

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.

**LIQUIDATING TRUSTEE'S MOTION TO APPROVE (1) SETTLEMENT  
WITH BRANNON HOWSE; AND (2) PAYMENT OF CONTINGENCY FEE**

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

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

**I. Factual Background**

**A. Procedural 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. The principal investment strategy of the Debtors was to invest in purchase financing transactions supposedly sourced by Thomas Petters and his company, Petters Company, Inc. and its affiliated entities (collectively, “**PCI**”).

3. The reality, however, was that Mr. Petters and PCI were engaging in a massive *Ponzi* scheme.

4. On October 2, 2008, the United States of America filed under seal in the United States District Court for the District of Minnesota its Complaint for Permanent Injunctive Relief and Other Equitable Relief (the “**DOJ Complaint**”) pursuant to 18 U.S.C. § 1345. The parties to the DOJ Complaint included a number of parties implicated in the massive *Ponzi* scheme perpetrated by Mr. Petters, including Deanna Coleman; Frank E. Vennes, Jr.; Metro Gem, Inc. (“**Metro Gem**”; and together with Mr. Vennes, the “**Vennes Parties**”); Robert White; Nationwide International Resources, Inc.; Larry Reynolds a/k/a Larry Reservitz; Michael Catain and Enchanted Family Buying Company (collectively, the “**Receivership Defendants**”).

5. On October 3, 2008, the United States District Court for the District of Minnesota (the “**Minnesota Court**”) entered a temporary restraining order, finding, among other things, that “[t]here is probable cause to believe that Defendants have conspired to commit and/or committed federal mail, wire, and/or banking fraud offenses.”

6. On October 6, 2008, the Minnesota Court entered an Order for Entry of Preliminary Injunction, Order Appointing Receiver, and Other Equitable Relief (including amendments thereto, the “**Petters Receivership Order**”).

7. The Petters Receivership Order appointed Douglas A. Kelley as the receiver for the Receivership Defendants (the “**Petters Receiver**”). Thereafter, the Petters Receiver filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the District of

Minnesota for PCI and was appointed Chapter 11 trustee for all such entities (in such capacity, the “*PCI Trustee*”; and at times together with the Liquidating Trustee, the “*Trustees*”).

8. On November 30, 2009, the Debtors filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the Southern District of Florida. By subsequent Order of this Court, the cases are jointly administered.

9. 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].

10. 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.

**B. The Vennes Litigation and the Adversary Proceeding**

11. The Debtors’ entry into the Petters’ fraud was made through the Vennes Parties. Namely, based on representations made by them, the Debtors invested hundreds of millions of dollars in fictitious PCI transactions.

12. On November 29, 2011, the Liquidating Trustee filed suit against the Vennes Parties, Adversary Case No. 11-03041-PGH-A (the “*Vennes Action*”). The Vennes Action seeks to avoid and recover transfers made to the Palm Beach Funds by the Vennes Parties and to hold the Vennes Parties liable in tort for material misrepresentations made by them to the Palm Beach Funds.

13. On September 23, 2014, the Liquidating Trustee, on behalf of the Liquidating Trusts, commenced suit against the Transferee, Adv. Case No. 14-1677-PGH (the “*Adversary*”). The Adversary sought to avoid net fraudulent transfers in the amount of \$145,778 made to or for the benefit of the Transferee by Metro Gem (the “*Transfers*”).

14. After filing the Adversary, the Liquidating Trustee and the Transferee entered into those certain tolling agreements with an effective date of October 13, 2014 (“*Tolling Agreements*”).

15. Pursuant to the Tolling Agreements, the Liquidating Trustee and the Transferee agreed to the tolling of any statutes of limitations that could be asserted by either party with respect to the Adversary and any other possible claims the Liquidating Trustee may possess against the Transferee, including but not limited to those relating to certain transactions, relationships and/or dealings among the Palm Beach Funds, the Vennes Parties and the Transferee (“*Potential Litigation*”).

16. Subsequently, the Liquidating Trustee voluntarily dismissed the Adversary without prejudice [Adversary, ECF No. 6].

17. The PCI Trustee has indicated that he intends to pursue the Transferee for the recovery of the Transfers under 11 U.S.C. § 550 (“*PCI Trustee’s Claims*”). The Adversary, the Potential Litigation and the PCI Trustee’s Claims are collectively referred to herein as the “*Trustees’ Claims*”.

