UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:

PALM BEACH FINANCE PARTNERS, L.P.,
PALM BEACH FINANCE II, L.P.,

Debtors.
_____/

CHAPTER 11

Case No. 09-36379-PGH
Case No. 09-36396-PGH
(Jointly Administered)

LIQUIDATING TRUSTEE'S MOTION FOR APPROVAL OF SETTLEMENT WITH DIVERSIFIED INVESTMENT POOL, LLC AND LEE MORTIMER 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 ("***Liquidating Trust***"), by and through undersigned counsel, and pursuant to *Fed. R. Bankr. P.* 9019, seeks an Order from this Court approving a settlement of claims that could be asserted against Diversified Investment Pool, LLC ("***DIP***") and Lee Mortimer ("***Mortimer***"). In support of this relief, the Liquidating Trustee states the following:

I. Factual Background

A. The Pre-Petition Activities of PBF I

1. The Liquidating Trust is the successor to Palm Beach Finance Partners, L.P. ("***PBF I***").

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2. PBF I was 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 PBF I 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, PBF I's 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***"), PBF I 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 Trust and appointing the Liquidating Trustee as liquidating trustee.

B. Transfers Made to DIP

7. DIP was a limited partner in PBF I.

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8. Based on a cash in, cash out analysis, DIP received a profit in the amount of $13,661.07 ("***Profit Distribution***") with respect to its limited partnership investment in PBF I.

II. Settlement Terms

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

a) Upon approval of the Stipulation, DIP and Mortimer will pay (or cause to be paid) $5,000.00 to the Liquidating Trust ("***Settlement Payment***"). The Settlement Payment represents roughly 37% of the Profit Distribution.

b) The parties shall exchange mutual, general releases; and

c) DIP and Mortimer shall not be entitled to any distribution from the PBF I bankruptcy estate.

III. Relief Requested

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

11. 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."

12. 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).

13. 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*

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

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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

14. 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

15. The Liquidating Trustee, on behalf of the Liquidating Trust, could assert that the Profit Distribution to DIP was a fraudulent transfer under federal or state law, or alternatively, that DIP was unjustly enriched by the Profit Distribution.

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

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

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Collectability

18. Collectability is a significant issue that substantiates approval of the Stipulation. DIP is a defunct entity that was dissolved on December 22, 2011. As such, assuming the Liquidating Trustee was successful in obtaining a judgment against DIP, he would have to engage in collection efforts. To this end, the Liquidating Trustee most likely would have to assert subsequent transferee actions against Mortimer and other similarly situated parties to collect on any judgment against DIP.

Complexity of litigation and attendant expense, inconvenience and delay

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

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

21. Moreover, the Liquidating Trustee's potential collection efforts described above would result in the estate incurring additional fees and delay. These expenses could potentially dwarf any recovery from Mortimer or other subsequent transferees.

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

Paramount interest of creditors

23. The Settlement Payment represents a roughly 37% recovery of the Profit Distribution and a waiver of any potential or corresponding claim. Although this recovery deviates from the proportion of recovery that the Liquidating Trustee has achieved in other

similarly situated litigations, the *de minimis* amount of recovery sought in the Complaint compared to the potential administrative expenses that would be incurred in further litigation warrants approval of the Stipulation. 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 PBF I's creditors and should be approved.

B. The Contingency Fee Ought to be Approved

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

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

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.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on August 29, 2012, 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 3, via U.S. Mail to those parties on the service list attached as Exhibit 4 and Lee Mortimer, Managing Member, MP 17.6, Edgerton Hwy, HC 60, Box 309A, Copper Center, AK 99573.

s/ Joshua A. Marcus
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jmarcus@melandrussin.com
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Telecopy: (305) 358-1221

Attorneys for Barry E. Mukamal, Liquidating Trustee

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (the "***Stipulation***") is entered into on _____, 2012 by and between (a) Barry E. Mukamal, in his capacity as liquidating trustee (the "***Liquidating Trustee***") of the Palm Beach Finance Partners Liquidating Trust (the "***Liquidating Trust***") and (b) Diversified Investment Pool, LLC ("***DIP***") and Lee Mortimer ("***Mortimer***") (the Liquidating Trustee, DIP and Mortimer are at times individually referred to as a "***Party***" or collectively, the "***Parties***"). The terms of this Stipulation are as follows:

RECITALS

A. On November 30, 2009 (the "***Petition Date***"), Palm Beach Finance Partners, L.P. ("***PBF I***") 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 (the "***Bankruptcy Court***");

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

C. On November 17, 2011, the Liquidating Trustee, on behalf of the Liquidating Trust, filed an adversary proceeding against DIP, Adv. Case No. 11-2812-PGH, that seeks to recover certain transfers made by PBF I to or for the benefit of DIP (the "***Litigation***");

D. DIP expressly denies the claims that are asserted in the Litigation;

E. The Parties have engaged in discussions in an attempt to resolve any and all issues, including the claims asserted in the Litigation; and

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

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

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

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

3. **Settlement Payment.** In full and final settlement of the Litigation, DIP and Mortimer shall pay (or cause to be paid) the aggregate sum of $5,000.00 (the "***Settlement Payment***") within 20 days from the date of the entry of an Order by the Bankruptcy Court approving this Stipulation. The Settlement Payment may be made via (i) wire transfer pursuant to written instructions to be provided by the Liquidating Trustee or his counsel or (ii) check made payable to "Barry E. Mukamal, Liquidating Trustee" and delivered to Jonathan S. Feldman, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131.

