

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

CHAPTER 11

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

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

Debtors.

**LIQUIDATING TRUSTEE'S MOTION TO APPROVE
(1) SETTLEMENT WITH FRANK E. VENNES, JR., KIMBERLY VENNES
AND METRO GEM., INC. 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 Frank E. Vennes, Jr., Kimberly Vennes and Metro Gem, Inc. (collectively, the "***Settling Parties***") 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 (“**DOJ Complaint**”) pursuant to 18 U.S.C. § 1345. The parties to the DOJ Complaint included 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 (“**Minnesota Court**”) entered a temporary restraining order (“**TRO**”).

6. Within two weeks of the entry of the TRO, all of the Receivership Defendants had stipulated to the entry of a preliminary injunction and appointment of a receiver to assume control of their assets.

7. Two separate receiverships were established by the Minnesota Court. The first receivership was established by order entered on October 6, 2008 (including amendments thereto, the “**Petters Receivership Order**”), and included all assets of the named defendants and entities 100% owned or controlled by them, with the exception of the assets belonging to the Vennes Parties and certain of their affiliated entities (collectively, the “**Vennes Defendants**”).

8. The Petters Receivership Order appointed Douglas A. Kelley as the receiver for the Receivership Defendants (“**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**”).

9. The second receivership was established by order of the Minnesota Court entered on October 16, 2008 (including amendments thereto, the “**Vennes Receivership Order**”) and includes all assets of the Vennes Defendants (“**Vennes Receivership**”). Gary Hansen was appointed as receiver in the Vennes Receivership.

10. 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.

11. 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].

12. 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

13. On October 6, 2010, the PCI Trustee commenced litigation against the Vennes Parties on behalf of the PCI/PGW Bankruptcy Estates. *See Kelley v. Metro Gem, Inc. et al.*, Adv. No. 10-04352 (Bankr. D. Minn.) (“**PCI Vennes Action**”). The PCI Vennes Action seeks to recover over \$2 billion in allegedly fraudulent transfers and preferential payments made by PCI to the Vennes Parties during the Petters *Ponzi* scheme.

14. The Debtors were introduced to Mr. Petters through the Vennes Parties.

15. On November 29, 2011, the Liquidating Trustee filed suit against the Vennes Parties, Adversary Case No. 11-03041-PGH-A (“**Vennes Action**,” and together with the PCI Vennes Action, the “**Vennes Litigation**”). The Vennes Action asserts various tort and avoidance claims against the Vennes Parties.

16. The Vennes Litigation remains stayed by Orders entered by District Judge Ann D. Montgomery in the United States District Court for the District of Minnesota. In accordance with the restrictions set forth in such Orders, the Plaintiff and the PCI Trustee filed their respective complaints in the Vennes Litigation to preserve their rights under the applicable statute of limitations.

C. The Vennes Receivership and Plea

17. On January 25, 2011, the Minnesota Court entered an order (“**Asset Distribution Order**”) in the Vennes Receivership, which approved and implemented a plan of liquidation to distribute the Vennes Receivership’s assets (“**ADP**”). One asset specifically excluded from the ADP (and thus retained by the Vennes Parties) was the right to any tax credits or refunds to which the Vennes Parties may be entitled relating to or arising out of the Petters’ fraud.

18. On February 1, 2013, Vennes entered into a plea agreement with the United States of America as to criminal charges brought against him in the United States District Court for the District of Minnesota in connection with his conduct in relation to the Petters *Ponzi* scheme. In particular, Vennes pled guilty to two counts of aiding and abetting securities fraud and money laundering.

19. On October 18, 2013, Vennes was sentenced to 15 years of imprisonment.

D. The Tax Refunds and the Settlement

20. Mr. Vennes and his wife, Kimberly Vennes (“*Mrs. Vennes*”), have applied for and sought to receive income tax refunds from the U.S. Treasury and Minnesota Department of Revenue collectively totaling approximately \$15,165,399 for tax years 2005 and 2006 (the “*Refunds*”). The Trustees have taken the position that, under the law and in fairness and justice, any refund ought be paid to their respective estates for the benefit of the creditors of those estates.

