

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 (1) TO APPROVE SETTLEMENT
WITH G. CRAIG HOWSE AND HOWSE & THOMPSON P.A.; (2) FOR ENTRY OF A
BAR ORDER; AND (3) TO APPROVE PAYMENT OF CONTINGENCY FEE**

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 "*Palm Beach Liquidating Trusts*"), by and through undersigned counsel, files this Motion (1) to approve settlement with G. Craig Howse and Howse & Thompson P.A. (collectively, the "*Howse Parties*"); (2) for the entry of a bar order; and (3) to approve payment of counsel's contingency fee (the "*Motion*"). In support of this Motion, the Liquidating Trustee states the following:

I. Factual Background

1. Prepetition, Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (collectively, the "*Debtors*") operated as hedge funds. Together, David Harrold and Bruce Prevost managed the Debtors' fund raising and investment activities.

2. On November 30, 2009, the Debtors filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code. By subsequent Order of this Court, the cases are jointly administered.

3. On January 28, 2010, the Court entered the Agreed Order Directing Appointment of Chapter 11 Trustee and Denying United States Trustee's Motion to Convert Cases to Cases under Chapter 7 [ECF No. 100].

4. 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].

5. On October 21, 2010, this Court entered its Order Confirming Second Amended Plan of Liquidation [ECF No. 444], creating the Palm Beach Liquidating Trusts, appointing the Liquidating Trustee as Liquidating Trustee and appointing Geoffrey Varga as Trust Monitor.

6. Pre-petition, the Howse Parties provided certain legal services to the Debtors and certain of their affiliates. Based on the investigation to date by the Liquidating Trustee and his professionals, the Liquidating Trustee has determined that the Palm Beach Liquidating Trusts may assert certain claims for professional negligence and disgorgement of compensation against the Howse Parties.

7. In recent months, the Liquidating Trustee obtained a copy of the Howse Parties' professional liability insurance policy. The policy limits are one million dollars (\$1,000,000) per claim, and three million dollars (\$3,000,000) in the aggregate. Further, the insurance policy is a "wasting" policy, which means that claim expenses (cost of defense, *etc.*) is subtracted from the total amount available to be paid under the policy for damages.

8. Thereafter, the Liquidating Trustee and his legal counsel, as well as the Howse Parties and their legal counsel and the insurance carrier and its legal counsel, exchanged information and engaged in settlement negotiations. These discussions culminated in a formal mediation at the offices of the Liquidating Trustee's counsel.

9. Richard Solum, Esq. served as mediator and the parties wish to recognize his skill and efforts in connection with this matter.

10. Following discussions and negotiations that continued after the mediation, the Liquidating Trustee and the Howse Parties executed a Stipulation of Settlement attached as Exhibit 1 and described below ("**Settlement**"). The Liquidating Trustee believes that the terms of the Settlement are in the best interests of the estates and should be approved.

II. Settlement Terms

11. The key aspects of the Settlement are the following:

- a) **Cash consideration** - upon approval of the Settlement, the Howse Parties shall pay or cause to be paid \$1,225,000 (the "**Settlement Payment**").
- b) **Bar order** – as a pre-condition for providing the above consideration, the Liquidating Trustee will obtain an Order in favor of the Howse Parties that would bar claims being asserted against them by the following parties: the Liquidating Trustee, the Debtors, creditors of the Debtors, limited partners of the Debtors and the general partner(s) of the Debtors. As has been requested in the past by the SEC in connection with other settlements reached by the Liquidating Trustee, the Bar Order excepts any proceedings or actions brought by the SEC.
- c) **Releases** – in exchange for the Settlement Payment, the parties will exchange mutual general releases. As part of this release, the Liquidating Trustee will also release claims against Winning Edge Holding Company ("**WEH**"), an entity affiliated with Mr. Howse.

12. 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**").

13. In agreeing to the above terms, the Liquidating Trustee considered the terms of the Howse Parties' insurance coverage and Howse Parties' potential executable assets. The Howse Parties contest liability and contend that any claims of the Liquidating Trustee, if valid at all, constitute a single claim subject to a maximum recovery of \$1,000,000.

14. The Liquidating Trustee also considered the substantive defenses asserted by Howse Parties, as well as other factors including the costs (fees and expenses) and risks of litigation. Mr. Howse has provided certain confidential financial disclosures regarding his financial status which the Liquidating Trustee considered as well.