18. The Transferee denies any liability arising from the Trustees’ Claims.

19. The Parties engaged in discussions in an attempt to resolve any and all issues, including the Trustees’ Claims, which ultimately led to a consensual resolution pursuant to the terms and conditions as set forth below.

## II. Settlement Terms

20. The key aspects of the stipulation of settlement between the Parties

(“*Stipulation*”) are the following:<sup>1</sup>

- a) The Transferee will pay (or cause to be paid) \$30,000.00 (the “*Settlement Payment*”) as follows:
  - i. Within 10 days from the date of the entry of final, non-appealable orders of both the Minnesota Bankruptcy Court and the Florida Bankruptcy Court approving the Stipulation, \$10,000.00 will be paid to the Trustees as follows:
    - a. \$4,000.00 will be paid to the Liquidating Trustee;
    - b. \$6,000.00 will be paid to the PCI Trustee (collectively, the “*First Payment*”);
  - ii. Within 6 months from the date the Transferee makes the First Payment, \$10,000.00 will be paid to the Trustees as follows:
    - a. \$4,000.00 will be paid to the Liquidating Trustee;
    - b. \$6,000.00 will be paid to the PCI Trustee (collectively, the “*Second Payment*”);
  - iii. Within 6 months from the date the Transferee makes the Second Payment, \$10,000.00 will be paid to the Trustees as follows:
    - a. \$4,000.00 will be paid to the Liquidating Trustee;
    - b. \$6,000.00 will be paid to the PCI Trustee;
- b) The Parties shall exchange mutual, general releases; and
- c) The Transferee shall not be entitled to any distribution from the Debtors’ or PCI bankruptcy estates.

21. Pursuant to the Second Amended Joint Plan of Liquidation (the “*Plan*”), approved by this Court’s Order dated October 21, 2010 [ECF No. 444], all monetary consideration received by the Palm Beach Liquidating Trusts in conjunction with the Settlement will be allocated as follows: 18% to Palm Beach Finance Partners Liquidating Trust and 82% to Palm Beach Finance II Liquidating Trust (the “*Pro Rata Allocation Formula*”).

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<sup>1</sup> A copy of the Stipulation is attached as Exhibit 1. To the extent the terms set forth in this Motion differ from those set forth in the Stipulation, the Stipulation controls.

### III. Relief Requested

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

23. 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.”

24. 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. *See In re Arrow Air*, 85 BR 891 (Bankr. S.D. Fla. 1988).

25. 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***

26. 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*

27. There is considerable litigation risk that is one of the main factors driving the Trustees' settlement of their Claims against the Transferee.

28. The Trustees could assert that the Trustees' Claims against the Transferee are constructively fraudulent transfers under Minnesota's variant of the Uniform Fraudulent Transfer Act – the Minnesota Uniform Fraudulent Transfer Act ("*MUFTA*") or subject to recovery under 11 U.S.C. § 550.

29. While the Trustees believe that they may be successful in prosecuting this cause of action, there are litigation risks both on proving the elements of the claim as well as on the affirmative defenses that the Transferee could assert.

*Collectability*

30. Collectability is a consideration with respect to the Transferee, as the Transferee has represented to the Liquidating Trustee that he has financial liquidity issues.

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

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

32. 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. Coupled with the legal hurdles outlined above, the result of these

efforts will be substantial fees of professionals that would significantly diminish the net result of any recovery against the Transferee.

33. 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*

34. The Settlement Payment represents an appropriate resolution of the Trustees' Claims that have significant legal and collectability concerns, gives certainty to the estates and avoids the risk, expense and delay attendant with litigation. As such, the Stipulation is in the paramount interest of the Liquidating Trusts and their stakeholders and should be approved.

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

35. 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**").

36. The Liquidating Trustee requests that the 10% Contingency Fee – in the amount of \$1,200.00 – be approved and that he be authorized and directed to pay this amount when the Liquidating Trustee receives his allocation of the Settlement Payment.

