

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 WITH JONATHAN SPRING AND  
SPRING INVESTOR SERVICES, INC.**

**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 (the "*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 potential claims that could be asserted against Jonathan Spring, individually ("*Mr. Spring*") and Spring Investor Services, Inc. ("*SIS*," and together with Mr. Spring, "*Spring*"). In support of this relief, the Liquidating Trustee states the following:

## I. Factual Background

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

1. The 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*”). The Management Entities were, in turn, wholly-owned and controlled by David Harrold (“*Harrold*”) and Bruce Prevost (“*Prevost*”).

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 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 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 never existed.

4. On September 24, 2008, federal agents raided Mr. Petters’ offices. Thereafter, Mr. Petters’ companies were placed into federal receivership. Ultimately, 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.

5. On November 30, 2009 (“*Petition Date*”), the Debtors each 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*”).

6. 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.

**B. *Transfers Made to Spring***

7. At all material times, SIS was in the business of, among other things, soliciting capital on behalf of certain investment programs. At all material times, Mr. Spring was SIS’s controlling person.

8. On or about October 27, 2003, SIS entered into a selling agreement with PBCMLP (the “*Selling Agreement*”). In accordance with the Selling Agreement, SIS was provided with the non-exclusive rights to solicit potential investors in the Debtors. In exchange for these services, SIS was to be paid 20% of any fees earned by PBCMLP from investors introduced by SIS.

9. Pursuant to that Selling Agreement, between January 2005 and September 2008, SIS received payments from PBCMLP (the “*Transfers*”).

**II. Settlement Terms**

10. The Liquidating Trustee has alleged that it has potential claims against Spring for, among other things, acts and omissions that occurred prior to the Petition Date, including for avoidance of the Transfers and for unjust enrichment (the “*PBF Claims*”). Spring disputes that any of the PBF Claims have any merit or validity.

11. A key issue in the alleged PBF Claims would be whether the Debtors received reasonably equivalent value for the Transfers. The PBF Claims would not be based upon any allegation that Spring knew of or was involved in the PCI scheme but rather would focus on, among other things, whether a solicitor provides reasonably equivalent value for the payment of its services when the money the solicitor helps raise is ultimately placed into a worthless investment.

12. The key aspects of the settlement agreement between the parties ("*Agreement*") are the following:<sup>1</sup>

- a) Spring makes no monetary payment to the Liquidating Trustee;
- b) Spring waives any rights to receive any distribution from the Liquidating Trusts or the Debtors' estates;
- c) Spring cooperates with the Liquidating Trustee in a reasonable manner, related to the Debtors' operations and any investigation related thereto;
- d) Spring assigns to the Liquidating Trustee all of Spring's claims, and the right to receive proceeds of any claims, against U.S. Bank, N.A.; and
- e) Mutual, general releases.

13. Geoffrey Varga, in his capacity as Trust Monitor for the Palm Beach Finance II Liquidating Trust, has concurred in the Liquidating Trustee's decision.

14. 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 Agreement will be allocated and apportioned among the Liquidating Trusts as follows: 18% to the Palm Beach Finance Partners Liquidating Trust and 82% to the Palm Beach Finance II Liquidating Trust ("*Pro Rata Allocation Formula*").

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<sup>1</sup> A copy of the Agreement 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

15. The Liquidating Trustee seeks an Order from this Court approving the Agreement.

16. 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.”

17. 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).

18. 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*

19. 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*

20. The Liquidating Trustee, on behalf of the Liquidating Trusts, could assert, among other things, that reasonably equivalent value was not received for the Transfers under state law, or alternatively, that Spring was unjustly enriched by the Transfers. The Liquidating Trustee believes that he could succeed in such an action, as the Debtors' investments with PCI were worthless.

21. Nonetheless, the Liquidating Trustee acknowledges that there are risks inherent in all litigation. Specific to the PBF Claims, Spring could raise significant defenses, factually and legally, that potentially could impact and defeat the Liquidating Trustee's claims. These defenses could include, but are not limited to, that Spring provided reasonably equivalent value in exchange for the Transfers, notwithstanding that the Debtors investments in PCI were worthless. *See In re Financial Federated Title & Trust, Inc.*, 309 F.3d 1325 (11<sup>th</sup> Cir. 2002).

*Collectability*

22. Collectability is not an issue which bears on approval of this Agreement.

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

23. This is a meaningful consideration that militates in favor of approval of the Agreement. Although the PBF Claims are typical claims litigated before this Court, they still could require motion practice and briefing, 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.

24. Indeed, consideration of 'value' in the hedge fund and selling / marketing agent context could require a deeper analysis than that a run of the mill fraudulent transfer. This could also require an expert witness, and the fees and costs associated therewith. Again, this would result in the estate incurring additional fees and delay.