III. Relief Requested

15. The Liquidating Trustee seeks (1) an Order from this Court approving the Settlement and directing payment of the Contingency Fee (as defined below); and (2) an Order from this Court entering the Bar Order.

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 Settlement Ought to be Approved*

19. Based upon the above legal principles, the Liquidating Trustee asserts that the Settlement 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 could assert the following claims against the Howse Parties:

- a) **Fraudulent transfer pursuant to §§ 544 and 548, or otherwise disgorgement:** The Liquidating Trustee could assert claims to avoid the approximate three hundred and eighty thousand dollars (\$380,000) in fees paid historically by the Debtors and their affiliates.
- b) **Professional Negligence:** The Liquidating Trustee could assert professional negligence claims against the Howse Parties based on the advice and counsel they provided, or failed to provide, to the Debtors during the years preceding the Petition Date.

21. Although the Liquidating Trustee believes he has valid claims as to all of these theories, the probability of success cannot be gauged with certainty at this stage. Indeed, the Howse Parties deny any liability, and have communicated that value was given in exchange for the fees paid, and that no professional negligence was committed. Moreover, as addressed

below, any judgment(s) regardless of the legal theory, would undoubtedly face significant collectability issues.

Collectability and Amount of Available Insurance Coverage

22. The collectability of the Howse Parties and the amount of available insurance coverage is significant given that Howse & Thompson P.A. is not a national law firm. Rather, it is a boutique firm with no more than four attorneys. The amount of insurance coverage described above reflects that the Liquidating Trustee has obtained the value of the entire first layer of coverage, \$1,000,000, as well as a significant additional amount of \$225,000.¹

23. In the event that the Liquidating Trustee were to succeed in litigation and obtain a judgment in an extraordinary amount, insurance coverage would likely be exhausted on defense costs and the firm would presumably disband or be placed into liquidation proceedings as it would not have the financial wherewithal to satisfy any meaningful portion of such a judgment. Moreover, based on the financial disclosures provided by Mr. Howse, who is married, he would have no significant ability to pay any meaningful portion of such judgment.

24. The economic terms of the Settlement avoids these pitfalls and provides a certain result to the estates that surpasses or approximates the best case scenario at trial, particularly when factoring in the costs of prosecuting this litigation to trial.

Complexity of litigation and attendant expense, inconvenience and delay

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

¹ Given the incurrence of defense costs to date, the amount of the first layer of coverage is below \$1 million.

26. In sum, although many of the claims outlined above are typical claims litigated before this Court, they still will require retention of experts and extensive fact discovery before a trial could take place. The result of these efforts will be substantial attorney's fees on both sides which would diminish the net result of any recovery.

27. The Settlement addresses these concerns. The parties avoid litigating fact specific claims with the attendant expense and delay of such litigation being nullified.

Paramount interest of creditors

28. Although a direct result of the Settlement is that creditors and limited partners will be barred from asserting any claims against the Howse Parties, the settlement conversely provides that a meaningful portion of available insurance coverage will be tendered to the Liquidating Trustee. If any creditor or limited partner has a direct claim against the Howse Parties it is questionable whether such claim is "unrelated" to those of the Liquidating Trustee such that there would be any remaining coverage. As such, the Settlement is in the paramount interest of the Debtors' stakeholders.

B. The Bar Order Ought to be Approved

29. This Court has the inherent power under the Bankruptcy Code, including section 105(a), to issue any order necessary or appropriate to carry out the provisions of Title 11. *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499 (Bankr. S.D.N.Y. 1991). The Eleventh Circuit Court of Appeals in *Munford* concluded that (i) public policy favors settlements, (ii) the cost of litigation can be burdensome on a bankruptcy estate, and (iii) "bar orders play an integral role in facilitating settlements." *In re Munford*, 97 F.3d 449, 454 (11th Cir. 1996).

30. This Court has the broad power to approve settlement agreements and effectuate a release of non-debtors. *Munford*, 97 F.3d at 455; *see also In re S&I Investments*, 421 B.R. 569, 583-586 (Bankr. S.D. Fla. 2009). Indeed, the Eleventh Circuit Court of Appeals has stated that:

[c]omplex litigation ...can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive. Accordingly, the Federal Rules of Civil Procedure authorize district courts to facilitate settlements in all types of litigation [B]ar orders play an integral role in facilitating settlement. Defendants buy little peace through settlement unless they are assured that they will be protected against codefendants' efforts to shift their losses through cross claims for indemnity, contribution, and other causes related to the underlying litigation.

