

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 MOTION FOR APPROVAL
OF SETTLEMENT WITH ROBERT O. NAEGELE, III
AND PAYMENT OF CONTINGENCY FEE**

Any interested party who fails to file and serve a written response to this motion within 21 days after the date of service stated in this motion shall, pursuant to Local Rule 9013-1(D), be deemed to have consented to the entry of an order in the form attached to this motion. Any scheduled hearing may then be cancelled.

Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance Partners II Liquidating Trust (collectively, the "*Liquidating Trusts*"), by and through undersigned counsel, and pursuant to *Fed. R. Bankr. P.* 9019, seeks an Order from this Court approving a settlement of claims that could be asserted against Robert O. Naegele, III ("*Naegele*"). In support of this relief, the Liquidating Trustee states the following:

I. Factual Background

A. *The Pre-Petition Activities of the Debtors*

1. The Palm Beach Liquidating Trusts are the successors to Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (collectively, the "*Debtors*"). Prepetition, the

Debtors operated as hedge funds and were managed and directed through two related entities, Palm Beach Capital Management, L.P. (“*PBCMLP*”) and Palm Beach Capital Management, LLC (“*PBCMLLC*,” and, together with PBCMLP, the “*Management Entities*”).

2. The Debtors were formed to lend monies in purchase financing transactions supposedly brokered by Thomas Petters and his company, Petters Company, Inc. (“*PCI*”) in the consumer goods business. The idea was that the Debtors and other lenders would supply bridge financing to PCI and then later, once goods were received by a particular big box retailer, the retailer would remit the payment to the lender or PCI.

3. In particular, in 2002, the principals of the Management Entities – Bruce Prevost and David Harrold – were introduced to Frank Vennes (“*Vennes*”). At that time, Vennes and his entity, Metro Gem, Inc. (“*MGI*”; and together with Vennes, the “*Vennes Parties*”), had invested in Petters purchase financing transactions for several years.

4. Based on misrepresentations made by the Vennes Parties, the Debtors raised monies by selling limited partnership stakes to investors and in the case of PBF II, by borrowing hundreds of millions of dollars from an offshore lender, Palm Beach Offshore Ltd. Nearly all of the monies raised by the Debtors were then used to invest in Petters purchase financing transactions.

5. In reality, the Debtors’ investments in PCI were worthless - PCI’s purchase and financing transactions were fictitious and part of an elaborate, multi-billion dollar *ponzi* scheme perpetrated by Petters, Vennes, Deanna Munson a/k/a Deanna Coleman, Robert White and others. No retailer ever made any payment on the purchase and sale of goods because the deals never existed.

6. On September 24, 2008, federal agents raided Petters' offices. Thereafter, Petters' companies were placed into federal receivership. Ultimately, Petters was convicted of his crimes and sentenced to 50 years in prison. Other persons complicit in the fraud were sentenced to prison sentences as well.

7. On November 30, 2009 ("*Petition Date*"), the Debtors commenced a Chapter 11 bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida ("*Bankruptcy Court*").

8. On October 21, 2010, the Bankruptcy Court entered its Order Confirming Second Amended Plan of Liquidation [ECF No. F444], creating the Liquidating Trusts and appointing the Liquidating Trustee as liquidating trustee.

9. On April 20, 2011, Vennes was indicted for alleged criminal acts committed by him in connection with the Petters ponzi scheme.

B. Transfers Made to Naegele

10. Naegele was an investor in MGI. Between 2002 and 2004, Naegele received a total of \$19,670.00 in payments from the Vennes Parties over and above his original investment in MGI (the "*Transfers*"). Neither the Vennes Parties nor the Debtors received any consideration for these payments.

11. The Trustee, on behalf of the Liquidating Trusts, has filed an action in this Court against the Vennes Parties ("*Vennes Action*"), seeking to avoid all transfers made by the Debtors to the Vennes Parties within four years of the Petition Date. Additionally, the Vennes Action seeks an award of monetary damages in tort relating to the significant misrepresentations,

omissions and breach of fiduciary duties by the Vennes Parties to the Debtors with respect to their investing in Petters purchase financing transactions.

12. During the time period that the Vennes Parties were committing these tortious acts and receiving transfers from the Debtors, the Vennes Parties made the Transfers to Naegele. Indeed, at all times relevant to the Transfers, the Debtors were creditors of the Vennes Parties.

13. On November 28, 2011, the Liquidating Trustee commenced an adversary proceeding in the Bankruptcy Court against Naegele (Adversary Case No. 11-02965-PGH) seeking recovery of the Transfers (the "*Adversary Proceeding*").