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on June 11, 2015, a true and correct copy of the foregoing was served via the Court's Notice of Electronic Filing on those parties listed on the attached Exhibit 3, via U.S. Mail upon the parties listed on the attached Manual Notice List attached as Exhibit 4, the Court's Matrices in Case No. 09-36379-BKC-PGH and Case No. 09-36396-BKC-PGH attached as Composite Exhibit 5<sup>2</sup>, and those additional addresses set forth on Exhibit 6.

s/ Joshua A. Marcus  
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Miami, Florida 33131  
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Telecopy: (305) 358-1221  
*Attorneys for Barry E. Mukamal,*  
*Liquidating Trustee*

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<sup>2</sup> "ADDL" means these additional parties served as a courtesy. See Exhibit 6.  
"COR" means that there is a known better address which is set forth on Exhibit 6.  
"DUP" means that the address appears more than once on this exhibit and is only being served one time by mail.  
"INC" means that the Matrix contains an incomplete addresses; hence, no service by mail.  
"NEF" means that service was made by Notice of Electronic Filing as set forth on Exhibit 3 and is not being additionally served by mail.  
"NNR" means no notice is required. Examples are professionals retained.  
"PBFP" means that entity appears on both matrices and only being served once.

**STIPULATION OF SETTLEMENT**

This Stipulation of Settlement ("*Stipulation*") is entered into on April 28, 2015 by and between (a) Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, the "*Liquidating Trusts*"), (b) Douglas A. Kelley, in his capacity as Chapter 11 trustee of the administratively-consolidated debtors under *In re Petters Company Inc., et al.* ("*PCI Trustee*"), and (c) Brannon Howse (individually or collectively, the "*Transferee*") (the Liquidating Trustee, PCI Trustee, and the Transferee are at times individually referred to herein as a "*Party*" or collectively, the "*Parties*"). The terms of this Stipulation are as follows:

**RECITALS**

a) On November 30, 2009 ("*Petition Date*"), Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (collectively, "*Palm Beach Funds*") commenced Chapter 11 bankruptcy cases by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida ("*Florida Bankruptcy Court*"), Case Nos. 09-36379 and 09-36396, respectively ("*Florida Bankruptcy Cases*");

b) On October 21, 2010, the Florida Bankruptcy Court entered its Order Confirming Second Amended Plan of Liquidation [ECF No. 444, Case No. 09-36379,], creating the Liquidating Trusts and appointing the Liquidating Trustee as liquidating trustee;

c) In an action commenced by the United States of America, by an Order entered on October 6, 2008 and as subsequently amended, Hon. Ann D. Montgomery, United States District Judge for the District of Minnesota, appointed Douglas A. Kelley as Receiver ("*Receiver*") for, among others, Thomas J. Petters ("*Petters*"), Petters Company, Inc. ("*PCI*"), Petters Group Worldwide, LLC ("*PGW*") and any affiliates, subsidiaries, divisions, successors, or assigns

owned 100% or controlled by the foregoing. *United States v. Petters, et al.*, Case No. 0:08-cv-05348, ECF Nos. 12 and 127 (“*Receivership Case*”);

d) On October 11, 200, pursuant to the authority granted to him under the Receivership Order, the Receiver filed petitions in the United States Bankruptcy Court for the District of Minnesota (“*Minnesota Bankruptcy Court*”), commencing the Chapter 11 cases of PCI and PGW. Petitions commencing the voluntary Chapter 11 bankruptcy cases of PC Funding, LLC, Thousand Lakes, LLC, SPF Funding, LLC, PL Ltd., Inc., Edge One, LLC and MGC Finance, Inc. were filed on October 15, 2008. The petition commencing the Chapter 11 bankruptcy case of PAC Funding, LLC was filed on October 17, 2008. The petition commencing the Chapter 11 bankruptcy case of Palm Beach Finance Holdings, Inc. was filed on October 19, 2008. The above-referenced bankruptcy cases are being jointly administered under *In re Petters Company, Inc., et al.*, Case No. 08-45257 (“*Minnesota Bankruptcy Cases*” or “*PCI/PGW Bankruptcy Estates*”);

e) On February 26, 2009, the Minnesota Bankruptcy Court approved the Office of the United States Trustee for the District of Minnesota’s appointment of Douglas A. Kelley, as the PCI Trustee;

f) On November 29, 2011, the Liquidating Trustee commenced litigation against Frank E. Vennes, Jr. (“*Vennes*”) and Metro Gem, Inc. (“*Metro Gem*”) on behalf of the Liquidating Trusts. *Mukamal v. Metro Gem, Inc. et al.*, Adv. Case No. 11-03041 (Bankr. S.D. Fla.). The Liquidating Trustee has asserted claims arising in tort based on certain representations Vennes / Metro Gem made to the Palm Beach Funds regarding their advances to Palm Beach Finance Holdings, Inc. and also for fraudulent transfers to recover certain investment transfers

