

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

In re:
PALM BEACH FINANCE
PARTNERS, L.P.,

CASE NO. 09-36379-BKC-PGH
Chapter 11

(Jointly Administered)

Debtors.

MOTION TO DEEM LATE FILED PROOFS OF CLAIM AS TIMELY FILED

COMES NOW Blackpool Absolute Return Fund, LLC (“**Blackpool Absolute**”), Blackpool Partners, LLC (“**Blackpool Partners**”), Kenneth A. Ralston and Raymond G. Feldman Family Venture, L.P. (the “**Limited Partnership**”) (collectively referred to as the “**Creditors**”), by and through undersigned their counsel, and file this Motion to Deem Late Filed Proofs of Claim as Timely Filed (the “**Motion**”) and in support thereof, state as follows:

BACKGROUND

1. On November 30, 2009, Palm Beach Finance Partners, LP (“**Palm Beach Finance Partners**”) and Palm Beach Finance II, LP (“**Palm Beach Finance II**”) (collectively referred to as the “**Debtors**”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. By order entered on December 1, 2009, the cases were jointly administered (DE 19).
2. On December 1, 2009, the Court set April 6, 2010 (the “**Claims Bar Date**”) as the last day to file Proofs of Claim.
3. At this time, no distributions have been made by the Chapter 11 Trustee, Barry E. Mukamal, who was appointed on January 29, 2010.

A. The Debtors and Nature of the Creditors' Claims

4. The Debtors were formed for the purpose of soliciting funds from third parties, whose funds were then invested with the Petters Company, Inc. and other investment vehicles.

5. Thomas J. Petters owned and controlled the Petters Company, Inc. The Petters Company, Inc. and several related entities are currently Chapter 11 debtors in the United States Bankruptcy Court for the District of Minnesota (Case No. 08-45257). The Minnesota bankruptcy cases are the result of a Ponzi scheme executed by Mr. Petters and others working for him in which third parties were fraudulently induced to invest funds to purportedly purchase merchandise that would be resold to retailers for a profit. In reality, no such merchandise was purchased and the funds invested were used for other purposes.

6. On or about October 2, 2008 the United States of America filed civil and criminal actions against Mr. Petters and his entities in the United States District Court for the District of Minnesota.

7. Prior to the Debtors' bankruptcy filings, the Creditors were fraudulently induced to loan money to the Petters Company, Inc. through the Debtors. The Creditors loans are broken down as follows:

- a. Blackpool Absolute loaned \$818,899 to Palm Beach Finance Partners and loaned Palm Beach Finance II \$1,816,990. See Claim Number 27 in the Palm Beach Finance Partners claims register and Claim Number 27 in the Palm Beach Finance II claims register;
- b. Blackpool Partners loaned \$1,505,434 to Palm Beach Finance II. See Claim Number 26 in the Palm Beach Finance II claims register;

- c. Mr. Ralston loaned \$500,000 to Palm Beach Finance II. See Claim Number 28 in the Palm Beach Finance II claims register; and
- d. The Limited Partnership loaned \$530,247.71 to Palm Beach Finance II. See Claim Number 29 in the Palm Beach Finance II claims register.

8. Therefore, the Creditors are prepetition creditors of the Debtors.

B. The Reason for Late Filing of Proofs of Claim

9. In late May of 2010, Raymond G. Feldman (“Mr. Feldman”), the attorney for the Limited Partnership, was first informed of the Debtors’ bankruptcy filing and later advised to look for a proof of claim by J. Douglas Ralston. Mr. Feldman ultimately found that a proof of claim form was addressed and mailed in his individual name to an incorrect address in Encino, California where his son lives. The correct address for the Limited Partnership is 2 West Second Street, Suite 900, Williams Center Tower II, Tulsa, Oklahoma 74103. No notice has yet been addressed or mailed to the Limited Partnership at its correct address. See Affidavit of Raymond G. Feldman attached hereto as **Exhibit “A.”**

10. After learning of the Debtors’ bankruptcy filing, Mr. Feldman sought bankruptcy counsel, and ultimately retained the law firm of Shraiberg, Ferrara & Landau, P.A. on June 1, 2010. At that time, Mr. Feldman learned that there was a deadline to submit a proof of claim in the Debtors’ bankruptcy case, and said deadline had expired. See Affidavit of Raymond G. Feldman attached hereto as **Exhibit “A.”**

11. On June 2, 2010, the undersigned filed a proof of claim on behalf of the Limited Partnership.

12. With respect to Blackpool Absolute, Blackpool Partners (Blackpool Absolute and Blackpool Partners shall collectively be referred to as the “**Blackpool Entities**”) and Kenneth A.