21. The Trustees and the Settling Parties have engaged in discussions in an attempt to resolve any and all issues, including the Vennes Litigation, which ultimately led to a consensual resolution pursuant to the terms and conditions as set forth below. Specifically, the Trustees have agreed to resolve their claims against the Vennes Parties (and to the Refunds), in exchange for, *inter alia*, allowing (i) the Vennes Parties to use a small portion of the Refunds to pay for professional expenses incurred by Mr. and Mrs. Vennes in regard to the Refunds and (ii) Mrs. Vennes to retain a small portion of the Refunds to pay for her living expenses.

II. Settlement Terms

22. The key aspects of the stipulation of settlement between the Parties (“*Stipulation*”) are the following:¹

- a) Mr. Vennes and Mrs. Vennes shall grant power of attorney and assign the Refunds to the PCI Trustee for the benefit of the PCI/PGW Bankruptcy Estates and the Liquidating Trusts.
- b) The Trustees shall have sixty (60) days after the execution of the Stipulation to perform due diligence into the viability and collectability of the Refunds (“*Due Diligence Period*”). The Trustees may withdraw from and rescind the Stipulation, at their sole discretion, at any time during the Due Diligence Period if the Trustees deem the Refunds to be unviable or uncollectible.²
- c) Upon receipt of the Refunds,
 - i. \$750,000 of the Refunds shall be payable by the PCI Trustee as follows:
 - a. \$600,000 from the Refunds to Kimberly Vennes (the “*Kim Allowance*”) and
 - b. \$150,000 (“*Counsel Fees*”) from the Refunds to the PCI Trustee to pay counsel or other tax representatives for fees and costs incurred in connection with services in obtaining the Refunds.
 - ii. Forty percent (40%) of the net remaining after payment of the Kim Allowance and the Counsel Fees shall be payable by the PCI Trustee to the Liquidating Trustee (“*PBF Settlement Payment*”).³
- d) Metro Gem agrees to entry of a final judgment in favor of each Trustee in the amount of \$90,427,899.
- e) Mr. Vennes agrees to entry of a final judgment in favor of each Trustee in the amount of \$6,000,000.

¹ 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.

² The Parties may also extend the Due Diligence Period on mutual agreement, but in no event shall either Trustee withdraw after a determination by the IRS or the Minnesota Department of Revenue that the Refunds shall be made.

³ The Trustees entered into an agreement whereby they agreed to mediate jointly with the Vennes Parties and their subsequent transferees and allocate between themselves according to the terms of that agreement any settlement proceeds (the “*Allocation Agreement*”). Under the terms of the Allocation Agreement, the parties agreed to share equally the first one million dollars of total aggregate recoveries relating to claims against the Vennes Parties and their transferees, and for recoveries in excess of one million dollars, the PCI Trustee receives sixty percent and the Liquidating Trustee receives forty percent. [See ECF No. 1282.]

- f) After expiration of the Due Diligence Period and entry of final, nonappealable orders by both this Court and the Minnesota Bankruptcy Court approving the Stipulation, the Trustees agree to
 - i. seek dismissal with prejudice of the (a) Vennes Litigation and (b) any litigation pending against Plaza 1, Inc., Norma Vennes, Cosmos, Inc., William Schneider, Sue Silker, Greg Vennes and Grace Consulting of Southeast, Inc. (“**Dismissed Defendants**”);
 - ii. seek dismissal with prejudice of all claims against Aurora Anton, Dean Eller, Islander Alliance Church, Darlene Thomas, Jeff Gilboy, and Virgil Rasmussen; and
 - iii. forgive the final judgment against Darrel Amiot (“**Mr. Amiot**”).
- g) The Parties shall exchange mutual, general releases; and
- h) The Vennes Parties and Mrs. Vennes shall not be entitled to any distribution from the Debtors’ or PCI bankruptcy estates.

23. 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**”).

III. Relief Requested

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

25. 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.”

26. 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).

