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., PALM BEACH FINANCE II, L.P.,	Case No. 09-36379-EPK Case No. 09-36396-EPK (Jointly Administered)
Debtors. _____/	

LIQUIDATING TRUSTEE'S MOTION TO APPROVE (1) AMENDMENT TO SETTLEMENT WITH BMO HARRIS BANK N.A.; AND (2) PAYMENT OF CONTINGENCY FEE

Barry E. Mukamal, in his capacity as liquidating trustee ("***Trustee***") for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance Partners II Liquidating Trust (together, the "***Trusts***"), files this motion (1) to approve an amendment to a previous settlement with BMO Harris Bank N.A., as successor by merger to M&I Marshall & Ilsley Bank ("***BMO***," and together with the Trustee, "***Parties***"); and (2) to approve payment of contingency fee ("***Motion***"). In support of this Motion, the Trustee states as follows:

I. Factual Background

1. On November 30, 2009, Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (together, the "***Debtors***") filed voluntary petitions under chapter 11 of the United States Bankruptcy Code. By 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].

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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. On October 21, 2010, the Court entered its Order Confirming Second Amended Plan of Liquidation [ECF No. 444], creating the Palm Beach Liquidating Trusts, appointing the Trustee as liquidating trustee.

5. BMO is a national banking association with headquarters in Chicago, Illinois. Beginning in 2011, the Trustee, on behalf of the Liquidating Trusts, asserted certain claims against BMO as set forth in Adv. Case Nos. 11-03015-PGH ("***BMO I***") and 14-01660-PGH ("***BMO II***," and together with BMO I, "***Adversary Cases***"). In connection with the Adversary Cases, the Trustee made spoliation allegations. BMO denied any liability.

A. The Trustee's 2015 Settlement with BMO and Kelley v. BMO

6. On July 16, 2015, the Trustee filed his Motion (1) To Approve Settlement with BMO Harris Bank N.A.; (2) for Entry of a Bar Order; and (3) to Approve payment of Contingency Fee ("***2015 Settlement Motion***"). ECF. No. 2670. The Trustee refers the Court to the 2015 Settlement Motion and the attached settlement agreement ("***2015 Agreement***") for a description of the specific claims asserted against BMO and the procedural history of the Adversary Cases. The 2015 Agreement provided that BMO would pay $16 million to the Debtors' estates in exchange for various consideration, including a release by the Trusts. The Court granted the 2015 Settlement Motion and approved the 2015 Agreement. [ECF No. 2689]. BMO timely made the settlement payment.

7. On November 14, 2012, Doug Kelley as Chapter 7 Trustee for Petters Company, Inc. and certain affiliates filed an adversary proceeding in the U.S. Bankruptcy Court for the District of Minnesota, Adv. Case No. 12-4288 ("***Kelley v. BMO***"), asserting certain claims against

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BMO. Up until the 2015 Settlement, *Kelley v. BMO* was dormant. The PCI Plan of liquidation was confirmed in April 2016. In August 2016, Mr. Kelley retained new counsel and the litigation became active. Mr. Kelley and BMO proceeded to litigate a number of issues such as whether BMO properly preserved and produced certain evidence and documents, including documents requested by the Trustee in discovery in the Adversary Cases before this Court.

8. In February 2018, based on certain motion practice relative to discovery issues in *Kelley v. BMO*, the Trustee issued Rule 2004 discovery to BMO for the purpose of investigating whether any potential additional claims might exist against BMO based on any potential discovery misconduct in the Adversary Cases. *See* ECF No. 3425.

9. BMO informally disputed the appropriateness of this Rule 2004 discovery, asserting, among other things, that any claim had been released. After further informal discussions, the Trustee and BMO mediated in August 2018 in Miami, Florida. While no resolution was reached, the Parties entered into a tolling agreement as the discovery disputes between the parties in *Kelley v. BMO* continued to advance.

10. On July 1, 2019, the Minnesota Bankruptcy Court in *Kelley v. BMO* entered an Order Granting Plaintiff's Motion for Rule 37 Sanctions for Defendant's Spoliation of Evidence ("***Sanctions Order***").[1] Significantly, the Minnesota Bankruptcy Court ruled that BMO failed to preserve and destroyed certain evidence, and in particular, provided a false sworn interrogatory response to the Trustee in the Adversary Cases.

11. In September 2019, the Trustee filed his motion for third interim distributions in these Bankruptcy Cases [ECF Nos. 3658 and 3660] and referenced the Sanctions Order and his consideration of potential claims against BMO. The Trustee stated that, as a result, he intended to

[1] ECF No. 353 in *Kelley v. BMO*.

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reserve a meaningful amount of money to address the possibility he might seek to rescind the 2015 Agreement, or otherwise take necessary or appropriate action.

12. In the meantime, BMO is pursuing its appellate remedies in *Kelley v. BMO* and otherwise challenging the Sanctions Order.

