred on November 1, 2010 ("Effective Date") and on that date, Liquidating Trusts for PBF I and PBF II were established pursuant to the Confirmation Order and Liquidating Trust Agreements for PBF I and PBF II signed by Barry Mukamal in his capacity as Chapter 11 Trustee and Liquidating Trustee. The PBF I and PBF II Liquidating Trust Agreements provide the framework and mechanism for recoveries by both estates post-confirmation.

8. The Monitor desires to retain the Applicant as local counsel because the Applicant served as the JOL's local counsel pre-confirmation and, therefore, has extensive knowledge about the history, claims and litigation implicated by these cases. The Applicant also has experience and expertise in Chapter 11 cases in Florida and is qualified to act as counsel for the Monitor in these

cases. The Monitor respectfully submits that the retention of the Applicant is necessary and in the best interests of creditors, the Debtors' estates and the Liquidating Trusts and their Beneficiaries.²

9. Except as disclosed in the Rubens Affidavit attached hereto as **Exhibit "B,"** to the best of the Monitor's knowledge: (i) Rubens and LKLSG are "disinterested" persons within the meaning of Section 101(14) of the Bankruptcy Code as required by Section 327(a) of the Bankruptcy Code; (ii) neither Rubens nor LKLSG have any connections with the Debtors, creditors, Beneficiaries or any other parties in interest, their respective attorneys and accountants, the United States Trustee or any person employed in the Office of the United States Trustee; and (iii) neither Rubens nor LKLSG hold or represent any interest adverse to the Debtors, the Debtors' estates, creditors, the Liquidating Trusts and their Beneficiaries or other interested parties as to the matters for which the Applicant is to be employed. LKLSG will periodically review its files during the pendency of these cases to ensure that no conflicts or other disqualifying circumstances exist or arise. In the event any new relevant facts or relationships are discovered or arise, LKLSG will use reasonable efforts to identify such further developments and will promptly file a supplemental declaration as required by Bankruptcy Rule 2014(a).

10. The services of Applicant are necessary to enable the Monitor to faithfully and completely execute his duties under the PBF II Liquidating Trust Agreement. Subject to Order of this Court, Applicant will be required to render, among others, the following services to the Monitor:

- a. Advise the Monitor with respect to his rights, powers and duties under the PBF II Liquidating Trust Agreement and protect the interests of the Monitor in all matters pending before the Court;
- b. Analyze and advise the Monitor as to which PBF II Litigation Claims should be pursued and the extent to which litigation or settlement of said claims is appropriate;
- c. Assist and advise the Monitor in his consultations with the Liquidating Trustee relative to the administration of the Liquidating Trusts;

² Capitalized terms used herein that are not otherwise defined herein shall have the meanings assigned to them in the Plan.

- d. Assist the Monitor in analyzing the claims of the Debtors' creditors and in negotiating with such creditors;
- e. Prepare motions, pleadings, orders, applications, adversary proceedings, and other legal documents necessary in connection with the administration of these cases; and
- f. Perform all other necessary legal services and provide all other necessary legal advice to the Monitor in connection with these cases.

11. Since the Applicant has rendered services and incurred costs on behalf of the Monitor as the Monitor's local counsel since the November 1, 2010 Effective Date, this Application requests that Applicant's employment as local counsel for the Monitor be approved *nunc pro tunc* as of November 1, 2010.

12. The Monitor proposes that the Applicant comply with, and be compensated pursuant to, the Liquidating Trust Compensation Provisions and that, otherwise, Applicant seek final approval of fees and expenses previously paid by the Liquidating Trustee in accordance with applicable provisions of the Bankruptcy Code including Sections 327 and 330, the Bankruptcy Rules, the Local Rules, the Court's Orders and procedures and the Office of the United States Trustee's guidelines.

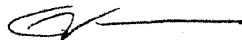
13. Throughout the course of the representation, if instances occur where the Applicant's fees and expenses should be allocated between the Liquidating Trusts and the Offshore Funds, the Applicant will appropriately allocate such fees and expenses and will note such allocations in the notice of fees and expenses provided on a monthly basis to the Liquidating Trustee and the United States Trustee. In order to avoid duplication, all professionals retained by the Liquidating Trustee and the Monitor will coordinate all matters and services they are responsible for, as authorized by the Liquidating Trustee and the Monitor pursuant to the Plan.

WHEREFORE, the Monitor respectfully requests that the Court enter an Order substantially in the form attached hereto as **Exhibit "A,"** approving the employment of the Applicant as local counsel for the Monitor in these cases *nunc pro tunc* to November 1, 2010.

Respectfully submitted,

The PBF II Liquidating Trust Monitor

Dated: December ²²____, 2010.