27. 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*

28. 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

29. This consideration militates in favor of approval of the Stipulation.

30. While Liquidating Trustee believes that he has certain strong claims against the Vennes Parties and would likely be successful in prosecuting certain of the causes of action, there are litigation risks involved in litigating the claims to judgment. Most notably, Mr. Vennes is serving a 15 year sentence and the stay of litigation imposed by the Vennes Receivership remains in place (as it has been for the nearly 3½ years since the Vennes Action was

commenced). Thus, it is unclear when the Liquidating Trustee may be in a position to bring his claims to judgment and how long it will take to adjudicate those claims.

31. Moreover, the Liquidating Trustee has asserted constructive fraudulent transfer claims under MUFTA against various transferees of the Vennes Parties, including the Dismissed Defendants. The majority of such remaining cases are also resolved by virtue of the Stipulation. While the Liquidating Trustee believes that he would be successful in prosecuting his claims against the Dismissed Defendants, there are litigation risks both on proving the elements of the claim as well as on the affirmative defenses that each of the transferees could assert.

Collectability

32. Collectability is a significant consideration with respect to the Vennes Parties, as Receiver Hansen has already liquidated and distributed the majority of their assets pursuant to the ADP. Indeed, upon information and belief, the Refunds are the one significant asset remaining against which the Liquidating Trustee might be able to collect (in any significant amount). Due to his incarceration, Mr. Vennes appears to have limited future earning capacity.

33. Moreover, the Liquidating Trustee has previously attended mediation with most of the Dismissed Defendants, as well as Mr. Amiot, and is thus aware that collectability is a significant concern with respect to many of such defendants.

Complexity of litigation and attendant expense, inconvenience and delay

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

35. The Vennes Action involves fact-intensive issues concerning the Vennes Parties' alleged role, legal obligations, and liability in connection with the massive fraud scheme orchestrated through PCI and its affiliates. As such, the litigation of such claims would

potentially require significant fact discovery before a trial could take place. The result of these efforts will be substantial fees of professionals that would significantly diminish the net result of any recovery against the Vennes Parties.

36. The Stipulation addresses these concerns. The parties avoid the challenges of litigating fact specific claims, against both the Vennes Parties and the Dismissed Defendants, with the attendant expense and delay of litigation being nullified.

Paramount interest of creditors

37. For all the reasons discussed herein, the Stipulation favorably and immediately concludes complex litigation with meaningful litigation risk, expense and delay. Thus, approval of the Stipulation is in the paramount interest of the Debtors' stakeholders.

B. The Contingency Fee Ought to be Approved

38. 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**").

39. The Liquidating Trustee requests that the 10% Contingency Fee be approved and that he be authorized and directed to pay to MRB 10% of the PBF Settlement Payment immediately upon receipt thereof.

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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 July 2, 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 5⁴, and those additional addresses set forth on Exhibit 6.

s/ Jessica L. Wasserstrom
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*Attorneys for Barry E. Mukamal,
Liquidating Trustee*

⁴ "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 June 11, 2015 by and between (a) Barry E. Mukamal, in his capacity as liquidating trustee (the "***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.* (the "***PCI Trustee***"); (c) Metro Gem, Inc. ("***Metro Gem***"); (d) Frank E. Vennes, Jr. ("***Mr. Vennes***"); and (e) Kimberly Vennes ("***Mrs. Vennes***") (the Liquidating Trustee, PCI Trustee, Metro Gem, Mr. Vennes, and Mrs. Vennes are at times individually referred to herein as a "***Party***" or collectively, the "***Parties***"). The terms of this Stipulation are as follows:

RECITALS

A. In an action under 18 U.S.C. Section 1345 commenced by the United States of America, by an Order entered on October 6, 2008 and as subsequently amended, the Honorable Ann D. Montgomery, United States District Judge for the District of Minnesota, appointed Douglas A. Kelley as Receiver (the "***Receiver***") for, among others, Thomas J. Petters ("***Petters***"), Petters Company, Inc. ("***PCF***"), Petters Group Worldwide, LLC ("***PGW***") and related entities owned 100% or controlled by the foregoing. *United States v. Petters, et al.*, Case No. 0:08-cv-05348, ECF Nos. 12 and 127 (the "***Receivership Case***");