Ralston, J. Douglas Ralston, a principal of the Blackpool Entities and Kenneth A. Ralston's son, received notice of the Debtors' bankruptcy filing. J. Douglas Ralston has assumed responsibility over the funds loaned by the Blackpool Entities and his father. See Affidavit of J. Douglas Ralston attached hereto as **Exhibit "B."**

13. In the Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors and Deadlines (DE 7) under the section "Deadline to File a Proof of Claim", J. Douglas Ralston confused the deadline for governmental units to file a proof of claim, which is June 1, 2010, with the deadline for all creditors to file a proof of claim, which is April 6, 2010. See Affidavit of J. Douglas Ralston attached hereto as **Exhibit "B."**

14. Upon returning home from a week long family vacation on April 5th, J. Douglas Ralston discovered a letter postmarked around March 25th, which stated that Barry E. Mukamal had been appointed the Chapter 11 Trustee in the instant bankruptcy case and was being represented by Jonathan S. Feldman. See Affidavit of J. Douglas Ralston attached hereto as **Exhibit "B."**

15. Kenneth A. Ralston received the same letter well after April 6, 2010 because he spends the winter and spring in Arizona and has his mail forwarded to him. See Affidavit of J. Douglas Ralston attached hereto as **Exhibit "B."**

16. On or about April 6, 2010, J. Douglas Ralston contacted Mr. Feldman and spoke with him about the confusion over the proper deadline to file a proof of claim. At that time, Mr. Feldman indicated that he believed the claims of the Blackpool Entities and Kenneth A. Ralston should be treated as equity rather than general unsecured claims. As such, J. Douglas Ralston did not cause a proof of claim to be filed. See Affidavit of J. Douglas Ralston attached hereto as **Exhibit "B."**

17. A few weeks later, J. Douglas Ralston learned that victims of the Petters' Ponzi scheme were being treated as creditors in the Petters' bankruptcy proceedings. See Affidavit of J. Douglas Ralston attached hereto as **Exhibit "B."**

18. Thereafter, J. Douglas Ralston retained the law firm of Shraiberg, Ferrara & Landau, P.A. on May 28, 2010 and proofs of claim were filed on behalf of the Kenneth A. Ralston and the Blackpool Entities on June 2, 2010.

RELIEF REQUESTED AND BASIS FOR RELIEF

19. Federal Rule of Bankruptcy Procedure 9006(b) allows the claims bar date to be extended where the failure to timely act "was the result of excusable neglect."

20. The United States Supreme Court articulated the standard of "excusable neglect" for allowing a proof of claim to be filed after the claims bar date in the case of *Pioneer Inv. Serv.'s Co. v. Brunswick Assoc.'s Ltd. P'ship*, 507 U.S. 380 (1993), explaining that a court's determination of whether the neglect is "excusable" should be an equitable one, whereby a court should "tak[e] account of all relevant circumstances surrounding the party's omission." *Id.* at 395. The circumstances courts should consider include: (1) the danger of prejudice to the debtor; (2) the length of delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. *Id.*

21. Courts have found excusable neglect and determined that creditors have a right to file late claims where they have not received actual notice of the bankruptcy. *See, e.g., In re Anchor Glass Container Corp.*, 325 B.R. 892, 897 (Bankr. M.D. Fla. 2005).

22. In the instant case there is no danger of prejudice to the Estate in deeming the Creditors' claims as timely filed because the Trustee has made no distributions to date.

23. Furthermore, the Creditors acted in good faith in filing this motion promptly after retaining counsel in this matter and after learning of the bankruptcy.

24. The delay was not within the control of the Limited Partnership because the Limited Partnership was unaware of the Claims Bar Date and the Debtors' bankruptcy filings. Additionally, J. Douglas Ralston did not fully understand his right to assert an unsecured claim in the instant cases.

25. Based upon the foregoing, there is sufficient cause for the Court to find excusable neglect on the part of the Creditors and the Creditors' proofs of claim should be deemed timely filed.