By: Geoffrey Varga, as the Joint Official Liquidator
of Palm Beach Finance Offshore, Ltd. and Palm Beach
Offshore II, Ltd.

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.,
a Delaware limited partnership, *et al.*,¹

Case No. 09-36379-BKC-PGH

Jointly Administered

Debtors.

**[PROPOSED] ORDER GRANTING
LIQUIDATING TRUST MONITOR'S APPLICATION FOR APPROVAL OF
EMPLOYMENT OF LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN
LLP AS LOCAL COUNSEL, NUNC PRO TUNC TO NOVEMBER 1, 2010**

THIS MATTER came before the Court at a duly noticed hearing on _____
_____, 2011 upon the *Liquidating Trust Monitor's Application for Approval of Employment of
Levine Kellogg Lehman Schneider + Grossman LLP as Local Counsel, Nunc Pro Tunc to
November 1, 2010* (the "Application") filed by Geoffrey Varga, the Joint Official Liquidator for

¹ The address and last four digits of the taxpayer identification number for each of the Debtors follows in parenthesis: (i) Palm Beach Finance Partners, L.P., 3601 PGA Blvd., Suite 301, Palm Beach Gardens, FL 33410 (TIN 9943); and (ii) Palm Beach Finance II, L.P., 3601 PGA Blvd., Suite 301, Palm Beach Gardens, FL 33410 (TIN 0680).

Exhibit "A"

Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd., in his capacity as the Liquidating Trust Monitor for Palm Beach Finance II, L.P. (the "Monitor") [ECF No. ____]. The Application seeks entry of an Order, pursuant to the confirmed Plan, Liquidating Trust Agreement for Palm Beach Finance II, L.P. (the "PBF II Liquidating Trust Agreement") and 11 U.S.C. §327(a), authorizing the Monitor to employ and retain Robin J. Rubens, Esq. and Levine Kellogg Lehman Schneider + Grossman LLP ("LKLSG") as local counsel to the Monitor; and upon the Affidavit of Robin J. Rubens (the "Rubens Affidavit"), and it appearing to the Court that representations have been made in the Application and in the Rubens Affidavit sufficient to demonstrate that said attorneys neither hold nor represent any interest adverse to the Debtors, the Debtors' estates, creditors, the Liquidating Trusts and their Beneficiaries or other interested parties, that they are disinterested persons as that term is defined under Section 101(14) of the Bankruptcy Code, that LKLSG's employment is necessary and would be in the best interests of the Debtors' estates, creditors, the Liquidating Trusts and their Beneficiaries, that all connections to the Debtors, creditors, Beneficiaries or any other parties in interest have been sufficiently disclosed, that proper and adequate notice has been given and that no other or further notice is necessary; upon the record herein and after due deliberation thereon, the relief should be granted as set forth below. Accordingly, it is

ORDERED as follows:

1. The Application is GRANTED;
2. Pursuant to the confirmed Plan, PBF II Liquidating Trust Agreement and Section 327(a) of the Bankruptcy Code, the Monitor is authorized to employ and retain Robin J. Rubens, Esq. and the law firm of LKLSG as its local counsel *nunc pro tunc* to November 1, 2010 in accordance with the terms and conditions set forth in the Application.

3. Robin J. Rubens, Esq. and LKLSG are authorized to render professional services to the Monitor as set forth in the Application.

4. LKLSG shall be compensated in accordance with the confirmed Plan and PBF II Liquidating Trust Agreement (summarized and defined in the Application as the Liquidating Trust Compensation Provisions). LKLSG shall, otherwise, seek final approval of fees and expenses previously paid by the Liquidating Trustee in accordance with applicable provisions of the Bankruptcy Code including Sections 327 and 330, the Bankruptcy Rules, the Local Rules, the Court's Orders and procedures and the Office of the United States Trustee's guidelines.

5. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

###

Submitted by:

Robin J. Rubens, Esq.
LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP
Miami Center – 34th Floor
201 South Biscayne Blvd.
Miami, Florida 33131-4301
Telephone: 305.403.8788
Facsimile: 305.403.8789
E-Mail: rjr@LKLLaw.com

Copies to:

Robin J. Rubens, Esq. (Attorney Rubens shall serve a copy of this Order on all interested parties upon receipt and shall file a Certificate of Service reflecting such service).

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.,
a Delaware limited partnership, *et al.*,¹

Case No. 09-36379-BKC-PGH

Jointly Administered

Debtors.

