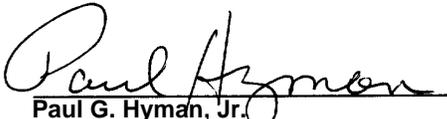




**ORDERED in the Southern District of Florida on March 4, 2016.**

  
Paul G. Hyman, Jr.  
Chief United States Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

IN RE:

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

CASE NO. 09-36379-PGH  
CASE NO. 09-36396-PGH  
(Jointly Administered)

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**ORDER GRANTING LIQUIDATING TRUSTEE'S  
MOTION FOR AUTHORITY WITH RESPECT TO THE CHAPTER  
11 PLAN OF LIQUIDATION FOR PETERS COMPANY, INC. ET AL.**<sup>1</sup>

**THIS CAUSE** came before the Court on February 24, 2016, at 9:30 a.m. upon the *Liquidating Trustee's Motion for Authority with Respect to the Chapter 11 Plan of Liquidation for Peters Company, Inc., et al.* ("**Motion**") [ECF No. 2810]. The Motion seeks the entry of an order: (1) approving the Settlements set forth in the PCI Plan; (2) authorizing the Liquidating Trustee to vote in favor of the PCI Plan and execute any and all documents necessary and take any and all actions necessary to effectuate the PCI Plan; (3) authorizing the Liquidating Trustee

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

to act as Creditor Proponent of the PCI Plan; (4) authorizing the Liquidating Trustee to exercise his reasonable business judgment to agree to any amendments or modifications to the PCI Plan as may be agreed among the interested parties prior to entry of a confirmation order; (5) authorizing the Liquidating Trustee to discharge his duties as a member of the PCI Liquidating Trust Committee in his reasonable business judgment and to take any and all reasonable, necessary or appropriate action in furtherance of same without further authority from this Court and (6) approving the Interlachen Settlement.

To approve the Settlements set forth in the PCI Plan and the Interlachen Settlement, this Court must determine whether the settlements are fair and equitable by considering:

- (a) the probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;
- (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

*In re Justice Oaks, II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir.), *cert. denied*, 498 U.S. 959 (1990).

In addition, the Court must determine whether the relief requested satisfies the standards set forth in §§ 105(a) and 363(b)(1) of the Bankruptcy Code.

As more fully stated on the record, the Court accepted into evidence Exhibits 1 through 18<sup>2</sup> and received in evidence the proffer (“*Proffer*”) offered on behalf of the Liquidating Trustee in support of the Motion. The Court offered an opportunity to object to the Proffer, cross examine the Liquidating Trustee or otherwise object to the requested relief. After considering all the evidence as well as the relevant law and the record, and hearing argument of counsel, the Court makes the following findings of fact and conclusions of law and grants the Motion.

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<sup>2</sup> See Exhibit Register [ECF No. 2851].

## I. FINDINGS OF FACT

1. Barry E. Mukamal serves as the Liquidating Trustee (“*Liquidating Trustee*”) of the Palm Beach Finance Partners, L.P. (“*PBFI*”) and Palm Beach Finance II, L.P. (“*PBFII*,” and together with PBF, “*Palm Beach Funds*”) Liquidating Trusts (“*Palm Beach Liquidating Trusts*”). In that capacity, the Liquidating Trustee is the second-largest creditor in the Petters Bankruptcy Cases<sup>3</sup> which is the third-largest financial fraud case in United States history. Creditors in the Petters Bankruptcy Cases have suffered combined losses of approximately \$2 billion on a cash-on-cash basis.

2. The Petters Bankruptcy Cases pending before the Minneapolis Division of the Bankruptcy Court for the District of Minnesota (“*Minneapolis Bankruptcy Court*”) have been complex and required guidance by the Official Committee of Unsecured Creditors. Since July 2011, the Liquidating Trustee has served as one of 3 voting members on the Committee.

3. Prior to the Liquidating Trustee’s appointment, the Palm Beach Funds filed proofs of claim in the Petters Company, Inc. (“*PCI*”), Peters Group Worldwide, LLC (“*PGW*”) and various affiliated bankruptcy cases.

4. In addition, Douglas Kelley, in his capacity as chapter 11 trustee in the Petters Bankruptcy Cases (“*PCI Trustee*”) filed proofs of claim in each of the Palm Beach Funds’ bankruptcy cases for the payments each debtor received during the 90 day period preceding their petition dates. The PCI Trustee also filed objections to the Liquidating Trustee’s claims in the PCI Bankruptcy Cases pursuant to § 502(d) of the Bankruptcy Code.