In re U.S. Oil & Gas Litig., 967 F.2d at 493-94.

31. The Liquidating Trustee submits that approval of the Settlement Agreement is fair, reasonable and in the best interest of the estate and its general unsecured creditors. An essential and necessary part of the Settlement Agreement is the Bar Order, and that too should be approved; without such approval, there is no Settlement.

32. Entry of the Bar Order is an essential, critical, necessary and integral element of the Settlement Agreement. The Liquidating Trustee's agreement to obtain the Bar Order was negotiated at arms-length between the parties and in good faith, as a part of the parties' formal mediation and associated discussions.

33. The Eleventh Circuit Court of Appeals has stated as follows:

When determining whether to enter a bar order against nonsettling defendants, the court must make reasonable determination that bar order is fair and equitable. In making such a determination, courts consider the interrelatedness of the claims that the bar order precludes, the likelihood of nonsettling defendants to prevail on the barred claim, the complexity of litigation, and the likelihood of depletion of the resources of the settling defendants.

Munford, 97 F.3d 455 (internal citations omitted).

34. The Liquidating Trustee submits that upon ‘reasonable determination,’ the requested Bar Order is fair and equitable. As set forth above, the Bar Order (i) bars interrelated claims; (ii) no non-settling defendants have yet brought suit; (iii) the factual underpinnings to the litigation is extremely complex; and (iv) the insurance coverage available for settlement depletes if the Liquidating Trustee is forced to continue pressing his claims.

35. Further, as stated above, the Bar Order was a necessary part of the Settlement, which results in the Settlement Payment to the Palm Beach Liquidating Trusts.

C. The Contingency Fee Ought to be Approved

36. 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 fee of 10% of any affirmative recovery received by the Debtors’ estates from a litigation matter pursued by the firm without further order of the Court (“**Contingency Fee**”).

37. The Liquidating Trustee requests that the 10% Contingency Fee – in the amount of \$122,500 – be approved and that he be authorized and directed to pay this amount when the Settlement Payment is made.

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

s/ Michael S. Budwick
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Attorneys for the Liquidating Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Court's Notice of Electronic Filing upon Registered Users set forth on the attached list on Exhibit 4 on June 14, 2012 and by U.S. Mail on those parties set forth on the attached list on Exhibit 5.

s/ Michael S. Budwick

CONFIDENTIAL SETTLEMENT AGREEMENT

This Confidential Settlement Agreement ("**Agreement**") is entered into on this 31st 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) Howse & Thompson, P.A. and G. Craig Howse, individually (together, "**Howse**," 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, asserts certain claims against Howse (the "**PBF Claims**"); Howse expressly denies those claims;

D. The PBF Claims include those arising from acts and omissions occurring prior to the Petition Date, generally concerning certain pre-petition professional services provided by Howse to the Debtors;

E. The Liquidating Trustee (and his legal counsel) and Howse and its legal counsel, and other representatives and interested parties, have shared information and engaged in {Firm Clients/4189/4189-29/01093449.DOC.}

settlement negotiations and discussions in-person, by telephone and in writing. Further, these persons and entities have engaged in a formal mediation. During the course of these steps, the Parties have analyzed the PBF Claims and potential defenses thereto.

F. To avoid the continued expense and risk of an adverse 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. 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. 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. In full and final settlement of the PBF Claims, Howse ~~and his insurer~~⁶⁰⁴ shall pay (or cause to be paid) \$1,225,000.00 (one million two hundred and twenty-five thousand dollars) (the "**Settlement Payment**"), by no later than the Settlement Payment Date (as that term is defined below) *via* wire transfer pursuant to written instructions to be provided by the Liquidating Trustee to Howse.

4. The Liquidating Trustee, with the cooperation of Howse, shall obtain the entry of a final, non-appealable order (the "**Bar Order**") by the Bankruptcy Court substantially in the form of Exhibit 1, which bars and permanently enjoins the prosecution of any and all direct,

indirect or derivative Claims (as defined below) against Howse and the Howse Parties (as defined below), whether known or unknown, by any and all of the following entities: (1) the Debtors; (2) all creditors of either of the Debtors including, but not limited to, Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd (the “*Offshore Funds*”); (3) all limited partners of either of the Debtors; and (4) all general partner(s) of either of the Debtors (collectively, the “*Enjoined Parties*”). It is the express intention of the Parties that the Bar Order shall and will be interpreted as broadly as possible so as to effectuate the purposes stated therein. This Agreement is contingent upon the entry of the Bar Order and if for any reason the Bar Order is not entered, this Agreement shall be null and void in its entirety.