B. Mediation And Settlement

13. On January 20, 2020, the Parties met again in Miami, Florida for a mediation with Ed Dobbs, Esq. of the Atlanta, Georgia law firm of Parker Hudson Rainer & Dobbs, to seek to negotiate a resolution. Mr. Dobbs is a Fellow of the American College of Bankruptcy and a nationally renowned bankruptcy attorney and mediator. The Parties appreciate Mr. Dobbs' efforts and dedication in assisting the Parties in resolving their disputes.

14. Arising from that mediation, the Parties entered into an Amendment to Amended and Restated Stipulation of Settlement ("***Settlement Amendment***"), attached as Exhibit 1.

15. The Settlement Amendment provides that BMO will pay the Trusts $800,000 and provides for certain amendments to the 2015 Agreement that would ensure the Trustee's Rule 2004 discovery would be withdrawn and that any claims by the Trustee against BMO, including those related to the Sanctions Order, are released.

16. Per Settlement Amendment ¶10, the Parties agreed to a ninety (90) day period of confidentiality, after which time the Trustee would file this Motion. In the meantime, on April 22, 2020, the Trustee filed the Settlement Amendment under seal.

II. Relief Requested

17. The Trustee seeks an Order from this Court approving the Settlement Amendment and directing payment of the Contingency Fee (defined below).

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18. Fed. R. Bank. P. 9019(a) provides in relevant part that "[o]n motion ... and after notice and a hearing, the court may approve a compromise or settlement."

19. Approval of a settlement in a bankruptcy proceeding is within the sole discretion of the Court and will not be disturbed or modified on appeal unless approval or disapproval is an abuse of discretion. *In re Arrow Air*, 85 B.R. 886, 890-91 (Bankr. S.D. Fla. 1988).

20. The standards for approval are well-settled and require the Court to inquire into the reasonableness of the proposed settlement. *See, e.g., Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *Florida Trailer and Equip. Co. v. Deal*, 284 F.2d 567, 571 (5th Cir. 1960). The inquiry need only determine whether the settlement falls below the lowest point of the range of reasonableness. *See W.T. Grant Co.*, 699 F.2d at 608; *see also In re Martin*, 91 F.3d 389 (3rd Cir. 1996); *In re Louise's Inc.*, 211 B.R. 798, 801 (D. Del. 1997) (setting forth considerations by the Court for approval of a settlement, including: (i) the probability of success in litigation, (ii) the likely difficulties in collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (iv) the paramount interest of the creditors) (citing *Protective Comm.*, 390 U.S. at 424).

21. The Trustee, in his informed business judgment, submits that approval of the Settlement Amendment is in the best interests of the Debtors' estates.

22. Pursuant to the Second Amended Joint Plan of Liquidation ("***Plan***"), approved by the Court's Order dated October 21, 2010 [ECF No. 444], all monetary consideration received in conjunction with the Settlement Amendment will be allocated and apportioned among the Debtors as follows: 18% to Palm Beach Finance Partners, L.P. and 82% to Palm Beach Finance II, L.P. ("***Pro Rata Allocation Formula***"). The Trustee believes that the Pro Rata Allocation Formula

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should apply to the Settlement Amendment, and through this Motion, the Trustee seeks that specific relief.

A. The Settlement Should Be Approved

23. Based upon these principles, the Trustee submits that the Settlement Amendment falls well above the lowest point of the range of reasonableness and should be approved.

Probability of success in litigation

24. This is a significant consideration that militates in favor of approval of the Settlement Amendment.

25. The Trustee could potentially seek sanctions against BMO or rescission of the 2015 settlement, in connection with the Minnesota Bankruptcy Court's findings in the Sanctions Order. However, BMO has and is challenging those and related conclusions, and BMO could also argue, among other things, that the scope of the release in BMO's 2015 settlement with the Trustee has eliminated the Trustee's ability to seek relief on this basis.[2] Indeed, the Trustee made spoliation allegations in BMO II regarding BMO's discovery failings. At the very least, the probability of success cannot be gauged with certainty and material risk exists that the Trustee will not succeed in any such litigation.

Collectability

26. This is not an issue with respect to the Settlement Amendment.

Complexity of litigation and attendant expense, inconvenience and delay

27. This too is a significant consideration that militates in favor of approval of the Settlement Amendment.

[2] In part, BMO could rely upon *Green Leaf Nursery v. E.I. DuPont De Nemours & Co.*, 341 F.3d 1292 (11th Cir. 2003) and its progeny.

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28. The proposed Settlement Amendment will avoid the need for any further fees or expense related to these issues. The facts and circumstances underlying the discovery giving rise to the Sanctions Order, both before the Minnesota Bankruptcy Court and this Court, and how they relate to the Adversary Cases, is complex, and took place over a number of years before two Bankruptcy Courts. Moreover, the Trustee's resolution of this dispute with BMO will not only bring additional monies into the Trusts, but enables the Trustee to make the next distribution from the Trusts' to their stakeholders with no further need for a holdback on this basis.