II. Settlement Terms

14. The key aspects of the stipulation of settlement between the parties ("*Stipulation*") are the following:¹

- a) Upon approval of the Stipulation, Naegele will pay (or cause to be paid) \$4,917.50 (the "*Settlement Payment*") within 20 days from the date of the entry of an Order by the Bankruptcy Court approving the Stipulation. The Settlement Payment represents 25% of the Transfers.
- b) The parties shall exchange mutual, general releases;
- c) Naegele shall not be entitled to any distribution from the Debtors' bankruptcy estates; and
- d) The Liquidating Trustee shall dismiss the Adversary Proceeding.

15. Pursuant to the Second Amended Joint Plan of Liquidation ("*Plan*"), approved by this Court's Order dated October 21, 2010 [ECF No. 444], all monetary consideration received in conjunction with the Settlement 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*").

¹ A copy of the Stipulation is attached as Exhibit 1. To the extent the terms of the agreement differ with the terms set forth in this Motion, the agreement shall control.

III. Relief Requested

16. The Liquidating Trustee seeks an Order from this Court (a) approving the Stipulation and (b) approving the Contingency Fee (as defined below).

17. Federal Rule of Bankruptcy Procedure 9019 provides in relevant part that [o]n motion . . . and after a hearing on notice to creditors; the debtor . . . and to such other entities as the Court may designate, the Court may approve a compromise or settlement.”

18. 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 BR 891 (Bankr. S.D. Fla. 1988).

19. 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 (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.

A. *The Stipulation Ought to be Approved*

20. Based upon the above legal principles, the Liquidating Trustee asserts that the Stipulation falls well above the lowest point of the range of reasonableness and thus, should be approved.

Probability of success in litigation

21. The Liquidating Trustee, on behalf of the Liquidating Trusts, could assert that the Transfers to Naegele were fraudulent transfers under federal or state law, or alternatively, that Naegele was unjustly enriched by the Transfers.

22. The Liquidating Trustee believes that he will likely succeed in prosecuting either of these causes of action.

23. Nonetheless, the Liquidating Trustee acknowledges that there are risks inherent in all litigation and there is the possibility that Naegele, or other similarly situated parties, could raise certain issues or defenses that potentially could impact the Liquidating Trustee's claims.

Collectability

24. Collectability is not an issue in dispute between the parties.

Complexity of litigation and attendant expense, inconvenience and delay

25. This is a meaningful consideration that militates in favor of approval of the Stipulation.

26. In sum, although many of the claims outlined above are typical claims litigated before this Court, they still potentially require retention of experts and extensive fact discovery before a trial could take place. The result of these efforts will be substantial fees of professionals that could diminish the net result of any recovery to creditors in the Debtors' chapter 11 cases.

27. Moreover, assuming the Liquidating Trustee was successful in obtaining a judgment against Naegele, he would then have to engage in collection efforts. Again, this would result in the estate incurring additional fees and delay.

28. The Stipulation addresses these concerns. The parties avoid litigating fact specific claims, with the attendant expense and delay of litigation being nullified.

Paramount interest of creditors

29. The Settlement Payment represents a 25% recovery of the Transfers and a waiver of any potential or corresponding claim. This result gives certainty to the estates and avoids the risk, expense and delay attendant with litigation. As such, the Stipulation is in the paramount interest of the Debtors' creditors and should be approved.

B. The Contingency Fee Ought to be Approved

30. Pursuant to the Plan and this Court's Order Approving the Trustee's Motion to Approve Hybrid Form of Compensation [ECF No. 223], Meland Russin & Budwick, P.A. ("**MRB**") is entitled to a contingency fee of 10% for any affirmative recovery it obtains on behalf of the Liquidating Trust without further order of the Court ("**Contingency Fee**").

31. As such, MRB requests that the Contingency Fee be paid from the Settlement Payment without further Order from this Court.

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WHEREFORE, the Liquidating Trustee requests that this Court enter an Order (similar in form to the Order attached as Exhibit 2) (1) approving the Stipulation; (2) approving payment of the Contingency Fee and (3) granting such other relief this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on March 2, 2012, a true and correct copy of the foregoing was served via the Court's Notice of Electronic Filing on those parties listed on the attached Exhibit 3; via U.S. Mail to the parties listed on the matrix attached as Exhibit 4; and Rob Kugler, Esq., Leonard, Street and Deinard, P.A., 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

s/ Jessica L. Wasserstrom
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*Attorneys for Barry E. Mukamal,
Liquidating Trustee*