Vennes and Metro Gem received from the Palm Beach Funds as investors in the Palm Beach Funds;

g) On September 23, 2014, the Liquidating Trustee, on behalf of the Liquidating Trusts, commenced an Adversary Proceeding (Adv. Case No. 14-1677) asserting claims against the Transferee for the avoidance and recovery of fraudulent transfers ("*Adversary*"), relating to funds the Transferee received from Metro Gem ("*Transfers*");

h) After filing the Adversary, the Liquidating Trustee, on behalf of the Liquidating Trusts, and the Transferee entered into those certain tolling agreements with an effective date of October 13, 2014 ("*Tolling Agreements*");

i) Pursuant to the Tolling Agreements, the Liquidating Trustee and the Transferee agreed to the tolling of any statutes of limitations that could be asserted by either party with respect to the Adversary and any other possible claims the Liquidating Trustee may possess against the Transferee, including but not limited to those relating to certain transactions, relationships and/or dealings among the Palm Beach Funds, Vennes / Metro Gem and the Transferee ("*Potential Litigation*");

j) Subsequently, the Liquidating Trustee voluntarily dismissed the Adversary without prejudice [ECF No. 6];

k) The PCI Trustee has indicated that he intends to pursue the Transferee for the recovery of the Transfers under 11 U.S.C. § 550 ("*PCI Trustee's Claims*"). The Adversary, the Potential Litigation and the PCI Trustee's Claims are collectively referred to herein as the "*Trustees' Claims*";

l) The Transferee expressly denies any liability arising from the Trustees' Claims;

m) The Parties have engaged in discussions in an attempt to resolve any and all issues, including the Trustees' Claims;

n) To avoid the continued expense and risk of litigation, the Parties have agreed to resolve the Trustees' Claims pursuant to the terms and conditions of this Stipulation.

**NOW, THEREFORE**, 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 Trustees' Claims, the Transferee will pay (or cause to be paid) \$30,000.00 ("**Settlement Payment**") to the Trustees as follows:

a) Within 10 days from the date of the entry of final, non-appealable orders of both the Minnesota Bankruptcy Court and the Florida Bankruptcy Court approving this Stipulation, \$10,000.00 will be paid to the Trustees as follows: \$4,000.00 to the Liquidating Trustee and \$6,000.00 to the PCI Trustee (collectively, the "**First Payment**").

b) Within 6 months from the date the Transferee makes the First Payment, \$10,000.00 will be paid to the Trustees as follows: \$4,000.00 to the Liquidating Trustee and \$6,000.00 to the PCI Trustee (collectively, the "*Second Payment*").

c) Within 6 months from the date the Transferee makes the Third Payment, \$10,000.00 will be paid to the Trustees as follows: \$4,000.00 to the Liquidating Trustee and \$6,000.00 to the PCI Trustee.

The Liquidating Trustee's total portion of the Settlement Payment (\$12,000.00) will be paid to the Liquidating Trustee 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 Joshua A. Marcus, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131. The PCI Trustee's total portion of the Settlement Payment (\$18,000.00) will be paid to the PCI Trustee on behalf of the PCI bankruptcy estate via (i) wire transfer pursuant to written instructions to be provided by the PCI Trustee or his counsel or (ii) check made payable to "Douglas A. Kelley, Trustee" and delivered to Douglas A. Kelley, Esq., Kelley, Wolter & Scott, P.A., 431 South Seventh Street, Suite 2530, Minneapolis, MN 55415. Any portion of the Settlement Payment made prior to the approval of this Stipulation by the Florida Bankruptcy Court and the Minnesota Bankruptcy Court shall be placed into the trust account for counsel for the Liquidating Trustee or the PCI Trustee, as appropriate. Transferee may prepay any of the amounts set forth herein without penalty.