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

*Paramount interest of creditors*

26. While the Agreement does not provide for a monetary payment to the Liquidating Trustee, through the Agreement, Spring, among other things, (i) is waiving any right to distribution from the Debtors' estate; (ii) will be cooperating with the Liquidating Trustee, which may result in significant value and decrease in investigation-related expenses; and (iii) is assigning any claims / right to receive proceeds of any claims, that Spring may have against U.S. Bank, N.A. Each of these may have value. This result gives certainty and value to the Debtors' estates and avoids the risk, expense and delay attendant with litigation.

27. As such, the Agreement is in the paramount interest of the Debtors' creditors and should be approved.

**B. The Contingency Fee is not Triggered**

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.

29. As there is no monetary consideration in conjunction with the Agreement, the contingency fee arrangement is not triggered.

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on May 22, 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 and Breton Leone-Quick, Esq., Mintz Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111.

s/ Solomon B. Genet  
Solomon B. Genet, Esquire  
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Telephone: (305) 358-6363  
Telecopy: (305) 358-1221

*Attorneys for Barry E. Mukamal,  
Liquidating Trustee*



**SETTLEMENT AGREEMENT**

This Settlement Agreement (“*Agreement*”) is entered into on this \_\_\_\_ day of May 2012 by and among (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 “*Palm Beach Liquidating Trusts*”) and (b) Spring Investor Services, Inc. and Jonathan Spring, individually (together, “*Spring*,” and together with the Liquidating Trustee, the “*Parties*”).

The terms of this Agreement are as follows:

**RECITALS**

A. On or about 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*”);

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

C. The Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, alleges that it has certain claims against Spring (the “*PBF Claims*”);

D. Spring expressly denies those alleged claims have any merit or validity;

E. The Liquidating Trustee (and his legal counsel) and Spring and its legal counsel, have shared information and engaged in settlement negotiations and discussions. During the course of these steps, the Parties have analyzed the PBF Claims and potential defenses thereto.

F. In addition, the Parties entered into tolling agreements (the “*Tolling Agreement*”) dated on or about November 24, 2011, setting forth a time period during which they can consider and explore the possibility of resolving the PBF Claims, and any defenses and counterclaims thereto (the “*Tolling Period*”).

G. To avoid the continued expense and risk of an outcome arising from the PBF Claims, as well as incurring costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve the PBF Claims subject to the terms and conditions of this Agreement and Bankruptcy Court approval.

**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 Agreement is a compromise and settlement of a controversy. No Party admits, and each expressly denies, any liability on its part.

2. **Entire Agreement.** This Agreement 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 Agreement.

3. **Definition of “Claims.”** “Claims” shall mean any and all actual and potential claims, cross-claims, counter-claims, third party claims, demands, damages, interest, actions, liabilities, debts, liens, charges, obligations, causes of action, penalties, sanctions and rights (including but not limited to the right to (i) indemnification; (ii) attorney’s fees; (iii) costs; (iv) expenses; (v) expert fees; and (vi) injunctive relief) of any type that a party may presently have, may have in the future (whether presently vested or accrued) 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 action 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 could have been asserted in any proceeding brought in connection with, or by reason of, the above-captioned matter.

4. **Settlement Terms.** In full and final settlement of the PBF Claims, and upon approval of this Agreement by final orders of the Bankruptcy Court in the Bankruptcy Cases:

- a. Spring shall make no monetary payment to the Liquidating Trustee.
- b. Spring waives all claims and interests in the Debtors' estates or the Palm Beach Liquidating Trusts, and the right to any distribution based on any claims or interests from the Debtors' estate or the Palm Beach Liquidating Trusts.
- c. Spring shall cooperate with the Liquidating Trustee in a reasonable and mutually convenient time and manner, by telephone, in person (if in person, then in Boston, Massachusetts) or other medium, including but not limited to communicating with the Liquidating Trustee on any topic arising from or relating in any way to the business affairs or operations of the Debtors. Spring's cooperation with the Liquidating Trustee pursuant to this paragraph shall neither constitute nor be deemed a waiver or breach of any of Spring's confidentiality obligations and shall in no way prevent Spring from complying with applicable law. Nothing in this paragraph or otherwise in this Stipulation shall prevent or limit the Liquidating Trustee from taking any other action to discover information, documents or evidence, as allowable by applicable law.

- d. Spring absolutely and unconditionally assigns to the Liquidating Trustee (and any successor) any and all Claims Spring had, has, or will have, against U.S. Bank, N.A., in any way relating to the Debtors.
- e. Spring absolutely and unconditionally assigns to the Liquidating Trustee (and any successor) any and all proceeds of any Claims Spring had, has, or will have, against U.S. Bank, N.A., in any way relating to the Debtors.
- f. Spring waives, releases and holds harmless, now and forever, the Liquidating Trustee, the Palm Beach Liquidating Trusts, the Debtors and their estates from any and all Claims that Spring may have against the Liquidating Trustee, the Palm Beach Liquidating Trusts, the Debtors and their estates; provided that this provision does not release, waive or otherwise limit any rights or obligations arising out of this Agreement.
- g. The Liquidating Trustee waives, releases and holds harmless, now and forever, Spring from any and all Claims that the Liquidating Trustee, the Palm Beach Liquidating Trusts, the Debtors and their estates may have against Spring; provided that this provision does not release, waive or otherwise limit any rights or obligations arising out of this Agreement.