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("*Stipulation*") is entered into on February ___, 2012 by and between (a) Barry E. Mukamal, 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, the "*Liquidating Trusts*") and (b) Robert O. Naegele, III ("*Naegele*") (the Liquidating Trustee and Naegele are at times individually referred to as a "*Party*" or collectively, the "*Parties*"). The terms of this Stipulation are as follows:

RECITALS

A. On November 30, 2009 ("*Petition Date*"), Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (the "*Palm Beach Funds*") commenced Chapter 11 bankruptcy cases by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida ("*Bankruptcy Court*");

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

C. On November 25, 2011, the Liquidating Trustee, on behalf of the Liquidating Trusts, commenced an Adversary Proceeding against Naegele for the recovery of fraudulent transfers and unjust enrichment [ECF No. 1, Adv. Case No. 11-02965] (the "*Adversary*") relating to funds received by Naegele from Frank Vennes and / or one of his related entities (the "*Transfers*");

D. Naegele expressly denies the claims that the Liquidating Trustee asserts in the Adversary;

E. Prior to and following commencement of the Adversary, the Liquidating Trustee and Naegele have engaged in discussions in an attempt to resolve any and all issues, including the claims that the Liquidating Trustee asserts in the Adversary;

F. To avoid the continued expense and risk of adverse outcome arising from the Adversary, as well as incurring costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve the Adversary pursuant to the terms and conditions of this Stipulation.

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

1. **No admission of liability.** The Parties acknowledge that this Stipulation is a compromise and settlement of a controversy. No Party admits, and each expressly denies, any liability on its part.

2. **Entire agreement.** This Stipulation 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 Stipulation.

3. **Settlement Payment.** In full and final settlement of the Adversary, Naegele shall pay (or cause to be paid) \$4,917.50 (the "**Settlement Payment**") within 20 days from the date of the entry of an Order by the Bankruptcy Court approving this Stipulation. The Settlement Payment may be made via (i) wire transfer pursuant to written instructions to be provided by the Liquidating Trustee or his counsel or (ii) check made payable to "Barry E. Mukamal, Liquidating Trustee" and delivered to Jonathan S. Feldman, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3000, Miami, Florida 33131.

4. **No entitlement to distribution.** Naegele agrees that he shall not be entitled to any monetary distribution whatsoever from the Liquidating Trusts or the Palm Beach Funds. To the extent that Naegele has scheduled or filed any proof of claim or proof of interest in the Palm

Beach Funds bankruptcy cases, such claims or interests shall be deemed disallowed in its entirety and be stricken.

5. **General releases between the Parties.**

A. For purposes of this Stipulation, the term "**Claims**" shall mean any obligations, claims, causes of action, demands of any type that a party may presently have, may have or have had in the past, upon or by reason of any matter, cause or thing whatsoever, including without limitation any and all obligations, claims, causes of actions and demands of any kind whatsoever, at law or in equity, indirect, derivative, or direct, known or unknown, discovered or undiscovered, including, but not limited to, those claims that the Liquidating Trustee asserts in the Adversary.

B. Upon approval of this Stipulation by final order of the Bankruptcy Court and payment of the Settlement Payment, the Liquidating Trustee, on behalf of the Liquidating Trusts and the Palm Beach Funds, waives, releases and holds harmless, now and forever, Naegele from any and all Claims that the Liquidating Trustee, the Liquidating Trusts or the Palm Beach Funds may have against Naegele; provided that nothing herein shall be deemed to release, waive or otherwise limit any rights or obligations arising out of this Stipulation.

C. Upon approval of this Stipulation by final order of the Bankruptcy Court and payment of the Settlement Payment, Naegele waives, releases and holds harmless, now and forever, the Liquidating Trustee, the Liquidating Trusts and the Palm Beach Funds from any and all Claims that Naegele may have against the Liquidating Trustee, the Liquidating Trusts or the Palm Beach Funds; provided that this provision does not release, waive or otherwise limit any rights or obligations arising out of this Stipulation.

6. **Dismissal of Adversary:** Upon entry of an order by the Bankruptcy Court approving this Stipulation, the Liquidating Trustee, on behalf of the Liquidating Trusts, agrees to seek dismissal of the Adversary.

7. **Authorization to bind.** The individuals signing below represent and warrant that they have the authority to execute this Stipulation on behalf of the applicable Party and bind them to its terms.

8. **Review/No Duress.** Each of the Parties acknowledges that he, she or it has read all of the terms of this Stipulation, has had an opportunity to consult with counsel of his, her or its own choosing or voluntarily waived such right, and enters into those terms voluntarily and without duress.