Paramount interest of creditors

29. For all the reasons discussed in this Motion, the Settlement Amendment favorably and immediately concludes a complex litigation claim with meaningful litigation risk. And in the event the Settlement Amendment is approved, the Trustee intends to promptly seek approval of a next (fourth) interim distribution to stakeholders. Thus, approval of the Settlement Amendment is in the paramount interest of the Trusts' stakeholders.

C. The Contingency Fee Should Be Approved

30. When the Trustee filed BMO I in November 2011, Meland Russin & Budwick, P.A. ("***MRB***") served as his sole counsel. MRB was to be compensated on a hybrid basis: 75% of its hourly rates plus a 10% contingency fee. [ECF No. 223].

31. In February 2014, this Court granted the Trustee's motion seeking to modify this compensation structure for the BMO I litigation, whereby Mandel & Mandel LLP ("***M&M***") joined MRB as co-counsel. Each firm would be compensated at 75% of hourly rates, with the 10% contingency fee apportioned 8% to MRB and 2% to M&M. ECF No. 2197. The contingency fee related to the 2015 settlement was paid in this manner.

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32. After the 2015 settlement, M&M continued to represent the Trustee as co-counsel in the Trustee's adversary proceeding against General Electric Capital Corporation. M&M's role in that adversary, and in these Bankruptcy Cases, concluded in March 2017.[3]

33. As a result, M&M has not been involved in the assertion of the Trustee's potential claims that are the subject of the Settlement Amendment and this Motion and has not incurred any reduced hourly fees since 2015 as to BMO. MRB alone handled the investigation and negotiations described in this Motion on behalf of the Trustee, for which MRB charged a reduced hourly rate. Accordingly, the Trustee requests that the 10% contingency fee be approved, and that he be authorized and directed to pay this amount to MRB. The Trustee has informed M&M that he does not believe M&M is entitled to 2% of the 10% and the Trustee understands there is no disagreement, given the conclusion of M&M's role as to BMO in 2015.

WHEREFORE, the Trustee respectfully requests that this Court enter an Order as set forth in attached Exhibit 2: (1) approving the Settlement Amendment, including application of the Pro Rata Allocation Formula; (2) directing payment of the Contingency Fee; and (3) granting such other relief this Court deems just and proper.

Dated: July 27, 2020.

s/ Michael S. Budwick
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[3] *See generally* ECF Nos. 3198, 3202, 3206, 3239, 3588 & 3592.

EXECUTION COPY

AMENDMENT TO AMENDED AND RESTATED
STIPULATION OF SETTLEMENT

This Amendment, dated as of April 15, 2020 ("***Amendment***"), to that certain Amended and Restated Stipulation of Settlement dated as of May 26, 2015 ("***Stipulation***") is entered by and among: (i) Barry E. Mukamal, not in his individual capacity, but solely in his capacity as liquidating trustee ("***Liquidating Trustee***") of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, "***Palm Beach Liquidating Trusts***"); and (ii) BMO Harris Bank N.A., as successor by merger to M&I Marshall & Ilsley Bank ("***BMO***") (BMO and the Liquidating Trustee are sometimes referred to individually as a "***Party***," or together, as the "***Parties***"). The terms of this Amendment are as follows:

DEFINED TERMS

Capitalized terms used in this document are defined terms ("***Defined Terms***") that are defined in the Recitals or Definitions section of the Stipulation and at various other points above or elsewhere herein. Such Defined Terms shall apply throughout this Amendment.

RECITALS

The following Recitals are material terms of the Amendment. The Amendment is made with reference to and in contemplation of the following facts and circumstances:

A. On November 30, 2009 (the "***Petition Date***"), Palm Beach Finance Partners, L.P. ("***PBF I***") and Palm Beach Finance Partners II, L.P. ("***PBF II***," together with PBF I, the "***Debtors***") commenced Chapter 11 bankruptcy cases by filing voluntary petitions for relief under Chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida ("***Bankruptcy Court***"), Case Nos. 09-36379-PGH and 09-36396-PGH, respectively ("***Bankruptcy Cases***");

EXHIBIT 1

B. On October 21, 2010, the Bankruptcy Court entered its *Order Confirming Second Amended Plan of Liquidation* [ECF No. 444] ("***Confirmed PBLT Plan of Liquidation***"), creating the Palm Beach Liquidating Trusts and appointing the Liquidating Trustee;

C. The Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, asserts certain claims ("***PBF Claims***") against BMO as set forth in Adv. Case Nos. 11-03015-PGH and 14-01660-PGH in the Bankruptcy Court ("***Adversary Cases***");

D. On October 11, 2008 ("***PCI Petition Date***"), Petters Company, Inc. commenced a Chapter 11 bankruptcy case by filing a voluntary petition for relief under Chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Minnesota ("***MN Bankruptcy Court***"), Case No. 08-45257;

E. On October 17, 2008, the Palm Beach Finance Partners, L.P. and Palm Beach Finance Partners II, LP. filed an appearance and request for notice in the PCI Bankruptcy Cases (as defined below);

F. The PCI Trustee asserts certain claims ("***PCI Claims***") against BMO as set forth in Adv. Case No. 12-04288 in the MN Bankruptcy Court ("***MN BMO Adversary Case***");

G. Ritchie Capital Management L.L.C., *et al,* assert certain claims against BMO as set forth in Case No. 15-cv-01876 ADM/JJK in the United States District Court for the District of Minnesota ("**Ritchie BMO Action**").