B. On October 11, 2008, 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 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 the caption *In re Petters Company, Inc., et al.*, Bky. Case No. 08-45257 (the “*Minnesota Bankruptcy Cases*” or “*PCI/PGW Bankruptcy Estates*”);

C. 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;

D. On November 30, 2009, Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (the “*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 (the “*Florida Bankruptcy Court*”), Bky. Nos. 09-36379 and 09-36396 respectively (the “*Florida Bankruptcy Cases*”);

E. On October 6, 2010, the PCI Trustee commenced litigation against Mr. Vennes and Metro Gem, (Metro Gem together with Mr. Vennes, the “*Vennes Parties*”), but not Mrs. Vennes, on behalf of the PCI/PGW Bankruptcy Estates. *Kelley v. Metro Gem, Inc. et al.*, Adv. No. 10-04352 (Bankr. D. Minn.) (the “*PCI Vennes AP*”);

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

G. On November 29, 2011, the Liquidating Trustee commenced litigation against the Vennes Parties, but not Mrs. Vennes, on behalf of the Liquidating Trusts. *Mukamal v. Metro*

Gem, Inc. et al., Adv. No. 11-03041 (Bankr. S.D. Fla.) (the “**PBF Vennes AP**,” and together with the PCI Vennes AP, the “**Vennes APs**”);

H. On November 29, 2011, the Liquidating Trustee, on behalf of the Liquidating Trusts, commenced adversary proceedings in the Florida Bankruptcy Court against, *inter alia*, each of (i) Plaza 1, Inc. (Adv. No. 11-2966), (ii) Norma Vennes (Adv. No. 11-2968), (iii) Cosmos, Inc. (Adv. No. 11-2970), (iv) William Schneider (Adv. No. 11-2990), (v) Sue Silker (Adv. No. 11-3023), (vi) Greg Vennes (Adv. No. 11-2967), and (vii) Grace Consulting of Southeast, Inc. (Adv. No. 11-2949) (collectively, the “**Metro Gem Profiteer APs**”);

I. Mr. Vennes and Mrs. Vennes have applied for and sought to receive income tax refunds from the U.S. Treasury and Minnesota Department of Revenue collectively totaling approximately \$15,165,399 for tax years 2005 and 2006 (the “**Refunds**.”) The PCI Trustee and the Liquidating Trustee, (collectively “**The Trustees**”) took the position that under the law and in fairness and justice any refund ought be paid to their respective estates for the benefit of the creditors of those estates and Mr. Vennes and Mrs. Vennes agreed on the condition that a small portion of any refund be paid to Mrs. Vennes for her living expenses and another small amount shall be used for professional expenses incurred by Mr. and Mrs. Vennes in regard to the Refunds.

J. Since commencement of the Vennes APs, the Parties have engaged in negotiations in an attempt to resolve any and all issues, including the claims asserted in the Vennes APs with regard to Mr. Vennes and Metro Gem and related actions as set forth here;

K. To avoid the continued expense of litigating the Vennes APs with regard to Mr. Vennes and Metro Gem and to avoid the related risk of an adverse outcome arising from the Vennes APs with regard to Mr. Vennes and Metro Gem, and the Metro Gem Profiteer APs, incurring additional costs and expenses associated therewith, among other reasons, the Parties have

agreed to resolve the Vennes AP's with regard to Mr. Vennes and Metro Gem 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. **Consideration - Entitlement to tax refunds.**

A. Mr. Vennes and Mrs. Vennes shall immediately grant power of attorney and assign the Refunds to the PCI Trustee for the benefit of the PCI/PGW Bankruptcy Estates and the Liquidating Trusts. Upon receipt of the Refunds, \$750,000 of the Refunds shall be payable by the PCI Trustee as follows: (i) \$600,000 from the Refunds to Kimberly Vennes (the "*Kim Allowance*") and (ii) \$150,000 ("*Counsel Fees*") from the Refunds to the PCI Trustee to pay counsel or other tax representatives for fees and costs incurred in connection with services in obtaining the Refunds. Any remaining unpaid Counsel Fees shall be shared by the Liquidating Trustee and PCI Trustee in the same manner as the Refunds under this Stipulation.