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<sup>3</sup> The Petters Bankruptcy Cases includes the following bankruptcy cases pending in the United States Bankruptcy Court for the District of Minnesota: Petters Company, Inc., Case No. 08-45257; Petters Group Worldwide, LLC, Case No. 08-45258; PC Funding, LLC, Case No. 08-45326; Thousand Lakes, LLC, Case No. 08-45327; SPF Funding, LLC, Case No. 08-45328; PL Ltd., Inc., Case No. 08-45329; Edge One, LLC, Case No. 08-45330; MGC Finance, Inc., Case No. 08-45331; PAC Funding, LLC, Case No. 08-45371; and Palm Beach Finance Holdings, Inc., Case No. 08-45392.

**A. The Mediation**

5. On September 2 and 3, 2015, the Liquidating Trustee participated in a mediation (“*Mediation*”) in Minneapolis, Minnesota with the PCI Trustee and major creditors Greenpond South, LLC (“*Greenpond*”), Ronald R. Peterson as Chapter 7 Trustee for the Lancelot entities (“*Lancelot Trustee*”) and Interlachen Harriet Investments Limited (“*Interlachen*”) regarding various issues related to the Petters Bankruptcy Cases.

6. After the Mediation, the parties to the Mediation continued their negotiations, culminating in the formulation of the Petters Company, Inc. *et al.* Chapter 11 Plan of Liquidation (as amended, “*PCI Plan*”) attached to the Motion for Authority as subsequently amended.

7. On February 17, 2016, the Minneapolis Bankruptcy Court held a hearing on the adequacy of the Petters Company, Inc. *et al.* Disclosure Statement (as amended, “*PCI Disclosure Statement*”), and considered and overruled several filed objections. Thereafter, the final two objections filed by the Office of the United States Trustee and Randy Seaver, the Chapter 7 Trustee for Petters Capital LLC were resolved and withdrawn. An amended PCI Plan and PCI Disclosure Statement were filed with the Minneapolis Bankruptcy Court on Monday, February 22, 2016.

8. On Tuesday February 23, 2016, notices of filing of the amended PCI Plan and Disclosure Statement were filed with this Court. Given the resolution of all the objections to disclosure, the Minneapolis Bankruptcy Court is expected to enter an order approving the adequacy of the PCI Disclosure Statement.

9. The PCI Plan contains certain compromises (“*Settlements*”) which could otherwise result in substantial litigation and delays. The PCI Plan contemplates that the Liquidating Trustee obtain this Court’s approval to be a “Creditor Proponent” of the PCI Plan.

**B. The PCI Plan**

10. The main features of the PCI Plan include:
  - a. Allowance of 100% of the Fraud Losses of the Palm Beach Funds. The Liquidating Trustee filed tort claims including for fraud, fraudulent inducement and civil conspiracy on behalf of the Palm Beach Funds against PCI. Claims were also filed against the PCI related special purpose entities that have already been consolidated into PCI as well as against PGW. Pursuant to the PCI Plan, the Liquidating Trustee will have an allowed unsecured claim against the consolidated PCI/PGW estate in the full amount of the cash on cash losses suffered by each Palm Beach Fund: (1) \$85,987,311 as to PBFI ("**PBFI Claim**") and (2) \$565,755,364 as to PBFII ("**PBFII Claim**," collectively with the PBFI Claim, "**PBF Claims**") for a total of \$651,742,675. These claims are based on the Palm Beach Funds having been defrauded in connection with the loans they made. The allowance of the PBF Claims reflects the recognition and allowance of 100% of the cash on cash fraud losses suffered by the Palm Beach Funds. The allowed PBF Claims do not include prepetition interest, which is consistent with how claims of other creditors will be treated – other unsecured creditors will likewise not have prepetition interest included in the quantification of their claims. Because there will be insufficient funds to pay unsecured creditors in full in the PCI/PGW case, excluding prepetition interest is for all practical purposes irrelevant to the Palm Beach Liquidating Trusts.
  - b. Payment of 80% of Payments Received within 90 Days of the PCI Petition Date. Net of new value, PBFI received \$10,125 and PBFII received \$6,368,750 during the 90 day period preceding the PCI *et al.* petition date. Pursuant to § 547 of the Bankruptcy Code, the PCI Trustee asserts that these transfers may be avoidable by him. Under the PCI Plan, the Palm Beach Liquidating Trusts will each pay 80% of these amounts, or \$8,100 and \$5,095,000 respectively, and receive § 502(h) claims for these amounts. Thus the allowed claims of PBFI and PBFII's proofs of claim will be \$85,995,411 and \$570,850,364 respectively ("**Allowed PBF Claims**"). The Allowed PBF Claims shall be allowed as Class 3 General Unsecured Claims and entitled to the same treatment as other Class 3 General Unsecured Claims.
  - c. Substantive Consolidation of PCI and PGW. The already substantively consolidated debtors in the PCI case will be consolidated with PGW. The PCI Plan had originally provided for consolidation of Petters Capital, LLC, which is a Chapter 7 debtor

in Minnesota. To meet the objection of the U.S. Trustee's Office which objected in part to a Chapter 7 Trustee being a Chapter 11 plan co-proponent, Petters Capital LLC will not be consolidated.