H. BMO expressly denies any liability in connection with the PBF Claims, the Adversary Cases, the PCI Claims, the MN BMO Adversary Case, and the Ritchie BMO Action;

I. On March 10-11, 2015, and on various dates thereafter, the Parties met in mediation before C. Edward Dobbs, Esq. ("***Mediator***") to negotiate a resolution of the Adversary Cases ("***Adversary Cases Mediation***"); and

J. To avoid the continued expense and risk of adverse outcome arising from the litigation, as well as incurring costs and expenses associated therewith, among other reasons, the Parties agreed to resolve the Adversary Cases, with the agreement and support of Geoffrey Varga, not in his individual capacity, but solely in his capacity at the time as monitor for the Palm Beach Finance II Liquidating Trust ("***Varga***"), subject to the terms and conditions of the Stipulation and Bankruptcy Court approval ("***Settlement***").

K. On August 25, 2015, the Bankruptcy Court, upon notice and opportunity for hearing, entered in the Bankruptcy Cases that certain Order Granting Liquidating Trustee's Motion (1) to Approve Settlement with BMO Harris Bank N.A.; (2) for Entry of a Bar Order; and (3) to Approve Payment of Contingency Fee ("***Approval Order***") [ECF 2689].

L. Upon the Approval Order becoming a final Order, BMO timely paid the Settlement Payment to the Liquidating Trustee, and the Settlement, including the release of the BMO Released Claims in favor of the BMO Parties set forth in Paragraph 7 of the Stipulation and further reinforced pursuant to the provisions of the Bar Order (pursuant to which the "Releasors" were "permanently barred and enjoined from commencing, prosecuting, or asserting either directly or in any other capacity" any of the "Barred Claims" against any BMO Parties), became effective pursuant to its terms.

M. On or about February 2, 2018, the Liquidating Trustee purported to serve upon counsel for BMO a request for production of documents pursuant to Bankruptcy Rule 2004, along with a related subpoena (collectively, with any subsequent requests for production of documents. testimony, or subpoenas, whether in draft form or otherwise, "***B.R. 2004 Subpoena***"), seeking production of documents directed to be produced by BMO in the MN BMO Adversary Case ("***MN BMO Adversary Discovery Dispute***").

N. In an ensuing exchange of correspondence through their respective counsel, BMO disputed the relevance and appropriateness of the B.R. 2004 Subpoena in light of the terms of the Settlement, the Liquidating Trustee maintained that the B.R. 2004 Subpoena was relevant and appropriate in order to investigate possible new claims, and BMO maintained that any such claims constituted BMO Released Claims and had been expressly released pursuant to the Settlement. Following such correspondence, the Parties, on August 3, 2018, met in mediation before the Mediator to try to negotiate a resolution of the disputes relating to the B.R. 2004 Subpoena.

O. Upon the Trustees' motion [ECF 3543], which came before the Bankruptcy Court for hearing in the Bankruptcy Cases on December 12, 2018, the Bankruptcy Court, on December 17, 2018, entered its Order Granting Trustee's Motion for Approval of Settlement with Geoffrey Varga and Stonehill Master Fund, Ltd. [ECF 3551], pursuant to which, *inter alia*, Varga was to resign as Trust Monitor within five days and not be replaced.

P. On July 1, 2019, the MN Bankruptcy Court entered in the MN BMO Adversary Case its Order Granting Plaintiff's Motion for Rule 37 Sanctions for Defendant's Spoliation of Evidence ("***MN BMO Adversary Discovery Ruling***"). The MN BMO Adversary Case has since been transferred to the United States District Court for the District of Minnesota ("***MN District Court***"), which is also acting as intermediate appellate court with respect to appeals of and objections to purported rulings of the MN Bankruptcy Court in the MN BMO Adversary Case. Without limiting the generality of Recital G of the Stipulation, as well as of Recital H of this Amendment, BMO denies and disputes the factual and legal findings and conclusions set forth in the MN BMO Adversary Discovery Ruling and, among other things, is challenging and seeking before and by the MN District Court the reversal or the vacatur of the MN BMO Adversary Discovery Ruling.

Q. Following the MN BMO Adversary Discovery Ruling, the Parties, on January 30, 2020, met in mediation before the Mediator to attempt to negotiate a resolution of any and all matters relating in any manner whatsoever to the B.R. 2004 Subpoena, as well as of any Claims threatened to be asserted or that could be asserted by the Liquidating Trustee against the BMO Parties in any manner relating to the information sought pursuant to the B.R. 2004 Subpoena (collectively, "***B.R. 2004 Subpoena and Related Matters***").