5. The Settlement Payment Date shall be the 20th calendar day from the later of the following three events: (1) the date of the entry by the Bankruptcy Court of an order approving this Agreement; (2) the date of the entry by the Bankruptcy Court of the Bar Order; and (3) if an appeal is filed, then 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 orders approving this Agreement and the Bar Order, unless such appeals have been determined by the Bankruptcy Court to have been rendered moot.

6. For purposes of this Agreement, the term “*Claims*” shall mean all liabilities, judgments, rights, claims, cross-claims, counterclaims, third-party claims, demands, suits, matters, obligations, damages, debts, losses, costs, actions and causes of action, of every kind and description, including but not limited to those pertaining to any dealings with, loans to or investments in the Debtors, arising under common law, rule, regulation or statute, whether arising under state or federal law, whether presently known or unknown that relate in any manner whatsoever to the Debtors.

7. The term “**Debtor Releasers**” shall mean (i) the Trustee (but only in his capacity as the Trustee and as a representative of the bankruptcy estates of the Debtors and not in any other capacity), and his successors and assigns (but only to the extent of any such successor(s’) and assign(s’) rights to serve in the capacity of the Trustee or as a representative of the bankruptcy estates of the Debtors and not in any other capacity); (ii) the Debtors; (iii) the Debtors’ bankruptcy estates and their respective successors and assigns; and (iv) any other person or entity that claims, or might claim, by, through, under, on behalf of or the benefit of any of the foregoing.

8. Upon approval of this Agreement by final Orders of the Bankruptcy Court in the Bankruptcy Cases, payment of the Settlement Payment, and entry of a Bar Order, the Trustee, on behalf of the Debtor Releasers:

- a) agrees to release, waive, hold harmless, now and forever, Howse & Thompson, P.A., Winning Edge Holding Company, Craig Howse, Jeffrey Thompson, Jamie Anderson and their insurer, from any and all Claims that the Debtor Releasors or any of them may have against Howse & Thompson, P.A., Winning Edge Holding Company, Craig Howse, Jeffrey Thompson, Jamie Anderson and their insurer (the "**Paragraph 8(a) Parties**"), arising out of or connected to losses sustained, known and unknown, to loans or investments of any kind or description with any business or entity owned, operated or controlled by Tom Petters and/or Frank Vennes, including but not limited to claims for disgorgement, return of fees, legal malpractice, breach of fiduciary duty and preferences, fraudulent conveyances and any other avoidance claims; provided that nothing herein shall be deemed to release, waive or otherwise limit any rights or obligations arising out of this Agreement. In the event the Trustee seeks damages from Frank Vennes or entities controlled or managed by Frank Vennes arising from or connected to the investments of the Debtors in any Petters or Vennes entity and Vennes establishes a right to be indemnified for all or part of such damages by the Paragraph 8(a) Parties, then Frank Vennes and any related entity shall be deemed released to the extent only of the right of indemnity against any Paragraph 8(a) Party. If a claim for indemnity is pursued by Vennes individually or entities owned, operated or controlled by Frank Vennes, Craig Howse agrees to cooperate with the Trustee and make himself voluntarily available to the Trustee for testimony without the necessity of the Trustee serving process or a subpoena on Howse.
- b) Further the Trustee on behalf of the Debtor Releasors agrees to release and hold harmless the following individuals, who are not included in the individuals released in 8(a) above: all officers, employees, members, managers, attorneys, predecessors, and successors and assigns of Howse & Thompson, P.A. from any and all Claims arising out of or connected to the furnishing of professional services by the officers, employees, members, managers, agents, attorneys, representatives, predecessors and assigns of Howse & Thompson, P.A. to the Debtor Releasors; provided that nothing herein shall be deemed to release, waive or otherwise limit any rights or obligations arising out of this Agreement.

The scope of the releases in paragraphs 8(a) and 8(b) shall not impact, impair or alter in any manner any claims whatsoever that the Trustee, on behalf of the Debtors or their estates, may have against any parties other than the parties identified in paragraphs 8(a) and 8(b) above, including, but not limited to, claims against alleged concurrent or consecutive tortfeasors.

