

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://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.

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**LIQUIDATING TRUSTEE'S MOTION FOR APPROVAL OF  
SETTLEMENT OF CERTAIN ISSUES AMONG PALM BEACH DIVERSIFIED  
OFFSHORE AND DOUGLAS A. KELLEY, IN HIS CAPACITY  
AS RECEIVER AND CHAPTER 11 TRUSTEE FOR PETTERS  
COMPANY, INC. 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 Palm Beach Finance 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 competing claims that could be asserted against Palm Beach Diversified Offshore Ltd. ("*PBDO*"). In support of this relief, the Liquidating Trustee states the following:

## I. Factual Background

### A. *The Pre-Petition Activities of PBF II*

1. The Liquidating Trusts are the successors in interest to Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (collectively, the “*Palm Beach Funds*”).

2. The Palm Beach Funds 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 Palm Beach Funds 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 reality, the Palm Beach Funds’ 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 Mr. Petters, 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 were fictitious.

4. On September 24, 2008, federal agents raided Mr. Petters’ offices. Thereafter, PCI was placed into receivership and ultimately filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Minnesota. Douglas A. Kelley, Esq., has been appointed receiver and Chapter 11 trustee for PCI (as to both roles, Mr. Kelley is referred to as the “*PCI Fiduciary*”).

5. Mr. 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.

6. On November 30, 2009 (“*Petition Date*”), the Palm Beach Funds commenced 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.

**B. PBDO**

7. PBDO is an offshore fund that was historically related to the Palm Beach Funds. PBDO lent monies to an affiliated hedge fund, Palm Beach Diversified Income, LP (“*PBDI*”). The Liquidating Trustee has asserted several claims against PBDI in connection with transfers received by it from the Palm Beach Funds.

8. PBDO has been in voluntary liquidation proceedings in the Cayman Islands since December of 2008 and DMS Corporate Services, Ltd. (“*PBDO Liquidator*”) has been appointed as the voluntary liquidator of PBDO.

9. PBDO is the owner of a money market account XXXXX3000 (“*PBDO Account*”) at US Bank, N.A. (“*USB*”) which presently holds approximately \$219,645.21 (“*Funds*”). In connection with the Petters criminal matters, USB, pursuant to Court Order, froze the PBDO Account, and the Funds have remained frozen.

10. The Petters Fiduciary and Liquidating Trustee theoretically could have claims (“*Claims*”) against PBDO to avoid and recover the Funds pursuant to Chapter 5 of the Bankruptcy Code or other relevant state law.

11. The PBDO Liquidator, however, asserts that it is unaware that PBDO directly or indirectly invested any money with PCI or the Palm Beach Funds and that the sources of the Funds are distributions from other investments made by PBDO.

## II. Settlement Terms

12. As it relates to these bankruptcy cases, the key aspects of the stipulation of settlement between the parties ("**Stipulation**") are the following:<sup>1</sup>

a) Before the Funds in the PBDO Account are disbursed to the PBDO Liquidator, the PBDO Liquidator agrees that \$40,000 of the Funds shall be paid, by wire transfer or check, from US Bank to Kelley and \$20,000 of the Funds shall be paid, by wire transfer or check, from US Bank to the Liquidating Trustee in full and final settlement of all claims asserted by the Petters Fiduciary and the Liquidating Trustee to the Funds.

b) Upon approval of the Stipulation by this Court and the other federal courts where the PCI receivership and bankruptcy case is pending, the Petters Fiduciary and the Liquidating Trustee on one hand, and the PBDO Liquidator on the other hand, will release the other from any and all known and unknown existing or hereafter arising, absolute or contingent, due or to become due, disputed or undisputed, whether arising at law or in equity, actions, causes of action, claims, demands, damages, injuries, costs, loss of services or expenses known or unknown, that are, have been, could have been or might in the future be asserted by them to or as against the Funds, excepting, however, any claims arising out of the Stipulation. The scope of the releases is expressly intended to be limited in nature to any claims as to the Funds.

13. This settlement differs from the typical settlements that have been presented to this Court. The nature of the claim does not involve a typical profiteer claim. Instead, the claim would be to avoid and recover theoretical transfers made to PBDO by Palm Beach Offshore Ltd. ("**PBO**"), a creditor of Palm Beach Finance II, L.P., under a theory of unjust enrichment.

## III. Relief Requested

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

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<sup>1</sup> 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.

15. 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.”

16. 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).