R. To avoid the continued expense and risk of adverse outcome arising from the litigation of B.R. 2004 Subpoena and Related Matters, as well as to avoid incurring further costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve such matters, subject to the terms and conditions of this Amendment and Bankruptcy Court approval.

NOW, WHEREFORE, it is further stipulated, consented to and agreed, by and among the Parties as follows:

1. The Parties acknowledge and agree that the Recitals and Definitions stated above are incorporated herein.

2. Upon and as of the Amendment Effective Date (as that term is defined below), the provisions of the Stipulation shall be deemed to be amended as follows without any other action being required of the Parties:

A. Definition I. of the Stipulation shall be deemed amended by adding the following, preceded by a comma, at the end thereof:

"as the same may have been amended or supplemented from time to time."

B. The following shall be deemed added to Paragraph 2 of the Stipulation, immediately following the first sentence thereof:

> "Without limiting the generality of the foregoing, and for avoidance of doubt, the Parties hereby acknowledge and agree that the BMO Parties make no, but instead expressly disclaim making any, representation or warranty herein, whether express or implied, relating in any manner whatsoever as to the truth, accuracy, or

completeness of (w) any discovery (including but not limited to document productions, interrogatory responses, answers to requests for admission, or deposition testimony) produced by the BMO Parties in the Bankruptcy Cases, whether pursuant to any subpoena pursuant to B.R. 2004 or otherwise, or in the Adversary Cases, discovery having remained open in all respects in the Adversary Cases as of the original date of this Stipulation, (x) any statement otherwise made by the BMO Parties in the Adversary Cases, whether in any court paper, during any settlement discussions or negotiations, or otherwise, (y) any discovery produced or statement otherwise made by the BMO Parties in the MN BMO Adversary Case, or (z) any discovery produced or statement otherwise made by the BMO Parties in the Ritchie BMO Action, and the Liquidating Trustee acknowledges not having relied in entering into the Settlement and this Stipulation on any discovery produced by or any statement otherwise made by or about the BMO Parties at any time and in any matter or circumstance, including, without limitation, in the Adversary Cases, in the MN BMO Adversary Case, or in the Ritchie BMO Action.

C. The following shall be deemed added to Paragraph 4 of the Stipulation at the end thereof:

"The Settlement Payment shall be augmented by the $800,000 paid (or caused to be paid) by BMO pursuant to Paragraph 3 of that certain Amendment to this Stipulation dated as of April 15, 2020."

D. The following shall be deemed added to Paragraph 7 of the Stipulation at the end thereof:

"Without limiting the generality of the other provisions of this Stipulation, (1) the Parties expressly agree that any and all Claims against any BMO Party for the rescission, cancellation, or reformation of, or for any other relief of any nature whatsoever with respect to, the Settlement or this Stipulation (including, as the same may be amended from time to time, including, without limitation, by that certain Amendment to this Stipulation dated as of April 15, 2020) based on or in any manner relating to abuse of process, mistake, duress, fraud in the inducement, fraud on the court, intentional misrepresentation, negligent misrepresentation, or any other theory, whether any such Claims are based (or asserted to be based) on facts, events, transactions, or scenarios known or unknown, discovered or undiscovered, discernable or non-discernable, disclosed or hidden as of the original date of the Stipulation or as of any other date, expressly are included within the Defined Term of, and thus, constitute, "BMO Released Claims", and (2) without limiting the generality of the foregoing, the Parties expressly agree that no PB Party may (and no PB Party shall be entitled or permitted to) contest, reform, seek to rescind or cancel, or otherwise challenge the Settlement, this Stipulation (including, as the same may be amended from time to time, including, without limitation, by that certain Amendment to this Stipulation dated as of April 15, 2020) (including the release provisions of this Paragraph 7), on any basis

whatsoever, including, without limitation, on the basis that the Settlement or this Stipulation (including, as the same may be amended from time to time, including, without limitation, by that certain Amendment to this Stipulation dated as of April 15, 2020) (including expressly the release provisions of this Paragraph 7), was procured by or entered into as a result of abuse of process, mistake, duress, fraud in the inducement, fraud on the court, intentional misrepresentation, or negligent misrepresentation, whether any such Claim is based (or asserted to be based) on facts, events, transactions, or scenarios known or unknown, discovered or undiscovered, discernable or non-discernable, disclosed or hidden as of the original date of the Stipulation or as of any other date.

