

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-PGH
Case No.: 09-36396-PGH
(Jointly Administered)

Debtors.

**LIQUIDATING TRUSTEE'S (I) MOTION TO MODIFY
COMPENSATION STRUCTURE FOR MELAND RUSSIN & BUDWICK, P.A.
AS TO TWO LITIGATION MATTERS AND (II) APPLICATION TO EMPLOY DAVID
S. MANDEL AND MANDEL & MANDEL LLP, AS SPECIAL CO-COUNSEL
NUNC PRO TUNC TO FEBRUARY 17, 2014**

Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") of the Palm Beach Finance Partners Liquidating Trust and Palm Beach Finance II Liquidating Trust, by and through undersigned counsel and pursuant to 11 U.S.C. § 327(a) and *Fed. R. Bank. P.* 2014(a), respectfully requests that this Court enter an Order, *nunc pro tunc* to February 17, 2014, authorizing the employment of David S. Mandel ("*Mr. Mandel*") and the firm of Mandel & Mandel LLP (the "*Firm*," and collectively with Mr. Mandel, the "*Applicant*") and modifying the compensation structure for Meland Russin & Budwick, P.A. ("*MR&B*") as it relates to two litigation matters. In support, the Liquidating Trustee states as follows:

General Background

1. On November 30, 2009, the Debtors filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code [ECF No. 1]. By subsequent Order of this Court, the cases are jointly administered.

2. On January 28, 2010, the Court entered the Agreed Order Directing Appointment of Chapter 11 Trustee and Denying 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 Chapter 11 Trustee in both of the Debtors' estates [ECF No. 107].

4. The Liquidating Trustee is the Liquidating Trustee by virtue of this Court's Order Confirming Second Amended Joint Plan of Liquidation dated October 21, 2010 [ECF No. 444].

Retention of Meland Russin & Budwick, P.A. and Fee Structure

5. Pursuant to the Court's Order dated February 12, 2010 [ECF No. 121], the Liquidating Trustee employed Michael S. Budwick, Esq. and the law firm of MR&B as his attorneys in these bankruptcy proceedings including related contested matters and adversary proceedings.

6. On July 26, 2010, the Liquidating Trustee filed his Motion to Approve Hybrid Form of Compensation for MR&B [ECF No. 193], which this Court granted via an Order Granting Motion to Approve Hybrid Form of Compensation for MR&B [ECF No. 223] ("**Compensation Order**").

7. Pursuant to the Compensation Order, for most litigation matters, MR&B is compensated in a hybrid manner: (1) 75% of hourly rates; plus (2) 10% of any affirmative recovery. The adversary proceeding styled *Mukamal v. BMO Harris Bank N.A.*, Adv. Case No. 11-3015-PGH ("**M&I Litigation**"), is subject to this hybrid fee structure.

8. On November 2, 2011, the Court entered its Order Granting Liquidating Trustee's Motion to Modify Compensation Structure for Meland Russin & Budwick, P.A. as to Certain

Litigation Matters [Motion: ECF No. 802, and Order: ECF No. 815] (“*Second Compensation Order*”). The Second Compensation Order provides, in pertinent part, that:

With respect to the GECC ... Claims, MR&B shall be compensated as follows: 33% of any affirmative recovery obtained by MR&B with respect to ... the GECC ... Claims, and, in the event of an appeal, MR&B will be entitled to an additional 5% of any affirmative recovery.

With respect to any costs or expenses associated with the GECC ... Claims MR&B will be entitled to one hundred percent (100%) reimbursement of all such costs and expenses incurred and allowed in connection with investigating, and if appropriate, prosecuting ... the GECC ... Claims.

The bankruptcy estates will bear the cost of any consulting or expert witness(es) retained in connection with the GECC ... Claims.

9. The adversary proceeding styled *Mukamal v. General Electric Capital Corporation*, Adv. Case No. 12-1979-PGH (“*GECC Litigation*”), is subject to this pure contingency fee structure.