17. 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***

18. 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*

19. As stated above, the primary claim that would be asserted against PBDO would be to recover transfers made to it by PBO (which consisted of monies originally sourced by the Palm Beach Funds) under a theory of unjust enrichment.

20. Because of the equitable nature of the claim, it is not possible to predict the ultimate litigation outcome. However, as explained below, any litigation success is tempered by collectability issues. Moreover, issues relating to extraterritoriality may conclusively preclude the claim.

*Collectability*

21. Collectability is a significant issue in this matter and drives this settlement.

22. PBDO does not have the financial wherewithal to pay any meaningful judgment obtained against it. The limited funds located in the PBDO Account are the only meaningful asset available for recovery.

*Complexity of litigation and attendant expense, inconvenience and delay*

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

24. In sum, although an unjust enrichment claim is a typical claim litigated before this Court, it still potentially requires 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 these bankruptcy cases.

25. Moreover, assuming the Liquidating Trustee was successful in obtaining a judgment against PBDO, he would then have to engage in collection efforts. These efforts are complicated due to PBDO being an offshore fund. It is highly likely that prior to any judgment

being entered in such action, the Funds would be dissipated to offshore participants, thus, rendering PBDO uncollectible and increasing the cost of any collection action.

26. The Stipulation addresses these concerns. The parties avoid litigating fact specific claims and issues relating to collection, with the attendant expense and delay of such litigation being nullified.

*Paramount interest of creditors*

27. Although the Stipulation results in a modest recovery to these bankruptcy estates, it is appropriate in light of the limited sources of collection and the practical issues that would result in any collection effort. Most importantly, this result gives certainty to the estate and avoids the risk, expense and delay attendant with litigation. As such, the Stipulation is in the paramount interest of the Liquidating Trusts creditors and should be approved.

**B. The Contingency Fee Ought to be Approved**

28. 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 Trusts without further order of the Court ("**Contingency Fee**").

29. As such, MRB requests that the aggregate Contingency Fee of \$2,000 be paid upon actual receipt of the Settlement Payment without further Order from this Court. Pursuant to the Allocation Formula, each Liquidating Trust shall pay the Contingency Fee from the portion of the Settlement Payment proceeds received by it.

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 April 4, 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, and via U.S. Mail to the parties listed on the matrix attached as Exhibit 4.

s/ Jonathan S. Feldman  
Jonathan S. Feldman, Esquire  
Florida Bar No. 12682  
jfeldman@melandrussin.com  
MELAND RUSSIN & BUDWICK, P.A.  
3000 Southeast Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131  
Telephone: (305) 358-6363  
Telecopy: (305) 358-1221

*Attorneys for Barry E. Mukamal,  
Liquidating Trustee*



EXECUTION COPY

**SETTLEMENT AGREEMENT**

This Settlement Agreement (the "Agreement") is made and entered effective as of the date indicated below, by and between DOUGLAS A. KELLEY, in his capacity as the Receiver and as the Petters Trustee, as defined below, BARRY MUKAMAL, in his capacity as the Liquidating Trustee, as defined below, and dms Corporate Services, Ltd., in its capacity as PBDO Liquidator, as defined below (each of the Receiver, the Petters Trustee, the Liquidating Trustee and the PBDO Liquidator is a "Party" and collectively are the "Parties").

**RECITALS**

WHEREAS, pursuant to an Order entered on October 6, 2008 and as amended on December 8, 2008, the Honorable Ann Montgomery, United States District Judge for the District of Minnesota (the "District Court") appointed Douglas A. Kelley as receiver (the "Receiver") for Thomas J. Petters ("Petters"), Petters Company, Inc., Petters Group Worldwide, LLC, among others (collectively, the "Defendants"), and any affiliates, subsidiaries, divisions, successors, or assigns owned 100% or controlled by the foregoing (collectively, the "Receivership Estates"). *United States v. Petters, et al.*, United States District Court, District of Minnesota, Case No. 0:08-cv-05348 Doc # 12, 127 (the "Receivership Order");