4. **No entitlement to distribution.** The Transferee agrees that he, she, or it will not be entitled to any monetary distribution whatsoever, directly or indirectly, from the Liquidating Trusts, the Palm Beach Funds, or the PCI/PGW Bankruptcy Estates. To the extent that the Transferee was scheduled (i) by the Palm Beach Funds in the Florida Bankruptcy Cases, or

(ii) by PCI, PGW or any of the related administratively-consolidated debtors in the Minnesota Bankruptcy Cases, as having a claim or has filed any proof of claim or proof of interest in the Palm Beach Funds bankruptcy cases or the Minnesota Bankruptcy Cases, the Transferee agrees such claims or interests are deemed withdrawn in their entirety and will be stricken or otherwise disallowed.

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

a) For purposes of this Stipulation, the term “*Claims*” means any obligations, claims (including those arising under section 502(h) of the Bankruptcy Code), causes of action, or 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, the Trustees’ Claims.

b) Upon approval of this Stipulation by final orders of the Florida Bankruptcy Court and Minnesota Bankruptcy Court and payment of the Settlement Payment, the Liquidating Trustee, on behalf of the Liquidating Trusts and the Palm Beach Funds, and the PCI Trustee, on behalf of the PCI/PGW Bankruptcy Estates, each waives and releases, now and forever, the Transferee from any and all Claims that the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, or the PCI/PGW Bankruptcy Estates may have against the Transferee; provided that nothing herein will be deemed to release, waive, or otherwise limit any rights or obligations arising out of this Stipulation.

c) Upon approval of this Stipulation by final orders of the Florida Bankruptcy Court and Minnesota Bankruptcy Court and payment of the Settlement Payment, the Transferee waives and releases, now and forever, the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, and the PCI/PGW Bankruptcy Estates from any and all Claims that the Transferee may have against the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, and the PCI/PGW Bankruptcy Estates; provided that this provision does not release, waive, or otherwise limit any rights or obligations arising out of this Stipulation.

6. **Termination of Tolling Agreements.** Upon approval of this Stipulation by final orders of the Florida Bankruptcy Court and Minnesota Bankruptcy Court and payment of the Settlement Payment, the Tolling Agreements shall be deemed terminated.

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

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

9. **Amendments, Waiver.** This Stipulation may not be terminated, amended, or modified in any way except in a writing signed by all the Parties. No waiver of any provision of this Stipulation shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.



10. **Assignability.** No Party hereto may assign its rights under this Stipulation without the prior written consent of each of the other Parties hereto.

11. **Successors Bound.** This Stipulation shall be binding upon and inure to the benefit of each of the Parties and their successors and permitted assigns, including any subsequently-appointed Chapter 7 trustee in the Minnesota Bankruptcy Cases or trustee of the Liquidating Trusts.

12. **No Third-Party Beneficiary.** The Parties do not intend to confer any benefit by or under this Stipulation upon any person or entity other than the Parties hereto and their respective successors and permitted assigns.

13. **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 Florida Bankruptcy Court or Minnesota Bankruptcy Court; provided 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 recover reasonable attorneys' fees and costs related thereto, including, but not limited to, those incurred at all trial and appellate levels.

14. **Effective date.** This Stipulation shall be effective upon execution by all of the Parties hereto, subject only to approval of this Stipulation by final, non-appealable orders of the Minnesota Bankruptcy Court and the Florida 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.

15. **No effect.** If either of the Florida Bankruptcy Court or the Minnesota Bankruptcy Court do not approve this Stipulation, then the Stipulation shall be of no further force or effect,

the Parties shall be restored to their rights as they existed prior to the execution of this Stipulation, and the Settlement Payment shall be returned to the Transferee by the Liquidating Trustee and the PCI Trustee in the amounts stated in Paragraph 3, respectively. Notwithstanding the foregoing, if either of the Florida Bankruptcy Court or the Minnesota Bankruptcy Court do not approve this Stipulation because any of the Parties has failed to provide the Florida Bankruptcy Court or Minnesota 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.