Also without limiting the generality of the other provisions of this Stipulation, the PB Parties shall be deemed to fully waive, release, hold harmless, and discharge, now and forever, the BMO Parties (including, without limitation, BMO's attorneys, whether in-house or outside attorneys and whether past, present, or future) from any and all Claims relating in any way to any conduct by any of the BMO Parties (including, without limitation, BMO's attorneys, whether in-house or outside attorneys and whether past, present, or future) in connection with the Adversary Cases, the MN BMO Adversary Case, the Ritchie BMO Action, or any other litigation, case, or proceeding, including but not limited to any Claims of abuse of process, mistake, duress, fraud in the inducement, fraud on the court, intentional misrepresentation, negligent misrepresentation, or any other Claims arising out of the institution, prosecution, defense, assertion, or resolution of any litigation, case, or proceeding. The list of Claims released includes, but is not limited to, any Claims for attorneys' fees, costs of suit, or sanctions of any kind.

In addition, the PB Parties fully understand that the facts upon which the Settlement or this Stipulation (including as the same may be amended from time to time, including, without limitation, by that certain Amendment to this Stipulation dated as of April 15, 2020) are executed may be found hereafter to be other than or different from the facts now believed by the PB Parties (including by their attorneys) to be true. The PB Parties expressly and knowingly accept and assume the risk of such possible differences in facts and agree that the Settlement and this Stipulation shall remain effective notwithstanding any such differences in facts. The PB Parties (including their attorneys) may hereafter discover facts other than, different from, or in addition to those that they know or believe to be true with respect to the BMO Released Claims, but, without limiting the generality of the other provisions of this Stipulation, the PB Parties hereby expressly and knowingly waive and fully, finally, and forever settle, release, and discharge any known or unknown, suspected or unsuspected, contingent or non-contingent BMO Released Claims, whether or not concealed or hidden, and without regard to the subsequent discovery or existence of such other, different, or additional facts. Without limiting the generality of the foregoing or any other provision of this Stipulation, the PB Parties agree that, each Party shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The PB Parties acknowledge and are deemed to acknowledge that the waivers in this paragraph were separately bargained for and are a material element of the Settlement and this Stipulation."

E. Paragraph 27 of the Stipulation shall be deemed amended to substitute the following as the address information for BMO:

"(b) If to BMO:

BMO Harris Bank, N.A.
111 West Monroe Street, 19E
Chicago, IL 60603
Attention: Jeffrey Jamison
Associate General Counsel and
Senior Vice President
email: Jeffrey.Jamison@bmo.com

With a copy to:

Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 60606-4637
Attention: Lucia Nale, Esq.
Debra Bogo-Ernst, Esq.
Tel: (312) 782-0600
Fax: (312) 701-7111"

3. In full and final resolution and settlement of the B.R. 2004 Subpoena and Related Matters, BMO shall pay (or cause to be paid) eight hundred thousand dollars ($800,000) by no later than the Amendment Payment Date (as that term is defined below), via wire transfer pursuant with written instructions to be provided by the Liquidating Trustee to BMO.

4. The "***Amendment Payment Date***" shall be the 10th business day from the latest of the following events: (i) the date on which the Bankruptcy Court's order approving this

Amendment (substantially in the form of Exhibit 1 hereto) becomes a final non-appealable order; (ii) the date of final resolution of all appeals and the expiration of time for any further appeals from or related to the Bankruptcy Court's order approving this Amendment; and (iii) the receipt by BMO from the Liquidating Trustee of: (x) the wire transfer instructions referenced in Paragraph 4 above; and (y) a fully completed and executed, current W-9 form to allow BMO to process the Settlement Payment. This Stipulation is contingent upon the amendment of the definition of the defined term "Barred Claims" as used in the Bar Order pursuant to the entry of an Order substantially in the form attached as Exhibit 1 hereto, and, without limiting the generality of the other provisions of this Paragraph 4, if for any reason such Order is not entered, this Amendment shall be null and void in its entirety. The date on or before the Amendment Payment Date on which BMO shall pay (or cause to be paid) the $800,000 to the Liquidating Trustee in accordance with the provisions of Paragraph 3 of this Amendment shall constitute the "Amendment Effective Date."

5. The Liquidating Trustee shall be deemed to have withdrawn the B.R. 2004 Subpoena immediately upon the receipt in cleared funds of the $800,000 payment and, without limiting the generality of the provisions of the Stipulation, thereafter shall be barred from again serving the 2004 Subpoena upon any BMO Party or from serving any other request for documents, testimony, or subpoena upon any BMO Party relating in any manner whatsoever to any of the BMO Released Claims.

6. Except as expressly amended hereby, all of the terms, covenants, conditions, and other provisions of the Stipulation shall remain unchanged, and the Stipulation (as amended by this Amendment) shall continue to be, and shall remain, in full force and effect. After the Amendment Effective Date, all references in the Stipulation to the Stipulation shall be deemed to be to the Stipulation as amended by this Amendment. Any conflict between the Stipulation in its

original form and the Stipulation as amended by this Amendment shall be governed by the Stipulation as amended by this Amendment.

7. The Parties acknowledge that this Amendment is a compromise and settlement of a controversy. No Party admits, and each expressly denies, any liability on its/his part.

8. This Amendment constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and there are no other stipulations, agreements, representations, or warranties other than those specifically set forth herein. All prior agreements and understandings between the Parties concerning the subject matter hereof are superseded by the terms of this Amendment.