WHEREAS, pursuant to the authority granted to him under the Receivership Order, the Receiver filed petitions in the United States Bankruptcy Court for the District of Minnesota (the "Minnesota Bankruptcy Court") commencing the Chapter 11 cases of Petters Company, Inc. ("PCI") and Petters Group Worldwide, LLC on October 11, 2008. Petitions commencing the Chapter 11 cases of PC Funding, LLC, Thousand Lakes, LLC, SPF Funding, LLC, PL Ltd., Inc., Edge One, LLC, and MGC Finance, Inc. were filed on October 15, 2008. The petition commencing the Chapter 11 case of PAC Funding, LLC was filed on October 17, 2008. The petition commencing the Chapter 11 case of Palm Beach Finance Holdings, Inc. was filed on October 19, 2008. The Chapter 11 cases will be referred to in this Agreement either individually as a "Petters Bankruptcy Case" or "Petters Bankruptcy Estate" or collectively as the "Petters Bankruptcy Cases" or "Petters Bankruptcy Estates." The Petters Bankruptcy Cases are being jointly administered under *In re Petters Company, Inc., et al.*, United States Bankruptcy Court, District of Minnesota, BKY No. 08-45257. As used in this Agreement, the term "Petition Date" shall refer to the date of filing of the petitions for each bankruptcy case described in this Agreement;

WHEREAS, on February 26, 2009, the Minnesota Bankruptcy Court approved the appointment of Douglas A. Kelley, Esq. (the "Petters Trustee"), as the Chapter 11 trustee for the Petters Bankruptcy Cases;

WHEREAS, Palm Beach Diversified Offshore, Ltd. ("PBDO") is an exempt company incorporated in the Cayman Islands under its Companies and Mutual Fund Laws. PBDO has been in voluntary liquidation proceedings since December of 2008 and dms Corporate Services, Ltd. (the "PBDO Liquidator") has been appointed as the voluntary liquidator of PBDO;

WHEREAS, PBDO engaged Palm Beach Capital Management, LLC ("PBCM") as its investment manager pursuant to an Investment Management Agreement dated December 31, 2004. Bruce Prevost was the Managing Director of PBCM;

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WHEREAS, Palm Beach Finance Partners, L.P. ("PBFP") and Palm Beach Finance II, L.P. ("PBFII") were lenders to debtor Palm Beach Finance Holdings, Inc.;

WHEREAS, subsequent to the entry of the Receivership Order, on November 30, 2009, PBFP and PBFII commenced voluntary petitions under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida (the "Florida Bankruptcy Court"), Bky. Nos. 09-36379 and 09-36396 respectively. Barry E. Mukamal (the "Liquidating Trustee") was appointed as the Liquidating Trustee for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance Partners II Liquidating Trust, the successors to PBFP and PBFII (collectively, the "Palm Beach Liquidating Trusts");

WHEREAS, PBDO is the owner of a money market account XXXXX3000 (the "PBDO US Bank Account") at US BANK, N.A. ("US Bank") which presently holds approximately \$219,645.21. (the "Funds");

WHEREAS, in response to the Receivership Order, US Bank froze the PBDO US Bank Account, and the Funds have remained frozen;

WHEREAS, the Receiver, Petters Trustee and Liquidating Trustee have possible claims (collectively, the "Claims") to the Funds;

WHEREAS, the PBDO Liquidator is unaware that PBDO directly invested any money with any of the Defendants, that it is an affiliate of, or controlled by, or owned by any of the Defendants in the Receivership Proceeding, that the Receivership Order applies to the Funds, and that the sources of the Funds are distributions from investments other than PBDO's investments in other entities;

WHEREAS, the PBDO Liquidator, wishes to settle all disputes with the Receiver, the Petters Trustee and the Liquidating Trustee relating to the Funds without the expense, delay and uncertainty of litigation.

NOW, THEREFORE, in consideration of the foregoing, of the mutual covenants, promises and undertakings set forth herein, and for good and valuable consideration, the mutual receipt and sufficiency of which are hereby acknowledged, and subject to the approval of the District Court, the Minnesota Bankruptcy Court and the Florida Bankruptcy Court, the Parties agree as follows:

### AGREEMENT

1. Recitals Incorporated. The Recitals set forth above are incorporated herein by reference and agreed to as if fully set forth herein.
2. Settlement Payments. Before the Funds in the PBDO US Bank Account are disbursed to the PBDO Liquidator, the PBDO Liquidator agrees that Forty Thousand and 00/100 (\$40,000.00) of the Funds shall be paid, by wire transfer or check, from US Bank to Kelley (the "Petters Settlement Payment") and Twenty Thousand and 00/100 (\$20,000.00) of the Funds shall be paid, by wire transfer or check, from US Bank to the