WHEREFORE, the Creditors seek the entry of an order granting the Motion, deeming their proofs of claim as timely filed, and granting any other and further relief this Court deems just and equitable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Motion to Allow Late Filed Claim was served this 4th day of June, 2010, via CM/ECF to all parties registered to receive such notice via electronic filing.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida, and I am in compliance with the additional qualifications to practice in this Court as set forth in Local Rule 2090-1(A).

SHRAIBERG, FERRARA & LANDAU, P.A.

Attorneys for the Creditors
2385 NW Executive Center Drive, Suite 300
Boca Raton, Florida 33431
Telephone: 561-443-0800
Facsimile: 561-998-0047
Email: jpage@sfl-pa.com

By: /s/ John E. Page
John E. Page
Florida Bar No 0860581

EXHIBIT "A"

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

IN RE:

PALM BEACH FINANCE PARTNERS, L.P.

Debtors,

Chapter 11

Case No: 09-36379-BKC-PGH

(Jointly Administered)

AFFIDAVIT OF RAYMOND G. FELDMAN

1. My name is Raymond G. Feldman. I am over the age of eighteen (18) years and am otherwise competent to execute this Affidavit.

2. I make this Affidavit from my personal knowledge and under penalty of perjury.

3. I am the attorney for the Raymond G. Feldman Family Venture, L.P. (the "Limited Partnership").

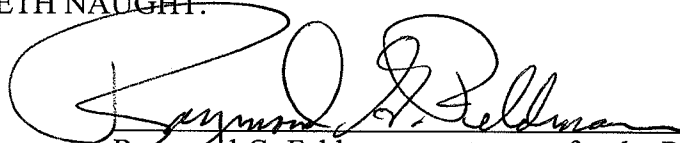
4. Prior to Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (collectively, the "Debtors") filing for Chapter 11 bankruptcy protection on November 30, 2009, the Limited Partnership was fraudulently induced to loan over \$500,000.00 to Palm Beach Finance II, L.P. Since then, I have learned that the Limited Partnership money was invested by the Debtors in a Ponzi scheme executed by Thomas J. Petters.

5. In December of 2009, my wife and I left the country for South America and did not return until mid-March of 2010. In late May of 2010, I was first informed of the Debtors' bankruptcy filing and later advised to look for a proof of claim by J. Douglas Ralston. I ultimately found that a proof of claim form was addressed and mailed in my individual name to an incorrect address in Encino, California where my son lives. The correct address for the Limited Partnership is 2 West Second Street, Suite 900, Williams Center Tower II, Tulsa,

Oklahoma 74103. Attached here as **Exhibit "1"** is the 2009 Annual Certificate of Limited Partnerships which shows the correct address for the Limited Partnership. No notice has yet been addressed or mailed to the Limited Partnership at its correct address.

6. After learning of the Debtor's bankruptcy filing, on behalf of the Limited Partnership, I sought bankruptcy counsel, and ultimately retained the law firm of Shraiberg, Ferrara & Landau, P.A. on June 1, 2010. At that time, I learned that there was a deadline to submit a proof of claim in the Debtors' bankruptcy cases, and said deadline had expired.

FURTHER AFFIANT SAYETH NAUGHT.


Raymond G. Feldman, as attorney for the Raymond
G. Feldman Family Venture, L.P.

STATE OF OKLAHOMA

COUNTY OF TULSA

SWORN TO AND SUBSCRIBED before me this 4th day of June 2010 by Raymond G. Feldman as attorney for the Raymond G. Feldman Family Venture, L.P., who is known to me, or who produced Membership Card in the Bar Association of the State of Oklahoma as identification.



Notary Public, State of Oklahoma
Print Name: Jami Simmons



EXHIBIT "1"

OKLAHOMA SECRETARY OF STATE

M. Susan Savage
Secretary of State

2300 N. LINCOLN BLVD., ROOM 101
OKLAHOMA CITY, OK 73105-4897

Brad Henry
Governor

~~THE~~ RAYMOND G. FELDMAN FAMILY
VENTURE LIMITED PARTNERSHIP
STE 900 WILLIAMS CENTER TOWER II
2 WEST 2ND ST
TULSA OK 74103

FILING NUMBER: 3300577431
ANNIVERSARY DATE: Dec 27, 2009

Filed 11/2

2009 ANNUAL CERTIFICATE
LIMITED PARTNERSHIPS

Pursuant to Title 54, Oklahoma Statutes, Section 311.1, every domestic limited partnership and every foreign limited partnership registered to do business in this state shall file an Annual Certificate each year in the Office of the Secretary of State. The certificate shall confirm it is an active business and must include its principal place of business address.