4. **No entitlement to distribution.** DIP and Mortimer agree that they shall not be entitled to any monetary distribution whatsoever from the Liquidating Trust or PBF I. To the extent DIP or Mortimer have scheduled or filed any proof of claim or proof of interest in the PBF I bankruptcy case, such claim or interest shall be deemed disallowed in its entirety and be stricken.

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

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

B. Upon approval of this Stipulation by final order of the Bankruptcy Court and payment of the Settlement Payment, the Liquidating Trustee, on behalf of the Liquidating Trust and PBF I, waives, releases and holds harmless, now and forever, DIP and Mortimer from any and all Claims that the Liquidating Trustee, the Liquidating Trust or PBF I may have against DIP or Mortimer; provided that nothing herein shall be deemed to release, waive or otherwise limit any rights or obligations arising out of this Stipulation. The scope of this release shall not impact, impair or alter in any manner any Claims whatsoever that the Liquidating Trustee, on behalf of the Liquidating Trust or PBF I, may have against any parties other than DIP or Mortimer, including but not limited to Claims against any alleged concurrent or consecutive tortfeasors, if any.

C. Upon approval of this Stipulation by final order of the Bankruptcy Court and payment of the Settlement Payment, DIP and Mortimer waive, release and hold harmless, now and forever, the Liquidating Trustee, the Liquidating Trust and PBF I from any and all Claims that DIP or Mortimer may have against the Liquidating Trustee, the Liquidating Trust or PBF I; provided that this provision does not release, waive or otherwise limit any rights or obligations arising out of this Stipulation.

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

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

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

8. **No waiver of modification.** This Stipulation and any of the specific items, covenants, and conditions contained herein, may not be waived, changed, altered or modified except by an instrument in writing signed by the Party against whom enforcement of such change is sought.

9. **Effective date.** This Stipulation shall be effective upon execution by all of the Parties hereto, subject only to approval of this Stipulation by final order of the Bankruptcy Court and payment of the Settlement Payment. Upon it becoming effective, this Stipulation shall be binding on all of the Parties' successors or assigns.

10. **No effect.** If the Bankruptcy Court does not approve this Stipulation, then the Stipulation shall be of no further force or effect, and the Parties shall be restored to their rights as

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

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

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

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

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

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STIPULATED AND AGREED TO BY:

_____ Date: 8/17/12
Barry E. Mukamal, Liquidating Trustee

Diversified Investment Pool, LLC

By: _____ Date: _____

_____ Date: _____
Lee Mortimer

STIPULATED AND AGREED TO BY:

_____ Date: _____
Barry E. Mukamal, Liquidating Trustee

Diversified Investment Pool, LLC

By: Lee R Mortimer Date: 8/12/12

Lee R. Mortimer Date: 8/12/12
Lee Mortimer

PROPOSED

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:

PALM BEACH FINANCE PARTNERS, L.P.,
PALM BEACH FINANCE II, L.P.,

Debtors.
_____/

CHAPTER 11

Case No. 09-36379-PGH
Case No. 09-36396-PGH
(Jointly Administered)

ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION FOR APPROVAL OF SETTLEMENT WITH DIVERSIFIED INVESTMENT POOL, LLC AND LEE MORTIMER AND PAYMENT OF CONTINGENCY FEE [ECF NO. ____]

THIS CAUSE came before the Court upon the Liquidating Trustee's Motion for Approval of Settlement with Diversified Investment Pool, LLC ("***DIP***") and Lee Mortimer ("***Mortimer***") and Payment of Contingency Fee [ECF No. _____] (the "***Motion***").[1] The Court, having reviewed the Motion and noting that a Certificate of No Response and Request for Entry of Order has been filed, finds that the notice of the proposed compromise and settlement is

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

EXHIBIT 2

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. DIP and Mortimer shall pay (or cause to be paid) $5,000.00 (the "***Settlement Payment***") within 20 days from the date of the entry of this Order. The Settlement Payment may be made via (i) wire transfer pursuant to written instructions to be provided by the Liquidating Trustee or his counsel or (ii) check made payable to "Barry E. Mukamal, Liquidating Trustee" and delivered to Jonathan S. Feldman, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131.

4. To the extent that DIP or Mortimer has any scheduled claim or proof of interest or has filed a proof of claim or proof of interest in the PBF I bankruptcy case, such claim or interest is deemed disallowed in its entirety.

5. The Court retains jurisdiction to enforce the terms of the Stipulation.

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6. MRB's Contingency Fee in the amount of $500.00 is approved and the Liquidating Trustee is authorized to pay this amount upon funding of the Settlement Payment.

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Submitted By:

s/ Joshua A. Marcus
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Attorneys for Barry E. Mukamal,
Liquidating Trustee

Copies Furnished To:
Joshua A. Marcus, 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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- Morris D. Weiss morrisw@hts-law.com, sherris@hts-law.com;annmariej@hts-law.com
- George L. Zinkler gzinkler.ecf@rprslaw.com

EXHIBIT 3

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New York, NY 10019

ARIS Multi-Strategy Fund, LP
Aris Capital Management
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Armadillo Fund
40 Random Farms Cir
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