

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM DIVISION
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IN RE:

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 TWENTY-FIRST OMNIBUS
OBJECTION (LIMITED PARTNER SCHEDULED EQUITY
INTERESTS IN CASE NO. 09-36396-PGH (PBF II))**

IMPORTANT NOTICE TO INTEREST HOLDERS:

THIS IS AN OBJECTION TO YOUR SCHEDULED EQUITY INTEREST

This objection seeks to modify the percentage of your previously scheduled equity interest. Please read this objection carefully to identify which equity interests are objected to and what disposition of your equity interest(s) are recommended.

If you disagree with the objection or the recommended treatment, you must file a written response WITHIN 30 DAYS from the date of service of this objection, explaining why your scheduled equity interest should be calculated using a different amount, and you must serve a copy to the undersigned attorney OR YOUR EQUITY INTEREST MAY BE RESOLVED IN ACCORDANCE WITH THE RECOMMENDATION IN THIS OBJECTION.

The written response must contain the case name, case number, and must be filed with the Clerk of the United States Bankruptcy Court.

Pursuant to Federal Rule of Bankruptcy Procedure 3007, Local Rule 3007-1, and this Court's Order Granting Motion to Authorize Liquidating Trustee to Use "Cash-in/Cash-out" Method to Calculate Limited Partner Claims and Interests [ECF No. 2678] ("*Cash-in/Cash-out Order*"), Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") for the Palm Beach Finance Partners Liquidating Trust and Palm Beach Finance II Liquidating Trust (collectively, the "*Liquidating Trusts*"), by and through undersigned counsel, objects to the scheduled equity

interest(s) of the limited partners in Palm Beach Finance II, L.P. (“*PBF II*”) set forth below,¹ on the following basis:

BASIS FOR OBJECTION

On July 30, 2015, the Court entered the Cash-in/Cash-out Order, pursuant to which the Court ordered that limited partner claims and equity interests shall be calculated using the cash-in/cash-out method. Under this method, as detailed in the Cash-in/Cash-out Order, the amount of each limited partner claim and/or interest shall be the amount of cash the limited partner transferred to a Debtor minus the amount of cash such limited partner received from that Debtor as of the Petition Date, whether such monies were received as a return of principal, profits, dividends or interest.

Each of the below-listed limited partners were included on the list of equity security holders filed at the outset of the Debtors’ chapter 11 cases.² *See* ECF No. 21 in Case No. 09-36396-PGH. However, such limited partner’s scheduled equity interest was not calculated, in accordance with the Cash-in/Cash-out Order, using the cash-in/cash-out method. Accordingly, the Liquidating Trustee objects to such limited partner’s scheduled equity interest in Case No. 09-36396-BKC-PGH (*PBF II*) and requests that such limited partner’s equity interest be calculated (following the final resolution of all limited partners claims and equity interests) using the amount reflected in the column titled “Net Loss on a Cash-in/Cash-out Basis” as the numerator (which reflects the amount of such limited partner’s claim calculated using the cash-in/cash-out method based on the Debtor’s books and records) and the total of all allowed equity interests as the denominator.

¹ Pursuant to Article 3 of the confirmed plan of liquidation, allowed claims filed by the Debtors’ limited partners are classified and treated in class 1A and 1B. *See* ECF No. 246. In addition, all holders of an equity interest in the Debtors, as of the date the Debtors filed for bankruptcy, are classified in class 3A and 3B. *Id.*

² None of the limited partners addressed by this Objection filed a proof of claim against the Debtors.

Finally, in certain instances, the name on the list of equity security holders differs slightly from the underlying documents in the Debtors' books and records evidencing the investment. Accordingly, the Liquidating Trustee requests that the list of equity security holders be modified, as necessary, to reflect the limited partner listed in the column entitled "Name of Claimant" below (which corresponds to the holder of the claim/equity interest according to the Debtors' books and records) as the actual holder of the equity interest.