1. Is the limited partnership active: yes no
2. The current mailing address of the limited partnership is:

2 W. 2nd St, Ste 900 Williams Center Tower II, Tulsa, Ok. 74103

The annual certificate is due during the anniversary month of each year and must be accompanied by the filing fee in the amount of **\$50.00.**

A limited partnership that neglects, refuses or fails to file the annual certificate within sixty (60) days after the date due shall cease to be in good standing as a domestic limited partnership or registered as a foreign limited partnership in this state.

Signature of General Partner

Richard G. Feldman

To file an annual report online, please follow the directions below:

- Select the Web Filings link on the Business Entities tab at <https://www.sooneraccess.state.ok.us>.
- key your filing number 3300577431 in the text box in the Change Documents area and click File Document.
- Select Annual Report from the drop-down list of Filing Types and click Continue.
- Indicate whether the LP is currently active, and fill in the street address of the principal place of business, click Continue.
- Sign the document by keying in the name of either an individual or business. You may click Next to add additional signatures. Click Continue.
- Review the annual report for errors and, when satisfied, click Submit.
- You will be notified via email when the filing has been processed and is available for download from the Briefcase tab.

Otherwise to ensure proper credit, you must return this notice along with your check in the amount of \$50.00, payable to the OKLAHOMA SECRETARY OF STATE.

EXHIBIT "B"

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

IN RE:

PALM BEACH FINANCE PARTNERS, L.P.

Debtors,

Chapter 11

Case No: 09-36379-BKC-PGH
(Jointly Administered)

AFFIDAVIT OF J. DOUGLAS RALSTON

1. My name is J. Douglas Ralston. I am over the age of eighteen (18) years and am otherwise competent to execute this Affidavit.
2. I make this Affidavit from my personal knowledge and under penalty of perjury.
3. I am a principle of Blackpool Absolute Return Fund, LLC. and Blackpool Partners, LLC (the "Blackpool Entities"), and the son of Kenneth A. Ralston.
4. I am the responsible person handling claims on behalf of the Blackpool Entities and Kenneth A. Ralston regarding the fraudulently induced loans that were invested with Thomas J. Petters.
5. On November 30, 2009, Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Prior to the Debtors filing for Chapter 11 bankruptcy protection on November 30, 2009, the Blackpool Entities were fraudulently induced to loan over \$4.1 million and Kenneth A. Ralston was fraudulently induced to loan over \$500,000 to the Debtors. Since then, I have learned that our money was invested by the Debtors in a Ponzi scheme executed by Thomas J. Petters.

6. In the Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors and Deadlines under the section "Deadline to File a Proof of Claim", J. Douglas Ralston confused the deadline for governmental units to file a proof of claim, which is June 1, 2010, with the deadline for all creditors to file a proof of claim, which is April 6, 2010.

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8. My father received the same letter well after April 6, 2010 because he spends the winter and spring in Arizona and has his mail forwarded to him.

9. On or about April 6, 2010, I contacted Mr. Feldman and spoke with him about our confusion over the proper deadline to file a proof of claim. At that time, Mr. Feldman indicated that he believed the claims of the Blackpool Entities and Kenneth A. Ralston should be treated as equity rather than general unsecured claims. As such, I did not cause a proof of claim to be filed. A few weeks later, I learned that victims of the Petters' Ponzi scheme were being treated as creditors in the Petters' bankruptcy proceedings.

10. Thereafter, I retained the law firm of Shraiberg, Ferrara & Landau, P.A. on May 28, 2010.

FURTHER AFFIANT SAYETH NAUGHT.

J. Douglas Ralston
J. Douglas Ralston

STATE OF ILLINOIS

COUNTY OF LAKE

SWORN TO AND SUBSCRIBED before me this 4 day of June 2010 by J. Douglas Ralston, who is known to me, or who produced ILLINOIS DRIVERS LICENSE as identification.



Alfred R. Crow
Notary Public, State of ILLINOIS
Print Name: ALFRED R CROW