- d. Liquidating Trusts. The creation of liquidating trusts to administer the PCI/PGW estates' assets, including providing for the continued prosecution of litigation claims for the benefit of PCI/PGW creditors with certain governance procedures.
- e. Withdrawal of Kelley Proof of Claims. The proofs of claim against the Palm Beach Funds filed by the PCI Trustee will be disallowed and withdrawn with prejudice.

### **C. The Interlachen Settlement**

11. The PCI Trustee filed an adversary against BMO Harris Bank ("**BMO**") in November 2012.

12. In January 2016, the Liquidating Trustee entered into the Interlachen Settlement with the PCI Trustee, Greenpond South, LLC, the Lancelot Trustee and Interlachen.

13. Pursuant to the Interlachen Settlement: Greenpond, the Lancelot Trustee and the Liquidating Trustee, have agreed to transfer to Interlachen certain portions of the potential distributions each might receive in connection with any recovery in the *PCI Trustee v. BMO* adversary case.

14. The Lancelot Trustee will assign the first \$3,000,000 of his Net BMO Distributions plus 50% of his Net BMO Distributions in excess of \$3,000,000.

15. Greenpond will assign the first \$1,000,000 of Greenpond's Net BMO Distribution plus 50% of Greenpond's Net BMO Distributions in excess of \$1,000,000.

16. The Liquidating Trustee will assign the first \$2,000,000 of the Palm Beach Liquidating Trusts' Net BMO Distributions which is the identical interest retained by the Palm Beach Liquidating Trusts in the BMO Claims defined in the *Amended and Restated Stipulation of Settlement* entered into between the Liquidating Trustee and BMO on May 26, 2015 and

approved by this Court, pursuant to which BMO paid the Liquidating Trustee \$16,000,000.

17. The BMO Settlement further provides that the Liquidating Trustee is to turn over to BMO the Palm Beach Liquidating Trusts' distributions from the PCI Trustee in excess of \$2,000,000, to the extent there are any, in connection with the PCI Trustee's resolution of his adversary case against BMO.

18. Pursuant to the Interlachen Settlement, the Liquidating Trustee will assign his limited remaining contingent and unliquidated right to that potential recovery from the PCI Trustee's case against BMO. Although this assigned amount could ultimately prove to be worth zero, it cannot exceed \$2,000,000 pursuant to the BMO Settlement.

19. Interlachen in turn is waiving its timely filed \$60 million claim against Polaroid Corporation n/k/a PBE Corporation and its affiliated companies ("***Polaroid***") which are in Chapter 7 in Minneapolis, Minnesota and Interlachen will not assert any objections to the PCI/PGW Plan.

20. PGW owns Polaroid and PCI asserts substantial claims against Polaroid. Many parties filed claims against Polaroid which have not been resolved. Therefore, the potential value of the waiver of Interlachen's \$60 million unsecured claim cannot be quantified. However, there is potential value to PGW and PCI by virtue of Interlachen waiving its Polaroid claim and in turn value to the Palm Beach Liquidating Trusts as 1/3 of the creditor body of PCI/PGW.

21. The limited consideration the Liquidating Trustee will provide to Interlachen is reasonable and appropriate for a number of reasons:

- a. The Liquidating Trustee has litigated for years with BMO, reaching a settlement last year. The Liquidating Trustee and his legal counsel are knowledgeable about the facts related to BMO.

Given that knowledge, the Liquidating Trustee is a position to make an informed determination that the Interlachen Settlement is in the Palm Beach Trusts' best interests.

- b. The PCI Trustee filed the BMO Adversary Proceeding in November 2012. In January 2013 BMO moved to dismiss. In the three years since, there has been no substantive activity. The PCI Trustee has not amended the complaint, nor responded to the motion to dismiss, and the motion to dismiss has not been set for hearing. BMO has stated that it will object to any effort to amend the complaint at this stage.
- c. The PCI Trustee has not retained a banking expert.
- d. BMO has asserted *in pari delicto* defenses, and the Liquidating Trustee has noted and considered that PCI, through the PCI Trustee, pled guilty to its complicity and involvement in the fraud.

