

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
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In re: CHAPTER 11
PALM BEACH FINANCE PARTNERS, L.P., Case No. 09-36379-PGH
PALM BEACH FINANCE II, L.P., Case No. 09-36396-PGH
(Jointly Administered)
Debtors.

**TRUSTEE’S MOTION TO APPROVE HYBRID FORM OF
COMPENSATION FOR MELAND RUSSIN & BUDWICK, P.A.**

The Chapter 11 Trustee, Barry E. Mukamal (“*Trustee*”) files this Motion to approve a hybrid form of compensation for Meland Russin & Budwick, P.A. (“*MR&B*”) as counsel for the Trustee and in support states as follows:

1. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. On November 30, 2009, Palm Beach Finance Partners, L.P. (“*PBF*”) filed its voluntary petition under Chapter 11 of the United States Bankruptcy Code [D.E. 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 (“*PBFII*,” and together with PBF, the “*Debtors*”) [D.E. 19].

3. 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 [D.E. 100].

4. On January 29, 2010, the United States Trustee appointed the Trustee as the trustee of both Debtors [D.E. 107].

5. The Trustee has employed Michael S. Budwick, Esq. and the law firm of MR&B as his attorneys in these bankruptcy proceedings and any related contested matters and adversary proceedings, as approved by the Court order dated February 12, 2010 [D.E. 121].

6. The Debtors have no tangible assets of material value, other than the return of less than \$200,000 in unused retainers held by their prior professionals,¹ which is relatively insignificant given the complexities and requirements of these cases.

7. A significant potential asset of the Debtors is their filed unsecured claims in the *Petters Company, Inc. et al* Chapter 11 pending in the United States Bankruptcy Court for the District of Minnesota, jointly administered under Case No. 08-45257 (the “*Petters Bankruptcy Cases*”). It appears that the claims of the Debtors may approximate roughly 1/3 of the entire unsecured creditor body in the *Petters Bankruptcy Cases*. However, at this stage the timing and amount of any distribution can not be estimated with any level of precision.

8. First, there unfortunately appear to be little if any distributable assets at this stage of the *Petters Bankruptcy Cases*. Virtually any recovery in those cases will likely be sourced from the recoveries from litigation yet to be filed by the *Petters* Trustee. The two year deadline pursuant to

¹ Certain insiders (David Harrold and Bruce Prevost) have contended those monies belong to them individually and are not property of the estate. *See* D.E. 153 and 154]. While the insiders have withdrawn (allegedly without prejudice) their objection to fee applications of the Debtors’s prior professionals, it is unclear whether they have formally and permanently abandoned this position.

11 U.S.C. § 546 within which the *Petters* Trustee may file certain actions expires in October 2010. To date the *Petters* Trustee has filed few actions as his forensic accountants are concluding an expansive analysis.

9. Second, the Trustee potentially may face opposition to allowance of the Debtors' claims and, if so, will devote significant resources towards defending the validity of those claims. One creditor has formally objected to the Debtors' claims as against one *Petters* affiliate. After argument in Minnesota, the Minnesota Bankruptcy Court denied that objection without prejudice. A second litigious, alleged creditor in the *Petters* Bankruptcy Cases has suggested in a pleading filed in connection with Mr. *Petters*' criminal restitution proceeding that the Debtors' claims should be disallowed in their entirety.

10. Thus, while significant resources will be expended in connection with the *Petters* Bankruptcy Cases, it is impossible to identify the timing or quantify the amount of any eventual distribution.

11. The litigation claims which MR&B will pursue on behalf of the estate are expected to be complex and contested. The estates will likely incur potentially meaningful expenses in connection with the pursuit of those recoveries, such as expert witnesses, travel expenses and deposition transcripts. As such, the Debtors lack the financial capacity to fund payment of MR&B's fees on a strict hourly basis and MR&B will pursue these litigation claims at risk of nonpayment of its fees. Perhaps more significant, the Trustee does not believe that the estates should bear the sole financial risk relative to the outcome of the litigation to be pursued and that it is appropriate for counsel to be paid a reduced hourly rate coupled with a partial contingency component.

12. As the Court is aware, the potential claims being investigated are claims against former insiders, financial institutions, professionals, and others. The claims to be brought will be based on common law tort as well as fraudulent transfer theories.

13. As of the date of the filing of this motion, the Trustee has executed a settlement agreement with Kaufman Rossin & Co. and Kaufman Rossin & Co. Cayman. The Trustee will seek approval and implementation of the agreement pursuant to a plan of liquidation. For the past several months, the financial terms of a hybrid form of compensation arrangement have been the subject of extensive discussions and negotiations not only as between the Trustee and MR&B but also with Geoffrey Varga, as Joint Official Liquidator for Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd. Mr. Varga is a substantial creditor of one of the two Debtors, PBFII, and agrees that the proposed hybrid compensation arrangement set forth herein is fair and appropriate as to PBFII and supports its approval.

Proposed Form of Hybrid Compensation

14. As a result, the Trustee has determined that it would be appropriate to apply a hybrid form of compensation for MR&B.

15. MR&B's hourly rates for its professionals vary. The current hourly rates for the attorneys with primary and day to day responsibility for this matter range from \$315 to \$500. The Trustee and MR&B seek to convert the terms of MR&B retention as set forth below.

16. MR&B shall reduce its hourly rates for all litigation matters brought by it on behalf of the Debtors to 75% of its standard rates then in effect. MR&B will apply for compensation at these reduced rates without imposition of a holdback.

17. MR&B shall be paid an additional fee in the amount of 10% of any affirmative recovery received by the Debtors' estates and allocated to Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. from a litigation matter pursued by MR&B. For instance, if the Trustee utilizes a separate, special counsel to prosecute a particular action, MR&B will not be entitled to any recovery or payment from the proceeds of that action.

18. This hybrid form of compensation would apply whether a matter is resolved pre or post filing of a lawsuit, regardless of the stage of litigation, and apply to the pending litigation against Kaufman Rossin and any recovery allocated to the Debtors' estates. MR&B would file fee applications in connection with the reduced hourly fees. This form of compensation would apply to all pending litigation filed by MR&B and any litigation to be filed by MR&B on behalf of Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. MR&B will maintain a separate time category for each litigation matter and attempt to segregate time by each litigation matter as accurately as possible.

19. The Trustee requests that the form of hybrid compensation apply post confirmation of any liquidating plan or post conversion in the event for any reason that the cases are converted to Chapter 7.

20. MR&B shall charge 100% of its hourly rates for all non litigation matters and all services associated with the Petters Bankruptcy Cases or any related receivership, forfeiture or restitution proceedings. However, depending on the outcome and results achieved in connection with the Debtors' cases, including the results of and amounts of distributions from the Petters Bankruptcy Cases, MR&B shall be entitled to seek additional fees based on the results achieved,

subject to application and approval by the Court.

21. In the event for any reason that the estates are financially unable to pay the hourly portion of MR&B fees, the Trustee reserves the right to revisit and restructure the form of hybrid arrangement set forth herein, subject to this Court's approval.

WHEREFORE, the Trustee respectfully requests that the Court grant this motion, enter an Order approving the proposed form of hybrid compensation for Michael S. Budwick and the law firm of MR&B as set forth above and provide that the form of compensation shall apply post confirmation of any plan of liquidation or conversion of the cases to Chapter 7, as well as grant such other and further relief as this Court deems just and proper.

Dated this 26th day of July, 2010.

s/ Michael S. Budwick
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