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Liquidating Trustee (the "Palm Beach Settlement Payment", and collectively "Settlement Payments") in full and final settlement of all claims asserted by Receiver, the Petters Trustee and the Liquidating Trustee to the Funds contained in the PBDO US Bank Account. The Petters Settlement Payment shall be allocated \$8,000.00 to the Receivership Estates and \$32,000 to the Petters Bankruptcy Estate of PCI. Within 10 days of the date on which this Agreement becomes effective and binding on the Parties under paragraph 6, the PBDO Liquidator shall direct US Bank to disburse the Funds as provided for herein and consistent with the terms of any order entered by District Court, the Minnesota Bankruptcy Court and the Florida Bankruptcy Court. Upon receipt of the Settlement Payments, the releases contained in paragraphs 3-5 shall become effective without further action by any of the Parties.

3. Release by Kelley, as Receiver and Petters Trustee. In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, upon delivery of the Settlement Payment, Kelley, on behalf of the Receivership Estates and the Petters Bankruptcy Estates, will be deemed to have released, remised and forever discharged PBDO and the PBDO Liquidator from any and all past, present or future claims or causes of action (including any suit, petition, demand or other claims in law, equity or arbitration) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorney's fees, costs or disbursements), known or unknown, that are, have been, could have been or might in the future be asserted to or as against the Funds, excepting, however, any claims arising out of this Agreement. The scope of this release is expressly intended to be limited in nature to any claims as to the Funds.
4. Release by Liquidating Trustee. In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, upon delivery of the Settlement Payment, the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, will be deemed to have released, remised and forever discharged the PBDO and the PBDO Liquidator from any and all past, present or future claims or causes of action (including any suit, petition, demand or other claims in law, equity or arbitration) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorney's fees, costs or disbursements), known or unknown, that are, have been, could have been or might in the future be asserted by the Liquidating Trustee to or as against the Funds, excepting, however, any claims arising out of this Agreement. The scope of this release is expressly intended to be limited in nature to any claims as to the Funds.
5. Release by PBDO Liquidator. In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the PBDO Liquidator, on behalf of PBDO, hereby releases, remises and forever discharges the Receiver, the Petters Trustee, the Liquidating

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Trustee and their respective estates from any and all past, present or future claims or causes of action (including any suit, petition, demand or other claims in law, equity or arbitration) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorney's fees, costs or disbursements), known or unknown, that are, have been, could have been or might in the future be asserted by PBDO and the PBDO Liquidator relating to the Funds, excepting, however, any claims arising out of this Agreement. The scope of this release is expressly intended to be limited in nature to any claims as to the Funds.

6. Court Approval; Effective Date; Termination. This Agreement is subject to, and shall become effective and binding on the Parties upon and only upon, the approval of this Agreement by each of the District Court, the Minnesota Bankruptcy Court and the Florida Bankruptcy Court. The Receiver, Petters Trustee and Liquidating Trustee shall use their best efforts to obtain such approvals as promptly as practicable after the date of this Agreement. In the event no objections are filed or such objections are consensually resolved at or before the hearing seeking approval of this Agreement, the Agreement will become effective and binding upon entry of the Orders of the respective courts approving the Agreement. In the event objections to the Agreement are filed and the District and/or Bankruptcy Court(s) overrule such objections, the Agreement will become effective and binding upon the entry of a final and non-appealable Order approving the Agreement. If this Agreement does not become effective, (a) this Agreement shall terminate and be null and void for all purposes, (b) all of the statements, admissions, consents and agreements contained in the Agreement shall be null and void, and (c) neither the Receiver, Petters Trustee, Liquidating Trustee nor the PBDO Liquidator may use or rely on any such statement, admission, consent or agreement in any public statement or litigation.
7. Authority. The Parties represent and warrant that, as of the date hereof, they have taken all necessary actions to authorize the execution, delivery, and performance of their respective obligations under this Agreement and have the full power, authority, and legal right to execute, deliver, and perform their respective obligations under this Agreement.
8. Statutes of Limitation and Repose. The Parties agree that all statutes of limitations and statutes of repose that are applicable to any and all of the Claims shall be tolled and suspended until the Settlement Payments have been received by the Receiver and Liquidating Trustee and has cleared the banking system, or if this Agreement is not approved by a final and non-appealable order, until the later of (a) any applicable statutes of limitation or repose limitations, or (b) 120 days following a final and non-appealable order denying approval of the Agreement. Notwithstanding the foregoing, the provisions of this paragraph shall expressly survive the expiration or termination of this agreement.
9. No Claims. Consistent with the releases contained within paragraphs 3 - 5 of this Agreement, the Parties covenant and agree not to interfere in any way with the distribution of Funds to the PBDO liquidator or bring any action, claim, litigation or proceeding the other to recover or obtain turnover of all or any part of the Funds.