**AFFIDAVIT OF ROBIN J. RUBENS IN SUPPORT OF
LIQUIDATING TRUST MONITOR'S APPLICATION FOR APPROVAL
OF EMPLOYMENT OF LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN
LLP AS LOCAL COUNSEL, NUNC PRO TUNC TO NOVEMBER 1, 2010**

STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

Robin J. Rubens, being duly sworn, says:

1. I am an attorney admitted to practice in the State of Florida, the United States District Court for the Southern District of Florida and qualified to practice in the United States Bankruptcy Court for the Southern District of Florida.

2. I am a partner with the law firm of Levine Kellogg Lehman Schneider + Grossman LLP ("LKLSG") with offices located at 201 South Biscayne Blvd., Miami Center – 34th Floor, Miami, Florida 33131. I will have principal responsibility for representing the Monitor as local counsel in these bankruptcy cases.

¹ The address and last four digits of the taxpayer identification number for each of the Debtors follows in parenthesis: (i) Palm Beach Finance Partners, L.P., 3601 PGA Blvd., Suite 301, Palm Beach Gardens, FL 33410 (TIN 9943); and (ii) Palm Beach Finance II, L.P., 3601 PGA Blvd., Suite 301, Palm Beach Gardens, FL 33410 (TIN 0680).

Exhibit "B"

3. I am familiar with, and have knowledge regarding, the matters set forth herein and make this Affidavit in support of the *Liquidating Trust Monitor's Application for Approval of Employment of Levine Kellogg Lehman Schneider + Grossman LLP As Local Counsel, Nunc Pro Tunc to November 1, 2010* ("Application").

4. In preparing this Affidavit, I have reviewed the creditor matrices prepared for the above-captioned jointly administered bankruptcy cases (hereinafter "Matrix"), I circulated a conflicts check e-mail to all employees at LKLSG to elicit any connections, relationships and/or representations of individuals and/or entities listed on the Matrix and my secretary ran a report for each individual and entity listed on the Matrix from LKLSG's internal conflicts check system which I reviewed.

5. Based on the foregoing searches and reviews, neither I nor LKLSG hold or represent any interest adverse to the Debtors, the Debtors' estates, creditors, the Liquidating Trusts and their Beneficiaries or other interested parties and we are disinterested persons within the meaning of Section 101(14) of the Bankruptcy Code as required by Section 327(a) of the Bankruptcy Code.

6. Neither I nor LKLSG has had or presently has any connection with any of the Debtors, creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee or any person employed in the office of the United States Trustee, except that: (i) prior to confirmation of the Plan and post-confirmation, LKLSG represented and continues to represent Geoffrey Varga in his capacity as the Joint Official Liquidator ("JOL") of Palm Beach Finance Offshore, Ltd. and Palm Beach Offshore II, Ltd. (collectively, the "Offshore Funds"); (ii) LKLSG had served as general counsel for Barry Mukamal as Chapter 7 Trustee in *Tradewinds Airlines, Inc. ("Tradewinds")*, Case No. 08-20394-AJC until June 18, 2010 and on

October 8, 2010 was employed as special counsel by Mr. Mukamal in *Tradewinds* for particular litigation which has since been resolved; and (iii) attorneys from LKLSG may have appeared in the past and may appear in the future in other, unrelated cases in which one or more of said parties may be involved.

7. Neither I nor LKLSG has or will represent any other entity in connection with these cases except the JOL for the Offshore Funds and neither I nor LKLSG will accept any fee from any other party or parties in these cases except as provided in the confirmed Plan and Liquidating Trust Agreement for Palm Beach Finance II, L.P. (the "PBF II Liquidating Trust Agreement") as to matters pertaining to the Monitor or as agreed with the JOL for the Offshore Funds as to matters pertaining to the JOL and Offshore Funds.

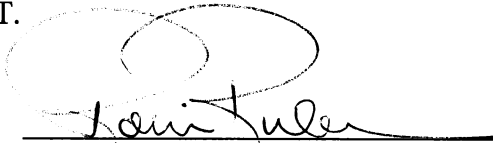
8. The payment of professional fees and costs to be incurred by LKLSG in the course of its representation of the Monitor in these cases shall be pursuant to the confirmed Plan and PBF II Liquidating Trust Agreement (summarized and defined in the Application as the Liquidating Trust Compensation Provisions). LKLSG will, otherwise, seek final approval of fees and expenses previously paid by the Liquidating Trustee in accordance with applicable provisions of the Bankruptcy Code including Sections 327 and 330, the Bankruptcy Rules, the Local Rules, the Court's Orders and procedures and the Office of the United States Trustee's guidelines.

9. The range of hourly rates at LKLSG are as follows: (i) Partners - \$360.00 to \$510.00; (ii) Associates - \$240.00 to \$320.00; and (iii) Paralegals - \$150.00 to \$175.00. My hourly rate in these cases is \$405.00. LKLSG reserves the right to increase its hourly rates in accordance with its normal and customary business practices.