Retention of Mandel & Mandel, LLP as Special Co-Counsel

10. Both Mr. Mandel and his partner, Nina Stillman Mandel, are former Assistant United States Attorneys with extensive experience litigating complex fraud, financial crimes and money laundering cases, including trying many such cases before juries. Recently, in the case styled *Coquina Investments, v. Scott W. Rothstein and TD Bank, NA*, Case No. 10-60786-Civ-COOKE/BANDSTRA, the Firm was lead trial counsel in which a South Florida jury returned a \$67,000,000 verdict against TD Bank for participating in and aiding and abetting the fraudulent scheme perpetrated by Scott Rothstein.

11. The Liquidating Trustee believes that the Applicant will well compliment the litigation team in place at MR&B. Given the extensive fact discovery that will take place during 2014 in both the GECC and M&I Litigations (including perhaps as many as 60 or more out of State fact and expert witness depositions), the likelihood that both matters will proceed to trial before a jury, and the Applicant’s substantial and pertinent experience, the Liquidating Trustee in

consultation with MR&B and the Trust Monitor believes that retention of the Applicant as co-counsel to work together with MR&B in both the GECC and M&I Litigations is in the best interests of the estates and should be approved pursuant to the proposed economic terms identified below.

12. Attached as Exhibit 1 is the curricula vitae of Mr. Mandel. Mr. Mandel's hourly rate is \$675. Mrs. Mandel's hourly rate is \$600. The hourly rates of associates and paraprofessionals, if utilized by the Applicant, currently ranges from \$110 to \$335.

Proposed Form of Compensation for MR&B and Applicant

13. With respect solely to the GECC Litigation, the Liquidating Trustee requests authority to retain the Applicant as special co-counsel and to compensate MR&B and the Applicant as follows:

- A. As to MR&B, prior to the adjudication of all summary judgment motions, MR&B shall receive 27% of any affirmative recovery. After the adjudication of all summary judgment motions, MR&B shall receive 24.75% of any affirmative recovery. In the event of an appeal, MR&B shall receive an additional 5% of any affirmative recovery.
- B. As to the Applicant, prior to the adjudication of all summary judgment motions, Applicant shall receive 6% of any affirmative recovery. After the adjudication of all summary judgment motions, Applicant shall receive 8.25% of any affirmative recovery.

14. With respect to the M&I Litigation, the Liquidating Trustee requests authority to retain Applicant as special co-counsel and to compensate MR&B and the Applicant as follows:

A. MR&B and the Applicant will each charge 75% of their respective hourly rates, without imposition of a holdback per the monthly invoicing procedures established by this Court in this proceeding.

B. MR&B's contingency fee shall be reduced to 8% of any affirmative recovery.

C. Applicant shall receive a contingency fee of 2% of any affirmative recovery.

15. With respect to the M&I and GECC Litigations, the estates shall continue to pay any associated costs or expenses, including those of experts and consultants. MR&B and the Applicant shall be reimbursed for any such costs or expenses which they advance or incur.

16. To the best of the Liquidating Trustee's knowledge, other than on attached Exhibit 2, the Applicant does not (i) have any connection with the Debtors or the Debtors' estates; or (ii) represent any interest adverse to the Liquidating Trustee, the Debtors or the Debtors' estates.

17. Attached as Exhibit 2 is Mr. Mandel's fully executed and notarized affidavit demonstrating that he is disinterested as required by 11 U.S.C. § 327(a) and a verified statement as required under *Fed. R. Bank. P.* 2014.

Allocation Between Debtors' Estates

18. Work performed by MRB and the Applicant with respect to the M&I Litigation will be performed on behalf of both estates.

19. 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* 18%/82% allocation formula as between PBF and PBF II, respectively. This Pro Rata Allocation Formula shall apply to the monthly reduced rate invoices submitted by MR&B and Applicant.

Relief Requested

20. The Liquidating Trustee believes that the employment of the Applicant as special co-counsel with respect to the GECC Litigation and M&I Litigation is in the best interest of the Debtors' estates and their creditors. Similarly, the Liquidating Trustee believes the proposed compensation structure is fair and reasonable and also in the best interest of the estates and their creditors.

21. As to the GECC Litigation, the total contingency fee will remain the same: 33% through trial and an additional 5% in the event of an appeal. Likewise, as to the M&I Litigation, the total contingency fee will remain 10%.