9. Howse agrees to cooperate with the Liquidating Trustee in a limited and specific manner. To wit, on one(1) occasion, at a mutually agreeable time and place, by telephone, within 90 (ninety) days of the Settlement Payment Date, Howse agrees to spend up to two (2) hours with the Liquidating Trustee or his counsel to discuss any investigation undertaken by the Liquidating Trustee arising from or relating in any way to the business affairs or operations of the Debtors. Howse's cooperation with the Liquidating Trustee pursuant to this paragraph shall not constitute nor be deemed a waiver or breach of any applicable privileges or confidentiality obligation on the party of Howse and shall in no way prevent Howse 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.

10. Upon approval of this Agreement by final orders of the Bankruptcy Court in the Bankruptcy Cases, payment of the Settlement Payment and entry of the Bar Order, the Howse Parties waive, release and hold harmless, now and forever, the Liquidating Trustee, the Palm Beach Liquidating Trusts, the Debtors and their estates and the Offshore Funds from any and all Claims that the Howse Parties may have against the Liquidating Trustee, the Palm Beach Liquidating Trusts, the Debtors and their estates and the Offshore Funds; provided that this provision does not release, waive or otherwise limit any rights or obligations arising out of this Agreement. The execution of this Agreement below by a duly authorized representative of Howse shall reflect a warranty and representation that Howse's representative is authorized to bind not only Howse but each and every one of the Howse Parties.

11. Mr. Howse has provided the Trustee with a written financial disclosure document (which the Liquidating Trustee shall keep confidential, other than sharing with (i) the Trust Monitor; and (ii) his and the Trust Monitor's professionals) setting forth a complete list of Mr.

Howse's assets and liabilities (the "*Financial Disclosure*"). Howse warrants and represents that the representations contained in the Financial Disclosure are true and correct, and acknowledges that the Trustee is specifically relying on the Financial Disclosure in agreeing to this Agreement.

12. 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.

13. The Trustee shall file and serve the necessary motion(s) in the Bankruptcy Cases seeking the entry of the Bar Order and an order approving this Agreement. The Trustee shall serve by U.S. Mail notice of motion(s) upon all persons and entities whose rights would or could be affected by the Bar Order, including, without limitation, (1) all creditors of the Debtors; (2) all limited partners of the Debtors; (3) all general partner(s) of the Debtors; and (4) all shareholders of the Debtors.

14. 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.

15. 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.

16. 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, payment of

the Settlement Payment and entry of the Bar Order. Upon it becoming effective, this Agreement shall be binding on all of the Parties' successors or assigns.

17. If the Bankruptcy Court does not approve this Agreement, then the Agreement 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 Agreement. Notwithstanding the foregoing, if the Bankruptcy Court does not approve this Agreement because any of the Parties have failed to provide the Bankruptcy Court with adequate information to rule on the merits of the Agreement, the Parties will use their best efforts to seek reconsideration of any order declining to approve the Agreement, or to file an amended motion to approve the Agreement.

18. 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 and by federal law to the extent the same has preempted the laws of the State of Florida.

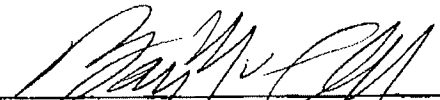
19. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement. Delivery of an executed counterpart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

20. 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.

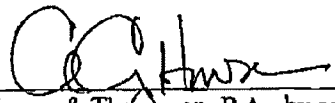
21. The Bankruptcy Court shall retain jurisdiction to enforce the terms of this Agreement.

22. 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.

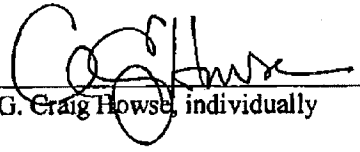
STIPULATED AND AGREED TO BY:


Barry E. Mukamal, as Liquidating Trustee

Date: May 31, 2012


Howse & Thompson, P.A., by and through G.
Craig Howse, as authorized agent

Date: May 31, 2012


G. Craig Howse, individually

Date: May 31, 2012

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
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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 APPROVING LIQUIDATING TRUSTEE'S
MOTION (1) TO APPROVE SETTLEMENT WITH G. CRAIG
HOWSE AND HOWSE & THOMPSON P.A.; (2) FOR ENTRY OF A BAR
ORDER; AND (3) TO APPROVE PAYMENT OF CONTINGENCY FEE**

THIS CAUSE came before the Court upon the Liquidating Trustee's Motion (1) to Approve Settlement with G. Craig Howse and Howse & Thompson P.A.; (2) for Entry of a Bar Order; and (3) to Approve 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

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

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. The Settlement is approved.
2. The Settlement Payment shall be apportioned between the Palm Beach Liquidating Trusts pursuant to the Pro Rata Allocation Formula.
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 Pro Rata Allocation Formula, promptly upon receipt of the Settlement Payment.
4. The Court retains exclusive jurisdiction to enforce the terms of the Settlement.