5. **Review/No Duress.** Each of the Parties acknowledges that he, she or it has read all of the terms of this Agreement, 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.

6. **Consent on Necessary Motion of Approval.** The Liquidating Trustee, after review by Spring, shall file and serve the necessary motion(s) in the Bankruptcy Cases seeking

an order approving this Agreement with an executed version of this Agreement as part of that motion.

7. **Extension of Tolling Period.** Notwithstanding anything else, including but not limited to written communication between the Parties related to the Tolling Agreement or the Tolling Period, the Tolling Period is extended by agreement of the Parties through and until 30 (thirty) calendar days following any ruling by the Bankruptcy Court denying or otherwise not granting the motion seeking approval of this Agreement. If said motion is granted by the Bankruptcy Court or this Agreement is otherwise approved by the Bankruptcy Court, the Tolling Period shall not be extended beyond the time and date of that approval. .

8. **Attorneys' Fees and Costs.** Each Party shall bear its own attorneys' fees and costs in connection with the PBF Claims, the negotiation and drafting of this Agreement and the submission of such Agreement, motions and orders as may be necessary to obtain the approval of the Bankruptcy Court; provided however, that in the event of any litigation between the Parties under this Agreement or arising as a result of a default under this Agreement, 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.

9. **Modification of Agreement.** This Agreement 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.

10. **Effective Date.** This Agreement shall be effective upon execution by all of the Parties hereto, subject only to approval of this Agreement by final orders of the Bankruptcy Court. Upon it becoming effective, this Agreement shall benefit and be binding on all of the

Parties' successors or assigns, including any Chapter 7 trustee subsequently appointed in these cases.

11. **Controlling Law.** This Agreement 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.

12. **Execution in Counterparts, Copies Effective.** This Agreement 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 Agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or PDF (or substantively similar mechanism) shall be effective as delivery of a manually executed counterpart of this Agreement.

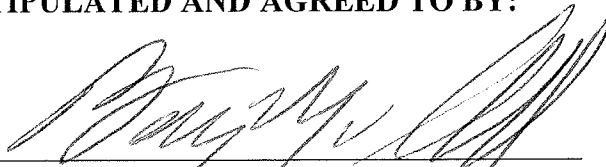
13. **Construction.** This Agreement shall be deemed to have been jointly drafted by the Parties, and in construing and interpreting this Agreement, no provision shall be construed and interpreted for or against any of the Parties because such provision or any other provision of the Agreement as a whole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

14. **Jurisdiction.** The Bankruptcy Court shall retain jurisdiction to enforce the terms of this Agreement.

15. **Authority.** The individuals signing below represent and warrant that they have the authority to execute this Agreement on behalf of the persons / entities identified and as set forth herein.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**STIPULATED AND AGREED TO BY:**

  
\_\_\_\_\_  
Barry E. Mukamal, as Liquidating Trustee

Date: May 21, 2012

\_\_\_\_\_  
Spring Investor Services, Inc., by and through  
Jonathan Spring, as authorized agent

Date: May \_\_, 2012

\_\_\_\_\_  
Jonathan Spring, individually

Date: May \_\_, 2012

**STIPULATED AND AGREED TO BY:**

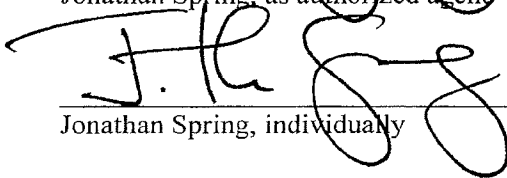
\_\_\_\_\_  
Barry E. Mukamal, as Liquidating Trustee

Date: May \_\_, 2012



\_\_\_\_\_  
Spring Investor Services, Inc. by and through  
Jonathan Spring, as authorized agent

Date: May 17, 2012



\_\_\_\_\_  
Jonathan Spring, individually

Date: May 17, 2012



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-PGH  
Case No. 09-36396-PGH  
(Jointly Administered)

Debtors.

\_\_\_\_\_ /

**ORDER GRANTING LIQUIDATING TRUSTEE'S  
MOTION FOR APPROVAL OF SETTLEMENT WITH  
JONATHAN SPRING AND SPRING INVESTOR SERVICES, INC.**

**THIS CAUSE** came before the Court upon the Liquidating Trustee's Motion for Approval of Settlement with Jonathan Spring and Spring Investor Services, Inc. [ECF No. ] (the "**Motion**").<sup>1</sup> 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

<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.

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 Agreement is **APPROVED**.
3. The Court retains jurisdiction to enforce or interpret this Order.

###

**Submitted By:**

Solomon B. Genet, Esquire  
Florida Bar No. 617911  
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**Copies Furnished To:**

Solomon B. Genet, 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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- Barry E Mukamal bankruptcy@marcumllp.com, FL64@ecfcbis.com
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- Leslie S. Osborne rappaport@kennethrappaportlawoffice.com

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