WHEREFORE, the Liquidating Trustee respectfully requests the Court enter an Order (similar in form to the attached Exhibit 3) modifying the compensation structure for Meland Russin & Budwick, P.A. with respect to the GECC Litigation and the M&I Litigation, and (ii) authorizing the retention of the Applicant with respect to the GECC Litigation and the M&I Litigation, *nunc pro tunc* to February 17, 2014, as his special co-counsel upon the terms and conditions set forth above; and (iii) for all other relief this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on February 14, 2014, a true and correct copy of the foregoing was served via the Court's Notice of Electronic Filing upon all Registered Users listed

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on the attached Exhibit 4 and via U.S. Regular Mail upon all parties listed on the attached Exhibit 5.

s/ Michael S. Budwick
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MELAND RUSSIN & BUDWICK, P.A.
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Miami, Florida 33131
Telephone: (305) 358-6363
Telecopy: (305) 358-1221

Attorneys for Liquidating Trustee

DAVID S. MANDEL

Education

CORNELL LAW SCHOOL Ithaca, New York. J.D. 1986

LONDON SCHOOL OF ECONOMICS London, England. Graduate Studies in International Relations, 1982-83

BROWN UNIVERSITY Providence, Rhode Island. A.B., Political Science, *magna cum laude*, 1982

Experience

MANDEL & MANDEL LLP Miami, Florida.

Partner. Represents individuals and corporations in complex commercial and criminal litigation, compliance and regulatory matters, internal investigations, grand jury proceedings and trials. Has extensive experience handling matters involving the substantive legal areas of antitrust, fraud, money laundering, securities and health care fraud, tax evasion, forfeiture and both civil and criminal RICO violations. Served as Court appointed Receiver in both Securities and Exchange Commission and Federal Trade Commission matters. Lead trial counsel for plaintiff in *Coquina Investments v. TD Bank* (\$67 Million verdict – January 2012). 1997-Present.

MORGAN, LEWIS & BOCKIUS LLP Miami, Florida.

Of Counsel. Directed the Miami Office's Corporate Investigations and Criminal Defense (CICD) Practice Group. Handled numerous criminal and civil litigation matters, involving RICO, antitrust violations, securities fraud, Foreign Corrupt Practices Act and money laundering. 1995-1997.

UNITED STATES ATTORNEY'S OFFICE Miami, Florida.

Assistant United States Attorney. Investigated and prosecuted a variety of complex criminal and asset forfeiture matters. Received Evans Memorial Award, given to the Outstanding Assistant United States Attorney, Southern District of Florida. Extensive trial and appellate experience. 1989-1995.

COFFIELD UNGARETTI & HARRIS Chicago, Illinois.

Associate. Handled commercial, products liability and securities litigation. 1986-1989.

Affiliations

- Past-Chairman, Federal Court Committee, Dade County Bar Association
- Former member, The Wilson Council, Woodrow Wilson Center, Washington, D.C.
- Admitted to Florida, Illinois, New York and District of Columbia Bars
- Commercial Pilots License

Personal Data Born January 23, 1959
Married; Three Children

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

Case No.: 09-36379-PGH
Case No.: 09-36396-PGH
(Jointly Administered)

Debtors.

_____ /

AFFIDAVIT OF DAVID S. MANDEL

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

David S. Mandel, being duly sworn, says:

1. I am a partner with the law firm of Mandel & Mandel LLP ("Firm").
2. Neither I nor the Firm represents any interest adverse to the Liquidating Trustee, the Debtors or the estate with respect to the matters for which I am to be employed. Further, I am "disinterested" as that term is used in 11 U.S.C. § 327(a).
3. Barnett Capital, Limited, d/b/a Barnett Capital, Ltd., is an Illinois active corporation. Joel Barnett, principal of Barnett Capital, was a close friend of mine in high school, but we have not socialized in many years. In addition, Michael Band of the Band Law Firm, which served as counsel to Bruce Prevost, leases commercial space from my law firm. The Band Law Firm does not have access to my firm's client files. I do not believe that either of these connections is of any significance in relation to the two matters for which my Firm and I are to be employed.