22. The interest being assigned to Interlachen is worth anywhere from as little as zero to no more than \$2 Million given the Palm Beach BMO Settlement and given that range of values the limited speculative consideration being provided is reasonable and in the best interests of the Palm Beach Liquidating Trusts.

**D. Establishment of the PCI Liquidating Trust**

23. The PCI Plan provides for the establishment of the PCI Liquidating Trust on the Effective Date to be administered pursuant to the PCI Liquidating Trust Agreement.

24. The purpose of the PCI Liquidating Trust is to administer the PCI Trust Assets, including prosecuting litigation claims, resolving proofs of claim and making distributions to

unsecured creditors.

**E. The PCI Liquidating Trust Committee**

25. The PCI Liquidating Trust Committee will have five members including the Lancelot Trustee, Greenpond, Lance Breiland of Interlachen and the Liquidating Trustee. The fifth member is in the process of being selected by the creditor plan co-proponents.

26. The concept of the PCI Liquidating Trust Committee is the result of a demand by creditors in PCI/PGW, including the Liquidating Trustee, for greater creditor control over the prosecution and resolution of litigation claims.

**F. Powers of the Liquidating Trust Committee**

27. Pursuant to the PCI Plan and the PCI Liquidating Trust Agreement, the PCI Liquidating Trustee will prosecute the litigation claims.

28. However, the PCI Liquidating Trust Committee will:

- a. approve the retention of litigation counsel;
- b. consult with the PCI Liquidating Trustee as to litigation strategy;
- c. receive regular reports;
- d. determine the basis of any settlements;
- e. approve any settlements; and
- f. determine the amounts and timing of distributions and reserves.

29. The exercise of the Liquidating Trustee's business judgment in approving the Settlements set forth in the PCI Plan is reasonable and in the best interests of the Palm Beach Liquidating Trusts for the following reasons:

30. As of December 31, 2015, there was approximately \$24.6 million in the PCI consolidated estate and \$132.8 million in the PGW estates. In addition, there is an approved

settlement with a claw-back defendant to repay \$15 million to PCI. While there are some accrued administrative expenses, they are generally paid in the ordinary course. The Palm Beach Liquidating Trusts together are projected to receive, net of administrative expenses, roughly 1/3 of the distributions (net of administrative expenses) made in the Petters Bankruptcy Cases.

31. The PCI Plan provides for the fraud claims of the Palm Beach Liquidating Trusts to be allowed in full on a cash-on-cash basis. While the Palm Beach Claims will exclude interest prior to the petition dates for the Petters Bankruptcy Cases, there appears to be no net effect on distributable dollars because (i) the claims of other creditors also will not include pre-petition interest and (ii) creditors are not expected to be paid in full. Also, the Liquidating Trustee has considered that in Ponzi scheme cases (like the Petters Bankruptcy Cases), allowing unsecured claims in bankruptcy cases based on the amounts of cash on cash losses has become the standard.

32. The PCI Plan resolves the PCI Trustee's proofs of claim at 80% of 90 day payments net of new value with a § 502(h) claim for those payments.

33. The PCI Plan provides for far greater creditor control over the remaining litigation in the Petters Bankruptcy Cases.

34. The PCI Plan provides for substantive consolidation of PGW with the already substantively consolidated estates of PCI. This will ensure a single estate with all of the recovered cash.

35. The consideration provided by the Liquidating Trustee in the form of the assignment of the remaining limited interest in the *PCI Trustee v. BMO* adversary is modest given the capped, contingent and speculative value of that interest.

## **II. CONCLUSIONS OF LAW**

36. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and

28 U.S.C. § 157(b). This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

37. The Court must determine whether the relief requested satisfies the standards set forth in Rule 9019 of the Federal Rules of Bankruptcy Procedure and §§ 105(a) and 363(b)(1) of the Bankruptcy Code.

**A. The PCI Plan Settlements and the Interlachen Settlement are Reasonable**

38. Approval of a settlement in a bankruptcy proceeding is within the sole discretion of the Court and will not be disturbed or modified on appeal unless approval or disapproval is an abuse of discretion. *In re Arrow Air*, 85 B.R. 886, 890-91 (Bankr. S.D. Fla. 1988).

39. 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, 801 (D. Del. 1997).