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

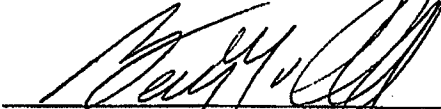
17. **Counterparts.** This Stipulation may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Stipulation. Delivery of an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

18. **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.

19. **Jurisdiction.** Jurisdiction to enforce the terms of this Stipulation shall rest exclusively with the Florida Bankruptcy Court or the Minnesota Bankruptcy Court and the Parties agree to bring any controversy arising under this Stipulation only in either the Minnesota Bankruptcy Court or the Florida Bankruptcy Court.

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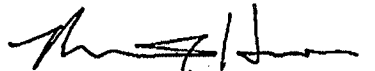
STIPULATED AND AGREED TO BY:

  
Barry E. Mukamal, Liquidating Trustee

Date: 4/28/15

\_\_\_\_\_  
Douglas A. Kelley, PCI/PGW Trustee

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


  
Brannon Howse

Date: 4-9-15

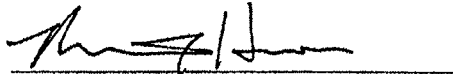
STIPULATED AND AGREED TO BY:

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

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

  
\_\_\_\_\_  
Douglas A. Kelley, PCI/PGW Trustee

Date: 5/4/15

  
\_\_\_\_\_  
Brannon Howse

Date: 4-9-15

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
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In re:

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PALM BEACH FINANCE II, L.P.,

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

Debtors.

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**ORDER GRANTING LIQUIDATING TRUSTEE'S  
MOTION TO APPROVE (1) SETTLEMENT WITH  
BRANNON HOWSE AND (2) AND PAYMENT OF CONTINGENCY FEE**

**THIS CAUSE** came before the Court upon the Liquidating Trustee's Motion to Approve (1) Settlement with Brannon Howse and (2) Payment of Contingency Fee [ECF No. \_\_\_\_] ("**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

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

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 Stipulation is **APPROVED**.
3. The Transferee shall pay (or cause to be paid) \$30,000.00 (the “*Settlement*”

*Payment*”) as follows:

- a) Within 10 days from the date of the entry of this Order and a final, non-appealable order of the Minnesota Bankruptcy Court approving the Stipulation, \$10,000.00 shall be paid to the Trustees as follows:
  - i) \$4,000.00 will be paid to the Liquidating Trustee;
  - ii) \$6,000.00 will be paid to the PCI Trustee (collectively, the “*First Payment*”);
- b) Within 6 months from the date the Transferee makes the First Payment, \$10,000.00 will be paid to the Trustees as follows:
  - i) \$4,000.00 will be paid to the Liquidating Trustee;
  - ii) \$6,000.00 will be paid to the PCI Trustee (collectively, the “*Second Payment*”); and
- c) Within 6 months from the date the Transferee makes the Second Payment, \$10,000.00 will be paid to the Trustees as follows:
  - i) \$4,000.00 will be paid to the Liquidating Trustee;
  - ii) \$6,000.00 will be paid to the PCI Trustee.

4. The Liquidating Trustee’s portion of the Settlement Payment (\$12,000.00) may be made via (i) wire transfers pursuant to written instructions to be provided by the Liquidating Trustee or his counsel or (ii) checks made payable to “Barry E. Mukamal, Liquidating Trustee” and delivered to Joshua A. Marcus, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131.

5. The Settlement Payment shall be allocated and apportioned among the Debtors as follows: 18% to Palm Beach Finance Partners, L.P. Liquidating Trust and 82% to Palm Beach

Finance II, L.P. Liquidating Trust (the “*Pro Rata Allocation Formula*”), and the Settlement Payment shall be made in the amounts in accordance with this allocation.

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

7. MRB’s Contingency Fee in the amount of \$1,200.00 is approved. The Liquidating Trustee is authorized and directed to make payment of the Contingency Fee from each of the Trusts without the need of further Court Order, in accordance with the Pro Rata Allocation Formula, promptly upon receipt of the Settlement Payment.

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

###

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**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.



6/10/2015

CM/ECF LIVE - U.S. Bankruptcy Court:flsb

**Mailing Information for Case 09-36379-PGH****Electronic Mail Notice List**

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113C-9  
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**ADDITIONAL (ADDL) for both cases: 09-36379 and 09-36396**

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