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10. Further Assurances. The Parties shall execute and deliver any document or instrument reasonably requested by any of them after the date of this Agreement to effectuate the intent of this Agreement.
11. Entire Agreement. This Agreement between the Parties constitutes the entire agreement and understanding between and among the Parties and supersede all prior agreements, representations and understandings concerning the subject matter thereof.
12. Amendments, Waiver. This Agreement may not be terminated, amended or modified in any way except in a writing signed by all the Parties. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.
13. Assignability. No Party hereto may assign its rights under this Agreement without the prior written consent of each of the other Parties hereto.
14. Successors Bound. This Agreement shall be binding upon and inure to the benefit of each of the Parties and their successors and permitted assigns, including any subsequently appointed Chapter 7 trustee in the Bankruptcy Cases.
15. No Third Party Beneficiary. The Parties do not intend to confer any benefit by or under this Agreement upon any person or entity other than the Parties hereto and their respective successors and permitted assigns.
16. No Admission of Liability or Wrongdoing. By entering into this Agreement, PBDO Liquidator does not admit and it expressly denies that it owes any liability to the Receiver, the Petters Trustee, the Liquidating Trustee, the Receivership Estates, the Petters Bankruptcy Estates, the Palm Beach Liquidating Trusts or to any other person or that it engaged in any wrongdoing.
17. Applicable Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota without regard to the conflicts of law principles of any jurisdiction. Any action brought to enforce any provision of this Agreement shall be brought in a court of competent jurisdiction sitting in Minneapolis, Minnesota, and the Parties hereto hereby consent to the jurisdiction of such courts.
18. Captions and Rules of Construction. The captions in this Agreement are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of this Agreement or the scope or content of any of its provisions. Any reference in this Agreement to a paragraph is to a paragraph of this Agreement. "Includes" and "including" are not limiting.
19. Counterparts; Electronic Copy of Signatures. This Agreement and attachments may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same document. The Parties may evidence their execution of this Agreement by delivery



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to the other Parties of scanned or faxed copies of their signatures, with the same effect as the delivery of an original signature.

20. Notices. Any notices under this Agreement shall be in writing, shall be effective when received and may be delivered only by hand, by overnight delivery service, by fax or by electronic transmission to:

<b>If to the Receiver or Petters Trustee, c/o:</b>	
James A. Lodoen Lindquist & Vennum P.L.L.P. 4200 IDS Center 80 South Eighth Street Minneapolis, MN 55402 F: (612) 371-3207 E: jlodoen@lindquist.com	
<b>If to the Liquidating Trustee, c/o:</b>	
Barry E. Mukamal Marcum LLP One SE Third Avenue, 10 <sup>th</sup> Floor Miami, FL 33131 F: (305) 995-9601 E: barry.mukamal@marcumllp.com -and- Michael S. Budwick Meland Russin Budwick 3000 Southeast Financial Center 200 South Biscayne Blvd Miami, FL 33131 F: (305) 358-1221 E: mbudwick@melandrussin.com	
<b>If to the PBDO Liquidator, c/o:</b>	
Georgia Schley Ritchie Sims Moss Kline & Davis LLP Three Ravinia Drive, Ste. 1700 Atlanta, GA 3346 F: (770) 481-7210 E: gsritchie@smkdllaw.com	

21. Severability. By execution of this Agreement, the Parties acknowledge that if any of the provisions of paragraphs 1 through 7 of this Agreement shall be found to be invalid or unenforceable for any reason, this Agreement shall be null and void. Excepting the provisions of paragraphs 1 through 7, if any other provision of this Agreement is found invalid or unenforceable for any reason, such provision may be severed from the remainder of this Agreement and the remaining provisions enforced as written to effectuate the purposes of this Agreement.

EXECUTION COPY

IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written below.