4. Except for the performance of services for the Liquidating Trustee, I do not and will not represent any other entity in connection with this case, and I will not accept any fee from any other party or parties in this case in connection with my work in the instant case.

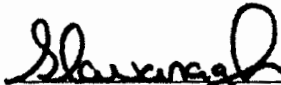
FURTHER AFFIANT SAYETH NAUGHT.



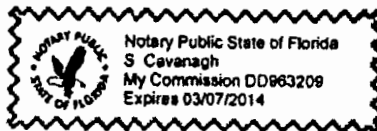
DAVID S. MANDEL

Sworn to and Subscribed before me

February 12, 2014:



Notary Public, State of Florida
My Commission Expires:



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
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Case No.: 09-36379-PGH
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Debtors.

**ORDER GRANTING LIQUIDATING TRUSTEE'S (I) MOTION TO MODIFY
COMPENSATION STRUCTURE FOR MELAND RUSSIN & BUDWICK, P.A.
AS TO TWO LITIGATION MATTERS AND (II) APPLICATION
TO EMPLOY DAVID S. MANDEL AND MANDEL & MANDEL LLP,
NUNC PRO TUNC TO FEBRUARY 17, 2014**

THIS CAUSE came before the Court on _____, 2014 at _____.m. upon the
Liquidating Trustee's (I) Motion to Modify Compensation Structure for Meland Russin &
Budwick, P.A. as to Two Litigation Matters and (II) Application to Employ David S. Mandel
and Mandel & Mandel LLP, *nunc pro tunc* to February 17, 2014 [ECF No. _____] ("**Motion**

and Application”). Upon the representations that Mr. Mandel¹ and the Firm (i) are duly qualified, (ii) hold no interest adverse to the Debtors’ estates in the matters upon which they are engaged, (iii) are disinterested persons as required by 11 U.S.C. § 327(a), (iv) have disclosed any connections with parties set forth in *Fed. R. Bankr. P.* 2014, and (v) their employment is necessary and would be in the best interests of the Debtors’ estates and their creditors, and the Court having reviewed the Court file and based upon the reasons set forth on the record which are incorporated here by reference, it is

ORDERED as follows:

1. The Motion and Application is **GRANTED**, *nunc pro tunc* to February 17, 2014.
2. The Liquidating Trustee is authorized to retain Mr. Mandel and the Firm as special co-counsel with respect to the GECC Litigation and M&I Litigation, pursuant to 11 U.S.C. §§ 327, 330 and 331, and the terms set forth in the Motion and Application.
3. With respect to the GECC Litigation, MR&B and the Applicant will be compensated as follows:
 - A. As to MRB, prior to the adjudication of all summary judgment motions, MR&B shall receive 27% of any affirmative recovery obtained. After the adjudication of all summary judgment motions, MR&B shall receive 24.75% of any affirmative recovery. In the event of an appeal, MR&B shall receive an additional 5% of any affirmative recovery.
 - B. As to the Applicant, prior to the adjudication of all summary judgment motions, Applicant shall receive 6% of any affirmative recovery. After the adjudication of

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

all summary judgment motions, Applicant shall receive 8.25% of any affirmative recovery.

4. With respect to the M&I Litigation, MR&B and the Applicant will be compensated as follows:

A. MR&B and the Applicant will charge 75% of their respective hourly rates, without imposition of a holdback per the monthly invoicing procedures established by this Court in this proceeding.

B. MR&B's contingency fee shall be reduced to 8% of any affirmative recovery.

C. Applicant shall receive a contingency fee of 2% of any affirmative recovery.

5. With respect to the M&I and GECC Litigations, the estates shall continue to pay any associated costs or expenses, including those of experts and consultants. MR&B and the Applicant shall be reimbursed for any such costs or expenses which they advance or incur.

6. The 18%/82% Pro Rata Allocation Formula shall apply to the monthly reduced rate invoices submitted by MR&B and Applicant with respect to the M&I Litigation.

###

Submitted By:

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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.

2/13/2014

CM/ECF LIVE - U.S. Bankruptcy Court:flsb

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 email notice/service for this case.

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2/13/2014

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