B. The PCI Trustee and Liquidating Trustee shall have sixty (60) days after the execution of this agreement to perform due diligence into the viability and collectability of the

Refunds (the “*Due Diligence Period*”). The PCI Trustee and Liquidating Trustee may withdraw from and rescind this Stipulation, at their sole discretion, at any time during those sixty days if the Trustees deem the Refunds to be unviable or uncollectible. If either Trustee withdraws from this Stipulation, the power of attorney granted by Mr. and Mrs. Vennes shall be withdrawn as of the date of the Trustee’s withdrawal. Any documents, files and electronic files obtained by the PCI Trustee in connection with the due diligence shall be destroyed or returned to Mr. and Mrs. Vennes and/or their Counsel, and this Stipulation of Settlement shall become null and void. The parties may extend the Due Diligence Period on mutual agreement but in no event shall either Trustee withdraw after a determination by the IRS or the Minnesota Department of Revenue that the Refunds shall be made.

C. Mr. Vennes and Mrs. Vennes agree to fully cooperate and to execute or provide any other or further documentation relevant to the assignment of the Refunds as the Trustees, in their discretion, the U.S. Treasury or the Minnesota Department of Revenue may reasonably require of Mr. Vennes and Mrs. Vennes in order to effectuate the assignment and pursuit of the Refunds;

D. The PCI Trustee agrees that, upon receipt of the Refunds, he shall (1) set aside \$150,000 for Counsel Fees, (2) remit the Kim Allowance to Mrs. Vennes (3) remit to the Liquidating Trustee forty percent (40%) of the net remaining after steps (1) and (2) above. Funds paid to the Liquidating Trustee shall be 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 Jessica L. Wasserstrom, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131.

E. In the unanticipated event that either the U.S. Treasury or Minnesota Department of Revenue pay the Refunds to Mr. Vennes and/or Mrs. Vennes or their counsel or tax representative, Mr. Vennes and Mrs. Vennes agree that, promptly upon receipt of the Refunds, they shall turn over to the Trustees any such Refunds (less any portion of the Kim Allowance not yet paid) as follows: (i) \$150,000 to the PCI Trustee to be set aside for Counsel Fees, (ii) 40% of the net remaining to the Liquidating Trustee via (a) wire transfer pursuant to written instructions to be provided by the Liquidating Trustee or his counsel or (b) check made payable to "Barry E. Mukamal, Liquidating Trustee" and delivered to Jessica L. Wasserstrom, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131; and (iii) 60% of the net remaining to the PCI Trustee on behalf of the PCI/PGW Bankruptcy Estates via (a) wire transfer pursuant to written instructions to be provided by the PCI Trustee or his counsel or (b) check made payable to "Douglas A. Kelley, Trustee" and delivered to Kelley, Wolter & Scott, P.A., 431 South Seventh Street, Suite 2530, Minneapolis, MN 55415.

F. If the Refunds are received prior to approval of this Stipulation, the Trustees will hold their respective portions of the Refunds pending approval of this Stipulation by the Florida Bankruptcy Court and the Minnesota Bankruptcy Court.

4. **Judgment against Metro Gem.** Metro Gem hereby stipulates to a judgment in favor of each Trustee ("***Metro Gem Judgment***") totaling Ninety Million Four Hundred Twenty Seven Thousand Eight Hundred Ninety-Nine Dollars (\$90,427,899) each. The Trustees agree to not use the judgment to pursue any assets of Mr. Vennes, Mrs. Vennes, Metro Gem, the parties to the Metro Gem Profiteer AP's, Aurora Anton, Dean Eller, Islander Alliance Church, Darlene Thomas, Jeff Gilboy, Virgil Rasmussen or Darrel Amiot. The PCI Trustee reserves his right to pursue Northwestern Foundation and it's transferees and Metro Gem, LLC and it's transferees.

The Trustees reserve their rights to pursue Metro Gem transferees and subsequent transferees, other than those to be excluded pursuant to the terms of this Stipulation. Mr. Vennes may demand satisfaction of the Metro Gem Judgment after the resolution of all transferee and subsequent transferee claims.