Date: 3/23/12

By: Douglas A. Kelley  
Douglas A. Kelley

431 South Seventh Street, Suite 2530  
Minneapolis, MN 55415  
Telephone: (612) 371-9090

**RECEIVER FOR THOMAS J. PETTERS, ET AL.**

Date: 3/23/12

By: Douglas A. Kelley  
Douglas A. Kelley

431 South Seventh Street, Suite 2530  
Minneapolis, MN 55415  
Telephone: (612) 371-9090

**CHAPTER 11 TRUSTEE OF IN RE PETTERS COMPANY,  
INC., ET AL.**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
**Barry E. Mukamal**

One SE Third Avenue, 10<sup>th</sup> Floor  
Miami, FL 33131  
Telephone: (305) 995-9600

**LIQUIDATING TRUSTEE FOR THE PALM BEACH FINANCE  
PARTNERS LIQUIDATING TRUST AND THE PALM BEACH  
FINANCE PARTNERS II LIQUIDATING TRUST**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

dms House, 2<sup>nd</sup> Floor  
20 Genesis Close, Grand Cayman  
Cayman Islands  
Telephone: (345) 749-2596

**DMS CORPORATE SERVICES, LTD., AS VOLUNTARY  
LIQUIDATOR OF PALM BEACH DIVERSIFIED OFFSHORE  
LIMITED**

EXECUTION COPY

IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written below.

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Douglas A. Kelley**

431 South Seventh Street, Suite 2530  
Minneapolis, MN 55415  
Telephone: (612) 371-9090

**RECEIVER FOR THOMAS J. PETTERS, ET AL.**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Douglas A. Kelley**

431 South Seventh Street, Suite 2530  
Minneapolis, MN 55415  
Telephone: (612) 371-9090

**CHAPTER 11 TRUSTEE OF IN RE PETTERS COMPANY,  
INC., ET AL.**

Date: 4/4/2012

By: 

**Barry E. Mukamal**

One SE Third Avenue, 10<sup>th</sup> Floor  
Miami, FL 33131  
Telephone: (305) 995-9600

**LIQUIDATING TRUSTEE FOR THE PALM BEACH FINANCE  
PARTNERS LIQUIDATING TRUST AND THE PALM BEACH  
FINANCE PARTNERS II LIQUIDATING TRUST**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

dms House, 2<sup>nd</sup> Floor  
20 Genesis Close, Grand Cayman  
Cayman Islands  
Telephone: (345) 749-2596

**DMS CORPORATE SERVICES, LTD., AS VOLUNTARY  
LIQUIDATOR OF PALM BEACH DIVERSIFIED OFFSHORE  
LIMITED**



EXECUTION COPY

IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written below.

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Minneapolis, MN 55415  
Telephone: (612) 371-9090

**RECEIVER FOR THOMAS J. PETTERS, ET AL.**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Douglas A. Kelley**

431 South Seventh Street, Suite 2530  
Minneapolis, MN 55415  
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**CHAPTER 11 TRUSTEE OF IN RE PETTERS COMPANY,  
INC., ET AL.**

Date: \_\_\_\_\_

By: \_\_\_\_\_

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**LIQUIDATING TRUSTEE FOR THE PALM BEACH FINANCE  
PARTNERS LIQUIDATING TRUST AND THE PALM BEACH  
FINANCE PARTNERS II LIQUIDATING TRUST**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

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for dms Corporate Services Ltd.  
Voluntary Liquidator

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**DMS CORPORATE SERVICES, LTD., AS VOLUNTARY  
LIQUIDATOR OF PALM BEACH DIVERSIFIED OFFSHORE  
LIMITED**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://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.

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**ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION  
FOR APPROVAL OF SETTLEMENT OF CERTAIN ISSUES AMONG PALM  
BEACH DIVERSIFIED OFFSHORE AND DOUGLAS A. KELLEY, IN HIS CAPACITY  
AS RECEIVER AND CHAPTER 11 TRUSTEE FOR PETTERS COMPANY, INC. AND  
PAYMENT OF CONTINGENCY FEE**

**THIS CAUSE** came before the Court upon the Liquidating Trustee's Motion for Approval of Settlement of Certain Issues Among Palm Beach Diversified Offshore and Douglas A. Kelley, in his Capacity as Receiver and Chapter 11 Trustee for Petters Company, Inc. and Payment of Contingency Fee ("**PBDO**") and Payment of Contingency Fee [ECF No. \_\_\_\_] (the "**Motion**").<sup>1</sup> The Court,

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

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 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. MRB's Contingency Fee is approved. The Liquidating Trustee is authorized and directed to make payment of the Contingency Fee without the need of further Court Order, in accordance with the Allocation Formula, promptly upon receipt of the Palm Beach Payment.

###

## Mailing Information for Case 09-36379-PGH

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