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Submitted By:

s/ Jonathan S. Feldman, Esq.
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Jonathan S. Feldman, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

In re:

PALM BEACH FINANCE PARTNERS,
L.P., a Delaware limited partnership, et al.,

Debtors,

Chapter 11

Case No. 09-36379-BKC-PGH
(Jointly Administered)

**ORDER GRANTING MOTION FOR ENTRY OF
BAR ORDER IN FAVOR OF HOWSE & THOMPSON, P.A.**

THIS MATTER came before the Court on [DATE] at [TIME], upon the *Liquidating Trustee's Motion to Approve Settlement with G. Craig Howse and Howse & Thompson, P.A. (the "Motion")* [ECF No. ____].¹ The Court has reviewed the Motion, considered the arguments of counsel and is otherwise duly advised in the premises.

In its Motion, the Liquidating Trustee, against Howse & Thompson, seeks entry of an Order as described in detail below (the "**Order**").

IT IS ORDERED AS FOLLOWS:

1. The Motion is **GRANTED**.
2. The Settlement Agreement ("**Agreement**") IS **APPROVED**.
3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and authority to enter this Order pursuant to 11 U.S.C. § 105(a).

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

4. The form and means of the notice of the Bar Order and the Motion are determined to have been the best notice practicable under the circumstances and to be good and sufficient notice to all persons whose interests would or could be affected by this Order.

5. The Court has been apprised of the negotiations that preceded the Settlement Agreement and finds that the Motion and request for Bar Order is a result of arms'-length bargaining among the parties. There is no evidence that the settlement reached by the Liquidating Trustee with Howse is the result of collusion among the parties or that there has been any intent to prejudice any interested parties.

6. The Court finds that entry of this Order is appropriate in order to achieve the finality and repose that is contemplated as a term of the proposed settlement and that good cause therefore exists for the entry of this Order, is fair and equitable and that this Order is necessary and appropriate to carry out the provisions of 11 U.S.C. § 105. *See In re U.S. Oil & Gas Litigation*, 967 F.2d 489, 495-96 (11th Cir. 1992); *Munford, Inc. v. Munford, Inc.*, 97 F.3d 449, 454-55 (11th Cir. 1996); *In re Jiffy Lube Securities Litigation*, 927 F.2d 155 (4th Cir. 1991); *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995).

The following additional definitions apply to the provisions of this Order barring certain claims as set forth in paragraph 7 below:

“Claims” shall mean all liabilities, judgments, rights, claims, cross-claims, counterclaims, third-party claims, demands, suits, matters, obligations, damages, debts, losses, costs, actions and causes of action, of every kind and description, including but not limited to those pertaining to any dealings with, loans to or investments in the

Debtors, arising under common law, rule, regulation or statute, whether arising under state or federal law, whether presently known or unknown that relate in any manner whatsoever to the Debtors.

“Debtors” shall mean Palm Beach Finance Partners, LP, Palm Beach Finance II, LP, Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd.

“Debtor Releasor” shall mean (i) the Trustee (but only in its capacity as the Trustee and as a representative of the bankruptcy estates of the Debtors and not in any other capacity), and its successors and assigns (but only to the extent of any such successors’ and assign(s)’ rights to serve in the capacity of the Trustee or as a representative of the Debtors and not in any other capacity) (ii) the Debtors and their respective current and former parents, subsidiaries and affiliates, all of the respective current and former partners, shareholders, directors, officers, employees, members, managers, agents, attorneys, representatives and insurers of each of them, and the heirs, executors, administrators, trustees, beneficiaries, predecessors, successors and assigns of any of the foregoing; and (iii) the Debtors’ bankruptcy estates and their respective successors and assigns.