5. **Judgment against Mr. Vennes.** Mr. Vennes hereby stipulates to a judgment in favor of each Trustee totaling Six Million Dollars (\$6,000,000) each ("the *Frank Vennes Judgment*"). The Trustees agree to not use these judgments to pursue any assets of Mr. Vennes, Mrs. Vennes, the parties to the Metro Gem Profiteer AP's, Aurora Anton, Dean Eller, Islander Alliance Church, Darlene Thomas, Jeff Gilboy, Virgil Rasmussen or Darrel Amiot. The PCI Trustee reserves his right to pursue transferees and subsequent transferees including, but not limited to, the Northwestern Foundation and its transferees and Metro Gem, LLC and its transferees. Mr. Vennes may demand satisfaction of the Frank Vennes Judgments after the resolution of all transferee and subsequent transferee claims.

6. **No entitlement to distribution.** Mr. Vennes agrees that neither he nor Metro Gem will be entitled to any direct monetary distribution whatsoever from the Liquidating Trusts, the Palm Beach Funds, or the PCI/PGW Bankruptcy Estates because their rights to any such payments were assigned in the Asset Distribution Plan approved by the U.S. District Court for the District of Minnesota on January 25, 2011. Notwithstanding the foregoing, nothing herein shall affect the Trustees' right to object to any claims or interests filed by or scheduled with respect to Mr. Vennes or Metro Gem in the Florida Bankruptcy Cases or the Minnesota Bankruptcy Cases, and the Trustees expressly reserve their right to object to any such claims or interests on any and all grounds.

7. 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.

B. Except as specifically set forth herein, upon approval of this Stipulation by orders of the Florida Bankruptcy Court and Minnesota Bankruptcy Court, 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 Vennes Parties and Mrs. Vennes 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 (collectively, the “*PBF/PCI Releasing Parties*”) may have against the Vennes Parties and Mrs. Vennes; *provided* that nothing herein will be deemed to release, waive, or otherwise limit any rights, judgments, including but not limited to the judgments set forth in paragraphs 4 and 5 above, or obligations arising out of this Stipulation. Moreover, the scope of this release shall not impact, impair or alter in any manner any Claims whatsoever that one or more of the PBF/PCI Releasing Parties may have against any parties other than the Vennes Parties and/or Mrs. Vennes, including but not limited to Claims against any alleged concurrent or consecutive tortfeasors, initial transferees, or subsequent transferees, if any, and Claims against any of the following: Metro Gem, Inc.,

The Northwestern Foundation, Metro Gem LLC, Peter Taunton, Kandi Kourts, Inc d/b/a Sunny Day Security Systems, Inc., Marie Ashton, The Ashton Revocable Living Trust, The National Christian Charitable Foundation, Inc. d/b/a The National Christian Foundation, Inc., Samuel Mansour, Phillip Mansour, Joseph Mansour, General Electric Capital Corporation, Richard Menczynski, Robert White, Thomas Petters, Deanna Coleman, Larry Reynolds, Michael Catain, Nationwide International Resources, Enchanted Family Buying Company, BMO Harris Bank N.A., as successor by merger to M&I Marshall & Isley Bank, and Christopher Flynn. Upon approval of this Stipulation by final order of the Florida Bankruptcy Court, Mr. Vennes and Mrs. Vennes each waives and releases, now and forever, the PBF/PCI Releasing Parties from any and all Claims that Mr. Vennes and/or Mrs. Vennes may have against the PBF/PCI Releasing Parties; *provided, however*, that this provision does not release, waive, or otherwise limit any rights or obligations arising out of this Stipulation.

8. **Cooperation.** Mr. Vennes agrees to cooperate and provide truthful information to the Liquidating Trustee in any investigation undertaken by the Liquidating Trustee arising from or relating in any way to the business affairs or operations of the Palm Beach Funds, including, but not limited to (a) being available by telephone to answer questions from the Liquidating Trustee or his counsel and/or meeting with them on reasonable notice; or (b) appearing for depositions, hearings or trials to the extent practicable. Mr. Vennes shall not be entitled to any compensation or other consideration in connection with his cooperation.