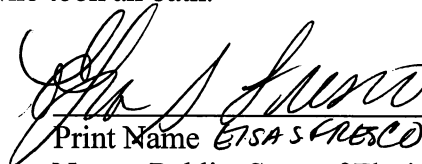
10. There is no agreement of any nature as to the sharing of any compensation to be paid to LKLSG in these bankruptcy cases.

11. Neither LKLSG nor I are a creditor, an equity security holder or an insider of the Debtors, creditors or Beneficiaries in these cases, nor have any members of LKLSG nor I been an officer, director or employee of said Debtors, creditors or Beneficiaries or served as a financial advisor for the Debtors, creditors or Beneficiaries.

FURTHER AFFIANT SAYETH NAUGHT.


Robin J. Rubens

SWORN TO AND SUBSCRIBED before me this 21st day of December, 2010 by Robin J. Rubens, who is personally known to me and who took an oath.


Print Name ELSA S. FRESCO
Notary Public, State of Florida at Large

My Commission Expires:

NOTARY PUBLIC-STATE OF FLORIDA
Elsa S. Fresco
Commission #DD695044
Expires: SEP. 02, 2011
BONDED THRU ATLANTIC BONDING CO., INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Application and all exhibits thereto were served on the 27th day of December, 2010 via the Court's CM/ECF filing system to recipients registered to receive notices of electronic filings generated by CM/ECF for case no. 09-36379-BKC-PGH as listed on attached Exhibit I, and that upon the docketing of a notice of hearing on the Application, undersigned counsel will serve the foregoing Application, all exhibits thereto, and said notice of hearing to all addressees who do not receive electronic filings for this case and a supplemental certificate of service will be filed to reflect such service.

LEVINE KELLOGG LEHMAN
SCHNEIDER + GROSSMAN LLP
Proposed Local Counsel for Monitor
201 South Biscayne Blvd.
Miami Center – 34th Floor
Miami, Florida 33131-4301
Telephone: 305.403.8788
Facsimile: 305.403.8789

By: /s/ Robin J. Rubens
Robin J. Rubens, Esq.
Florida Bar. No. 959413
E-mail: rjr@LKLaw.com

Mailing Information for Case 09-36379-PGH

Electronic Mail Notice List

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

- **Geoffrey S. Aaronson** gaaronson@aaronsonpa.com, tdmckeown@mckeownpa.com
- **Paul A Avron** pavron@bergersingerman.com, efile@bergersingerman.com
- **Michael S Budwick** mbudwick@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com
- **Heidi A Feinman** Heidi.A.Feinman@usdoj.gov
- **Jonathan S. Feldman** jfeldman@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com
- **Robert C Furr** bnasralla@furrcohen.com
- **Jaclyn A Gonzalez** jgonzalez@houghrobson.com, lgener@houghrobson.com;Houghrobson@gmail.com;sramirez.hr@gmail.com
- **Ross R Hartog** rhartog@mrthlaw.com, ecfnotices@mdrtlw.com;joyecf@mdrtlw.com
- **Julie E Hough** jhough@houghrobson.com, lgener@houghrobson.com;Houghrobson@gmail.com;sramirez.hr@gmail.com
- **Barry E Mukamal** bankruptcy@marcumllp.com, FL64@ecfcbis.com
- **Office of the US Trustee** USTPRegion21.MM.ECF@usdoj.gov
- **Leslie S. Osborne** rappaport@kennethrappaportlawoffice.com
- **John E Page** jpage@sfl-pa.com, scusack@sfl-pa.com;lrosetto@sfl-pa.com
- **Chad P Pugatch** cpugatch.ecf@rprslaw.com
- **Craig V Rasile** crasile@hunton.com, mtucker@hunton.com,mmannering@hunton.com,adeboer@hunton.com
- **Robin J. Rubens** rjr@lkllaw.com
- **Michael L Schuster** mschuster@gjb-law.com, gjbecf@gjb-law.com;mpacheco@gjb-law.com
- **Bradley S Shraiberg** bshraiberg@sfl-pa.com, lmelton@sfl-pa.com;lrosetto@sfl-pa.com;blee@sfl-pa.com
- **Paul Steven Singerman** singerman@bergersingerman.com, efile@bergersingerman.com
- **Peter A Tappert** peter.tappert@wdbn.net, earcia@wdbn.net;emma.lastra@wdbn.net
- **Charles W Throckmorton** cwt@kttlw.com, lf@kttlw.com;la@kttlw.com
- **Trustee Services Inc 2** court@trusteeservices.biz
- **George L. Zinkler** gzinkler.ecf@rprslaw.com