“Howse Parties” shall mean Howse and Thompson, P.A. together with its current and former partners, subsidiaries and affiliates, (including but not limited to Winners Edge Holding Company), all of its and their respective current and former partners, shareholders, directors, officers, employees, members, managers, agents, attorneys, representatives and their insurers, and the heirs, executors, administrators, trustees, beneficiaries, predecessors, successors and assigns of any of the foregoing.

7. **“Bar Order”**

a. The commencement, prosecution or assertion of the following claims in this Court, in any federal or state court, or in any court, arbitration proceeding, administrative agency or other forum in the United States or elsewhere are hereby permanent barred, enjoined and restrained: (i) any Claim of any kind by any Debtor Releasor, against any Howse Party which directly or indirectly arises from or relates to, in whole or in part, any services rendered or actions performed by any Howse Party at any time to any Debtor Releasor; (ii) any Claim of any kind by any party in interest of any of the Debtors against any Howse Parties which directly or indirectly arises from or relates to, in whole or in part, any services rendered or action performed by any Howse Party at any time to any Debtor; and (iii) any Claim for indemnity or contribution brought by any person or entity (together with any Debtor Releasor, collectively the **“Enjoined Parties”**) against any Howse Party, asserted in any suit, action, cause of action or other proceeding, including proceedings in arbitration, whether in the nature of a claim, cross-claim or counterclaim, as a result of or relating to a claim initiated by any person asserting rights derivative of any Debtor, including without limitation any past or present partner, principal, officer, director, shareholder, employee, related entity, subsidiary entity, affiliated entity, parent entity, administrator, predecessor, successor, assign, debtor-in-possession, bankruptcy trustee, agent, attorney, accountant, representative or insurer thereof against any such third party (collectively **“Barred Claims”**). In the event any Enjoined Party asserts a Barred

Claim, the Howse Parties and/or the Liquidating Trustee promptly shall provide notice of this Order to the Court or Tribunal hearing such Barred Claim.

b. In the event that (i) any person asserting rights derivative of any Debtor, including without limitation any past or present partner, principal, officer, director, shareholder, employee, related entity, subsidiary entity, affiliated entity, parent entity, administrator, predecessor, successor, assign, debtor-in-possession, bankruptcy trustee, agent, attorney, accountant, representative or insurer thereof (the Debtors) and all such persons, collectively, (“**Initiators**”), initiates any suit, action, cause of action or other proceeding, including proceedings in arbitration, whether in the nature of a claim, cross-claim or counterclaim, against any person (each a “**Defendant/Third-Party Plaintiff**”, such term to include any subrogee thereof) with respect to any matter (a “**Proceeding**”), and (ii) such Defendant/Third-Party Plaintiff brings a cross-claim for contribution or indemnity against a Howse Party (each an “**Indemnified Party**” such term to include any subrogee thereof) seeking to recover any loss, liability, cost or expense suffered or incurred by such Defendant/Third-Party Plaintiff, as a result of or relating to the Proceeding (an “**Indemnified Claim**”), then the Court or Tribunal hearing said Indemnified Claim shall reduce any judgment in favor of the Debtors, jointly and severally, against a Defendant/Third-Party Plaintiff asserting said Indemnified Claim by an amount equal to the amount of the judgment multiplied by the aggregate proportionate share of fault of the Indemnified Party or the amount of the Settlement payment, whichever is greater.

c. If any Initiator enters into a settlement with any person with respect to one or more causes of action based upon, arising from or related to any Claim described in paragraph 7(a)(i) above, or any transaction underlying such Claim, then such Initiator shall use best efforts to cause to be included in the Settlement Agreement, and in all events the settlement shall be deemed to include, a dismissal, release and waiver of any Barred Claims.

d. Any Initiator or person against whom any Initiator initiates any suit, cause of action or other proceeding is hereby enjoined and restrained from seeking relief or collecting judgments in any manner that fails to conform to the terms of this Order.

e. Provided that nothing in this Order shall (i) enjoin, impair or delay the Securities and Exchange Commission (“SEC”) from commencing or continuing any claims, causes of action, proceedings or investigations against any person or entity, including the Howse Parties or (ii) release or discharge any person or entity, including the Howse Parties from any claims, rights, powers or interest held or assertable by the SEC.

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

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The Bank of Nova Scotia
Global Alternative Asset Group
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HSBC SECURITIES (USA) INC
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Beal Family trust FBO Kelly Beal
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The Beal Trust U/A
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Beal GST Exemption Trust
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Carlton Beal Family Trust
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