9. **Attorneys' fees and costs.** Each Party shall bear its own attorneys' fees and costs in connection with the negotiation of this Stipulation and motions and orders as may be necessary to obtain the approval of this Stipulation by the Bankruptcy Court; provided that that in the event of any litigation between the Parties under this Stipulation or arising as a result of a default under this Stipulation, the prevailing Party shall be entitled to reasonable attorneys' fees and costs related thereto, including, but not limited to, those incurred at all trial and appellate levels.

10. **No waiver of modification.** This Stipulation 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.

11. **Effective date.** This Stipulation shall be effective upon execution by all of the Parties hereto, subject only to approval of this Stipulation by final order of the Bankruptcy Court

and payment of the Settlement Payment. Upon it becoming effective, this Stipulation shall be binding on all of the Parties' successors or assigns.

12. **No effect.** If the Bankruptcy Court does not approve this Stipulation, then the Stipulation 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 Stipulation. Notwithstanding the foregoing, if the Bankruptcy Court does not approve this Stipulation because any of the Parties has failed to provide the Bankruptcy Court with adequate information to rule on the merits of the Stipulation, the Parties will use their best efforts to seek reconsideration of any order declining to approve the Stipulation, or to file an amended motion to approve the Stipulation.


13. **Controlling law.** This Stipulation 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.

14. **Counterparts.** This Stipulation 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 Stipulation. Delivery of an executed counterpart of a signature page to this Stipulation by facsimile shall be effective as delivery of a manually executed counterpart of this Stipulation.

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

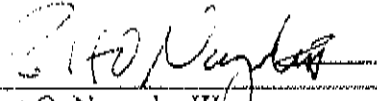
16. **Jurisdiction.** The Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Stipulation.

STIPULATED AND AGREED TO BY:



Barry F. Mukamal, Liquidating Trustee

Date: 2/28/12



Robert O. Naegele, III

Date: 2.23.12

PROPOSED

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.

**ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION
FOR APPROVAL OF SETTLEMENT WITH THE ROBERT O. NAEGELE, III
AND PAYMENT OF CONTINGENCY FEE [ECF NO. _____]**

THIS CAUSE came before the Court upon the Liquidating Trustee's Motion for Approval of Settlement with Robert O. Naegele, III and Payment of Contingency Fee [ECF No. _____] (the "**Motion**").¹ The Court, having reviewed the Motion and noting that a Certificate of No Response and Request for Entry of Order has been filed, finds that the notice of the proposed compromise and

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

settlement is sufficient to comply with Bankruptcy Rules 9019 and 2002(a)(3), Local Rule 9013-1(D) and any other applicable notice requirement, and accordingly, it is:

ORDERED as follows:

1. The Motion is **GRANTED**.
2. The Settlement is **APPROVED**.
3. Naegele shall pay (or cause to be paid)) \$4,917.50 (the "**Settlement Payment**") within 20 days from the date of the entry of an Order by the Bankruptcy Court approving the Stipulation. The Settlement Payment may be made via (i) wire transfer pursuant to written instructions to be provided by the Liquidating Trustee or his counsel or (ii) check made payable to "Barry E. Mukamal, Liquidating Trustee" and delivered to Jessica L. Wasserstrom, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3000, Miami, Florida 33131.
4. The Settlement Payment 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. (the "**Pro Rata Allocation Formula**"), and the wire transfers and/or checks referenced in paragraph 3 above as the mechanism for the Settlement Payment shall be made in the amounts in accordance with this allocation.
5. MRB's Contingency Fee in the amount of \$491.75 is approved. The Liquidating Trustee is authorized and directed make payment of the Contingency Fee without the need of further Court Order, in accordance with the Pro Rata Allocation Formula, promptly upon receipt of the Settlement Payment.

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PROPOSED

6. To the extent that Naegele has any scheduled claim or proof of interest or has filed a proof of claim or proof of interest in the Debtors' chapter 11 cases, such claim or interest is deemed disallowed in its entirety.

7. The Court retains jurisdiction to enforce the terms of the Settlement.

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Submitted By:

s/ Jessica L. Wasserstrom
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Attorneys for the Liquidating Trustee

Copies Furnished To:

Jessica L. Wasserstrom, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.

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.

- **Geoffrey S. Aaronson** gaaronson@aspalaw.com, tdmckeown@mckeownpa.com;sbeiley@aspalaw.com;dlinder@aspalaw.com
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EXHIBIT 3

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Midland, TX 79701

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New York, NY 10019

ARIS Multi-Strategy Fund, LP
Aris Capital Management
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New York, NY 10019

Armadillo Fund
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Chappaqua, NY 10514

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Midland, TX 79701

Lynda Beal
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Midland, TX 79701

Nancy Beal
104 S Pecos St
Midland, TX 79701

Spencer Beal
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Midland, TX 79701

Barry Beal
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