9. **Dismissal of Adversary Proceedings.** After expiration of the Due Diligence Period and entry of final, non-appealable orders by the Florida Bankruptcy Court and the Minnesota Bankruptcy Court approving this Stipulation, the Trustees agree to seek dismissal with

prejudice of the Vennes AP's with regard to Mr. Vennes, and the Metro Gem Profiteer APs. The Liquidating Trustee and the PCI Trustee shall further dismiss all claims, with prejudice, the Liquidating Trustee and PCI Trustee may have against Aurora Anton, Dean Eller, Islander Alliance Church, Darlene Thomas, Jeff Gilboy, and Virgil Rasmussen. Finally, the Liquidating Trustee shall forgive the final judgment it holds against Darrel Amiot.

10. **Representations of Vennes Parties and Mrs. Vennes.** Mr. Vennes and Mrs. Vennes, or the individuals executing this Stipulation on their behalf, represent and warrant that he, she, or it has the authority to execute this Stipulation on behalf of the applicable Party and bind them to its terms.

11. **Representations of the Trustees.** Subject to the approval of the Bankruptcy Courts, the Trustees signing below each represents and warrants that he has the authority to execute this Stipulation on behalf of the Liquidating Trusts and the PCI/PGW Bankruptcy Estates, respectively, and bind them to its terms.

12. **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.

13. **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.

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

15. **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.

16. **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.

17. **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.

18. **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 Refunds to the Trustees. Upon it becoming effective, this Stipulation shall be binding on all of the Parties' successors or assigns.

19. **No effect.** If either of the Florida Bankruptcy Court or the Minnesota Bankruptcy Court do not approve this Stipulation, or if the PCI Trustee and/or Liquidating Trustee withdraw from the Stipulation in accordance with the terms in paragraph 3B of 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. 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.

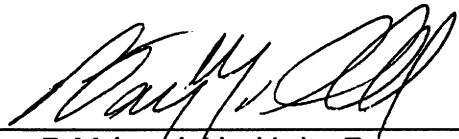
20. **Controlling law.** This Stipulation shall in all respects be construed in accordance with the laws of the State of Minnesota applicable to contracts made and to be performed wholly within the State of Minnesota and by federal law to the extent the same has preempted the laws of the State of Minnesota.

21. **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.

22. **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.

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

STIPULATED AND AGREED TO BY:



Barry E. Mukamal, Liquidating Trustee

Date: 6/18/15

Douglas A. Kelley, PCI/PGW Trustee

Date: _____

Frank E. Vennes, Jr.

Date: _____

Kimberly Vennes

Date: _____

Metro Gem, Inc.

Date: _____

By _____

Its _____

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

STIPULATED AND AGREED TO BY:

Barry E. Mukamal, Liquidating Trustee

Date: _____



Douglas A. Kelley, PCI/PGW Trustee

Date: 6/15/15

Frank E. Vennes, Jr.

Date: _____

Kimberly Vennes

Date: _____

Metro Gem, Inc.

Date: _____

By _____

Its _____

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.

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

STIPULATED AND AGREED TO BY:

Barry E. Mukamal, Liquidating Trustee

Date: _____

Douglas A. Kelley, PCI/PGW Trustee

Date: _____

Frank E. Vennes, Jr.

Date: _____

Kimberly Vennes
Kimberly Vennes

Date: 6/11/15

Metro Gem, Inc.

Date: _____

By _____

Its _____

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.

20. 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.

21. 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.

22. 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.

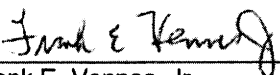
23. Jurisdiction. Jurisdiction to enforce the terms of this Stipulation shall rest exclusively with the Minnesota Bankruptcy Court and the Parties agree to bring any controversy arising under this Stipulation only in the Minnesota Bankruptcy Court.
STIPULATED AND AGREED TO BY:

Barry E. Mukamal, Liquidating Trustee

Date: _____

Douglas A. Kelley, PCI/PGW Trustee

Date: _____


Frank E. Vennes, Jr.