9. Each of the Parties acknowledges that he or it has read all of the terms of this Amendment, has had an opportunity to consult with counsel of his or its own choosing or voluntarily waived such right, and enters into those terms voluntarily and without duress.

10. Following the execution of this Amendment by all Parties, the Liquidating Trustee shall file, each in form reasonably acceptable to the Parties (i) an agreed motion ("***Seal Motion***") with the Bankruptcy Court to file under seal a copy of this Amendment with a statement that pursuant to this Paragraph 10 the Liquidating Trustee will file a Rule 9019 motion ("***9019 Motion***") on or about 90 days later. The Seal Motion shall be consistent with the confidentiality requirements set forth in this Paragraph 10 and Paragraph 11. The Seal Motion shall be filed under seal pursuant to Rule 5003-1(D)(1)(a) of the Local Rules of the Bankruptcy Court, shall be served only on the Office of the United States Trustee, and shall contain a request that it be sealed for a period of ninety (90) days following its filing. Unless otherwise ordered by the Bankruptcy Court, the Liquidating Trustee will file the Rule 9019 Motion in the public docket on or about the ninetieth day following the filing of the Seal Motion and follow the applicable local rules to provide the required notice to other parties of record in the Bankruptcy Cases prior to the

hearing on the 9019 Motion. In the event the Bankruptcy Court denies the Seal Motion or sets the Seal Motion for hearing prior to the first regular business day after the ninetieth (90th) day following the filing of the Seal Motion, the Parties shall request an *in camera* hearing with the Bankruptcy Court to discuss maintaining the confidentiality of this Amendment for a period of ninety (90) days from the filing of the Seal Motion, and the Parties shall use their good faith efforts during such a hearing to maintain the confidentiality of this Amendment for a period of ninety (90) days. In all cases, the Parties shall use their good faith efforts to maintain a ninety (90)-day period of confidentiality with respect to this Amendment, to the extent allowed by the Bankruptcy Court. In the event the Bankruptcy Court denies the Parties' efforts to maintain the confidentiality of this Amendment for a period of ninety (90) days from the filing of the Seal Motion, this Amendment, and all conditions and provisions herein, shall remain effective and binding on the Parties and all of the Parties' successors or assigns. Notwithstanding the foregoing, BMO at its discretion may request the filing of the 9019 Motion, at which point the Liquidating Trustee shall file the 9019 Motion within five (5) business days, and may in his discretion move to withdraw the Seal Motion.

11. Each of the Parties hereto, for themselves and their respective agents, representatives, attorneys, accountants, successors and assigns, agrees that they shall not disclose, publish, reveal, communicate or discuss in any manner whatsoever to or with any person or entity, whether orally or in writing, but instead shall reasonably cooperate in the defense of the confidentiality of, the terms and/or conditions of this Amendment, it being the intention of the Parties to keep confidential and out of the public domain the existence, and all of the terms and conditions of, this Agreement, except as otherwise provided in Paragraph 10 or by order of the Bankruptcy Court, or until the 9019 Motion is filed in the public docket. In the event that the Liquidating Trustee receives an inquiry relating to the status of the B.R. 2004 Subpoena and/or

the status of any dispute with BMO, the Parties agree that the Liquidating Trustee may only respond that the Parties have tentatively settled, are in the process of seeking court approval of the tentative settlement and that the terms of such settlement are subject in all respects to a confidentiality agreement.

12. Any statement by the Parties for publication directed to any media outlet(s) regarding this Amendment and resolution of the B.R. 2004 Subpoena and Related Matters may only address: (i) the filing and prosecution of the B.R. 2004 Subpoena; and (ii) any information contained in the Rule 9019 Motion. Otherwise, the Parties will not make a public comment directed to any specific news media outlet. In no event, shall either party make any statement to anyone, whether to any media outlet(s) or otherwise, disparaging either Party or any of the BMO Parties.

13. Each Party shall bear its own attorneys' fees and costs in connection with the B.R. 2004 Subpoena and Related Matters, the negotiation and drafting of this Amendment, and the submission of such motions and orders as may be necessary to obtain Court approval of this Amendment; provided however, that in the event of any litigation between the Parties relating to this Amendment or arising as a result of a default under this Amendment, the prevailing Party shall be entitled to reasonable attorneys' fees and out-of-pocket costs related thereto, including, but not limited to, those incurred at all trial and appellate levels.

14. This Amendment and any of the specific items, covenants, and conditions contained herein, may not be waived, changed, altered or modified except by an instrument in writing signed by the Party against whom enforcement of such change is sought.

15. This Amendment shall be effective upon execution by all of the Parties hereto, subject only to approval of this Amendment by final Order of the Bankruptcy Court. Upon its becoming effective, this Amendment shall be binding on all of the Parties' successors or assigns,

as well as on any and all other persons or entities claiming (whether expressly or otherwise) or purporting to claim by, on behalf of, or through, any Party.