Name of Equity Holder	Net Loss on a Cash-in/Cash-Out Basis
Genesis Special Opportunity (QP), LP ³	\$5,150,000.00 <i>See Schedule 1.</i>
Genesis Special Opportunity, LP ³	\$2,425,000.00 <i>See Schedule 1.</i>
Genesis Strategic Investors (QP), LP ³	\$10,622,263.98 ⁴ <i>See Schedule 1.</i>
Genesis Strategic Investors, LP ³	\$7,753,876.49 ⁵ <i>See Schedule 1.</i>
Aegis Capital Fund, LLC ⁶	\$3,000,000.00 <i>See Schedule 1.</i>

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³ Genesis Special Opportunity (QP), LP, Genesis Special Opportunity, LP, Genesis Strategic Investors (QP), LP, and Genesis Strategic Investors, LP were collectively listed on the schedule of equity holders as Genesis Capital. See ECF No. 21.

⁴ The cash-in amount for Genesis Strategic Investors (QP), LP ("**GSIQP**") reflects the entity's initial investment in PBF II, which was made using funds GSI QP cashed out of its investment in PBFP, resulting in a net profit on a cash-in/cash-out basis in PBFP. Accordingly, the Liquidating Trustee has asserted a clawback claim against GSIQP in PBFP for the recovery of those net profits, which have been preserved pursuant to a tolling agreement between the parties ("**GSIQP Tolling Agreement**"). Nothing contained herein shall affect in any way the GSIQP Tolling Agreement or the Liquidating Trustee's rights preserved thereunder to pursue the clawback of GSIQP's net profits in PBFP.

⁵ The cash-in amount for Genesis Strategic Investors, LP ("**GSI**") reflects the entity's initial investment in PBF II, which was made using funds GSI cashed out of its investment in PBFP, resulting in a net profit on a cash-in/cash-out basis in PBFP. Accordingly, the Liquidating Trustee has asserted a clawback claim against GSI in PBFP for the recovery of those net profits, which have been preserved pursuant to a tolling agreement between the parties ("**GSI Tolling Agreement**"). Nothing contained herein shall affect in any way the GSI Tolling Agreement or the Liquidating Trustee's rights preserved thereunder to pursue the clawback of GSI's net profits in PBFP.

⁶ Aegis Capital Fund, LLC was listed on the schedule of equity holders as Centermark Asset Management. See ECF No. 21.

RESERVATION OF RIGHTS

Nothing herein should be construed as the Liquidating Trustee waiving any of his rights as to issues relating to the priority of distributions (such as 11 U.S.C. §510); to the contrary, the Liquidating Trustee reserves all of such rights. The Liquidating Trustee's claims review process and legal analysis is ongoing, and the Trustee anticipates filing court papers in the future on these and any other appropriate grounds. Further, nothing herein is intended to be or should be considered a limit to the damages that the Liquidating Trustee - or any other party - can claim or recover against third parties.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 11, 2016, a true copy of the foregoing was served via the Court's Notice of Electronic Filing upon the Registered Users set forth on the attached **Exhibit A** and via U.S. Mail on the Claimants listed above at the addresses set forth on the attached **Exhibit B**.

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Attorneys for Liquidating Trustee

Schedule 1

LP Name	Total LP "In" Activity	Total LP "Out" Activity	Net LP Loss (Gain)	Proposed Numerator for Equity Holder %
Genesis Special Opportunity (QP), LP	5,150,000.00	-	5,150,000.00	5,150,000.00
Genesis Special Opportunity, LP	2,425,000.00	-	2,425,000.00	2,425,000.00
Genesis Strategic Investors (QP), LP	10,622,263.98	-	10,622,263.98	10,622,263.98
Genesis Strategic Investors, LP	7,753,876.49	-	7,753,876.49	7,753,876.49
Aegis Capital Fund, LLC	3,000,000.00	-	3,000,000.00	3,000,000.00

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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EXHIBIT B

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