Date: 6-11-15

Kimberly Vennes

Date: _____


Metro Gem, Inc.

Date: 6-11-15

By 

Its CEO

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

In re:

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

Chapter 11

Debtors,

CASE NO. 09-36379-BKC-PGH
(Jointly Administered)

**ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION TO APPROVE
(1) SETTLEMENT WITH FRANK E. VENNES, JR., KIMBERLY VENNES
AND METRO GEM, INC. AND (2) PAYMENT OF CONTINGENCY FEE**

THIS MATTER came before the Court upon the *Liquidating Trustee's Motion to Approve (1) Settlement with Frank E. Vennes, Jr., Kimberly Vennes and Metro Gem, Inc. and (2) Payment of Contingency Fee ("Motion")* [ECF No. ____].¹ The Court has reviewed and considered the Motion, and noting that a Certificate of No Response and Request for Entry of Order has been filed, finds that the notice of the proposed compromise and settlement is sufficient to comply with Bankruptcy Rules 9019 and 2002(a)(3), Local Rule 9013-1(D) and any other applicable notice requirement, and accordingly, it is:

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion and the Stipulation attached as Exhibit 1 to the Motion.

ORDERED as follows:

1. The Motion is **GRANTED**.
2. The Stipulation is **APPROVED**.
3. Mr. Vennes and Mrs. Vennes shall grant power of attorney and assign the Refunds to the PCI Trustee for the benefit of the PCI/PGW Bankruptcy Estates and the Liquidating Trusts.
4. The Trustees shall have sixty (60) days after the execution of the Stipulation to perform due diligence into the viability and collectability of the Refunds (“***Due Diligence Period***”). The Trustees may withdraw from and rescind the Stipulation, at their sole discretion, at any time during the Due Diligence Period if the Trustees deem the Refunds to be unviable or uncollectible.
5. Upon receipt of the Refunds,
 - a. \$750,000 of the Refunds shall be payable by the PCI Trustee as follows:
 - i. \$600,000 from the Refunds to Kimberly Vennes (the “***Kim Allowance***”) and
 - ii. \$150,000 (“***Counsel Fees***”) from the Refunds to the PCI Trustee to pay counsel or other tax representatives for fees and costs incurred in connection with services in obtaining the Refunds.
 - b. Forty percent (40%) of the net remaining after payment of the Kim Allowance and the Counsel Fees shall be payable by the PCI Trustee to the Liquidating Trustee (“***PBF Settlement Payment***”).
6. The PBF Settlement Payment 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 Jessica L. Wasserstrom, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131.

7. The PBF 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 PBF Settlement Payment shall be made in the amounts in accordance with this allocation.

8. The PBF Settlement Payment will be held in the trust account of counsel for the Liquidating Trustee pending approval of the Stipulation by the Minnesota Bankruptcy Court.

9. The Contingency Fee, in the amount of 10% of the PBF Settlement Payment, is approved. The Liquidating Trustee is authorized and directed to make payment of the Contingency Fee without the need for further Court Order, in accordance with the Pro Rata Allocation Formula, promptly upon receipt of the PBF Settlement Payment.

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

###

Submitted By:

Jessica L. Wasserstrom, Esquire
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jwasserstrom@melandrussin.com
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3200 Southeast Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 358-6363
Telecopy: (305) 358-1221
Attorneys for the Liquidating Trustee

Copies Furnished To:

Jessica L. Wasserstrom, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.

07/02/15

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.

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- **Patricia A Redmond** predmond@stearnsweaver.com, jmartinez@stearnsweaver.com; bank@stearnsweaver.com; rross@stearnsweaver.com; cgraver@stearnsweaver.com; sdaddese@akingump.com
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- **Steven E Seward** steven.seward@gmail.com
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- **George L. Zinkler** gzinkler.ecf@rprslaw.com

Manual Notice List

The following is the list of **parties** who are **not** on the list to receive email notice/service for this case (who therefore require manual noticing/service). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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Maple Grove, MN 55369

Megan C. Fitzpatrick
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James F Bendernagel
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Pete L Demahy
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