16. If the Bankruptcy Court does not approve this Amendment, then the Amendment shall be of no further force or effect, and the Parties shall be restored to their rights as they existed prior to the execution of this Amendment. Notwithstanding the foregoing, if the Bankruptcy Court does not approve this Amendment because any of the Parties have failed to provide the Bankruptcy Court with adequate information to rule on the merits of the Amendment, the Parties will use their best efforts to seek reconsideration of any Order declining to approve the Amendment, or to file an amended motion to approve the Amendment.

17. This Amendment shall in all respects be construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed wholly within the State of Florida, and by federal law to the extent the same has preempted the laws of the State of Florida.

18. This Amendment may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Amendment. Delivery of an executed counterpart of a signature page to this Amendment by facsimile or e-mail shall be effective as delivery of a manually executed counterpart of this Amendment.

19. This Amendment shall be deemed to have been jointly drafted by the Parties, and in construing and interpreting this Amendment, no provision shall be construed and interpreted for or against any of the Parties because such provision or any other provision of the Amendment as a whole is purportedly prepared or requested by such Party.

20. The Bankruptcy Court for the Southern District of Florida, shall retain exclusive jurisdiction to enforce the terms of this Amendment with respect to any disputes among the PB Parties and the BMO Parties. The Parties shall not file any court papers to effectuate this

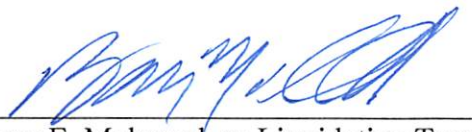
Amendment in any court other than the Bankruptcy Court. Notwithstanding the preceding two sentences or any other provision of this Amendment to the contrary, neither BMO nor any of the BMO Parties shall be barred from asserting, but instead, each shall be entitled in all respects to assert, the Stipulation (as amended by this Amendment) as a *res judicata* or claim preclusion (or similar) bar in any litigation brought against BMO or any of the BMO Parties asserting or otherwise seeking recovery on any of the Claims, including, without limitation, any of the Adversary Claims, released pursuant to the provisions of the Stipulation (as amended by this Amendment).

21. All notices and other communications in connection with this Amendment shall be in writing and shall be deemed given (and shall be deemed to have been duly given upon receipt) if delivered personally, sent via electronic facsimile (with confirmation), mailed by registered or certified mail (return receipt required) or delivered by an express courier (with confirmation) to the Parties at the addresses set forth in Paragraph 27 of the Stipulation (as amended by this Amendment).

22. The individuals signing below represent and warrant (in the case of the Liquidating Trustee, subject to the approval of this Amendment by the Bankruptcy Court) that they have the authority to execute this Amendment on behalf of the person(s) / entity identified and as set forth herein.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

STIPULATED AND AGREED TO AS OF
THE DATE FIRST SET FORTH ABOVE:



Barry E. Mukamal, as Liquidating Trustee
for the Palm Beach Liquidating Trusts

STIPULATED AND AGREED TO AS OF THE DATE FIRST SET FORTH ABOVE:

BMO Harris Bank N.A., as successor by merger to M&I Marshall & Ilsley Bank
by: David R. Casper, President and Chief Executive Officer

Exhibit 1

ORDER APPROVING AMENDMENT
AND AMENDING BAR ORDER

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. _____/	

ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION TO APPROVE (1) AMENDMENT TO SETTLEMENT WITH BMO HARRIS BANK N.A.; AND (2) PAYMENT OF CONTINGENCY FEE

THIS CAUSE came before the Court on _____ 2020 at _____ ___.m. upon the *Liquidating Trustee's Motion to Approve (1) Amendment to Settlement with BMO Harris Bank N.A.; and (2) Payment of Contingency Fee* [ECF No. _____] ("***Motion***").[1] The Court reviewed the Motion and is otherwise duly advised in the premises. Accordingly, it is:

ORDERED as follows:

[1] All capitalized terms not defined in this Order shall have the meaning ascribed to such term as set forth in the Motion.

EXHIBIT 2

1. The Motion is **GRANTED**.

2. The Settlement Amendment is **APPROVED.**

3. The Settlement Payment will be allocated and apportioned among the Debtors as follows: 18% to Palm Beach Finance Partners, L.P. Liquidating Trust and 82% to Palm Beach Finance II, L.P. Liquidating Trust (the "***Pro Rata Allocation Formula")***.

4. The Contingency Fee is approved. The Trustee is authorized and directed to make payment of the Contingency Fee from each of the Trusts without the need of further Court Order, in accordance with the Pro Rata Allocation Formula, upon receipt of the Settlement Payment.

5. The Court retains jurisdiction to enforce or interpret this Order.

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Submitted By:
Michael S. Budwick, Esquire
Florida Bar No. 938777
mbudwick@melandrussin.com
MELAND RUSSIN & BUDWICK, P.A.
Counsel for Liquidating Trustee
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Miami, Florida 33131
Telephone: (305) 358-6363
Telefax: (305) 358-1221

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.