40. Here, the evidence establishes that PBF I and PBF II, through the Liquidating Trustee and the Palm Beach Liquidating Trusts, shall have allowed unsecured claims against the consolidated PCI estate in the full amount of the cash on cash fraud losses suffered by each debtor: (1) \$85,987,311 as to PBF I and (2) \$565,755,364 as to PBF II, for a total amount of \$651,742,675.00, which represents the second largest group of claims asserted in the Petters Bankruptcy Cases. There is approximately \$160 million in the PCI/PGW estate, with administrative expenses generally being paid in the ordinary course and substantial litigation claims pending. Further, since creditors in the Petters Bankruptcy Cases suffered combined

losses of approximately \$2 billion on a cash on cash basis, the Palm Beach Liquidating Trusts are projected to receive roughly 1/3 of the distributions (net of administrative claims) made in the Petters Bankruptcy Cases.

41. Based upon the above legal principles and findings of fact, the Settlements set forth in the PCI Plan and the Interlachen Settlement fall well above the lowest point of the range of reasonableness.

### **B. Probability of Success in the Litigation**

42. The probability of success cannot be gauged with certainty at this stage. However, given that the PBF Claims are to be allowed in full on a cash-on-cash basis, the settlement is a recognition that the PBF Claims are being appropriately treated since the allowance in full of such claims recognizes that the Palm Beach Funds are victims of the Petter's fraud and will receive a pro rata distribution from the PCI/PGW estate.

43. The Liquidating Trustee will pay 80% of the net 90 day payments and receive a claim for such amounts. This is a fair, reasonable and standard resolution of § 547 or other avoidance exposure. This percentage is well within the typical and ordinary range of settlement percentages that creditors routinely pay in many bankruptcy cases. And the Liquidating Trustee will receive a claim under § 502(h) and thus receive back a portion of this amount as well as a pro rata portion of the amount to be paid by the Lancelot Trustee.

44. This factor also militates in favor of the Interlachen Settlement based on the evidence described in paragraphs 11 through 22 herein.

### **C. Collectability**

45. This is not an issue with respect to the Settlements. The PCI Trustee and the Liquidating Trustee both recognize that the PCI Estates have sufficient assets to make a

meaningful although partial distribution on any allowed Class 3 claims, per the PCI Plan. As for the Interlachen Settlement, collectability does not apply.

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

46. The complexity of the litigation relating to the objections to the Palm Beach Claims and the expense, inconvenience and delay attendant thereto is a significant consideration that militates in favor of approval of the settlement. The Liquidating Trustee and the PCI Trustee have incurred substantial fees and costs related to analysis of the Palm Beach Claims and objections thereto. The Settlements in the PCI Plan provides for the fraud claims of the Liquidating Trustee to be allowed in full on a cash-on-cash basis. While the Palm Beach Claims will exclude interest prior to the petition dates for the Petters Bankruptcy Cases, there appears to be no net effect on distributable dollars because (i) the claims of other creditors will likewise exclude pre-petition interest and (ii) creditors are not expected to be paid in full. Litigating entitlement to pre-petition interest could materially delay the timing of distributions in the PCI/PGW estates to the detriment of all creditors of those estates, including the Liquidating Trustee. The PCI Plan also resolves the PCI Trustee proofs of claim filed against the Palm Beach Funds and provides for other valuable benefits such as greater creditor control over the remaining litigation in the Petters Bankruptcy Cases and substantive consolidation of multiple affiliated Petters entities.

47. This factor also militates in favor of the Interlachen Settlement based on the evidentiary record described in paragraphs 11 through 22 herein.

**E. Paramount Interests of Creditors**

48. For all the reasons discussed herein, the Settlements set forth in the PCI Plan favorably and immediately concludes myriad and complex litigation issues that would remain

fairly expensive to prosecute or defend as applicable, including substantive consolidation of PCI and PGW and the creation of a single estate. The PCI Plan also provides for the Liquidating Trustee, and other major creditors, to have far more influence over the management of the remaining litigation in the Petters Bankruptcy Cases and will lead to a prompt and substantial interim distribution. Thus, approval of the Settlements set forth in the PCI Plan is in the paramount interest of the Palm Beach Liquidating Trusts and its creditors.

49. This factor also militates in favor of the Interlachen Settlement based on the evidentiary record described in paragraphs 11 through 22 herein.

**F. 11 U.S.C. § 105**

50. Pursuant to 11 U.S.C. § 105(a): “The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” A bankruptcy court has statutory authority to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code. 11 U.S.C. § 105(a). But in exercising those statutory and inherent powers, a bankruptcy court may not contravene specific statutory provisions. *See Law v. Siegel*, 134 S.Ct 1188, 1194 (2014).

51. The requested relief does not contravene any specific provision of the Bankruptcy Code, and granting the requested relief is necessary and appropriate to allow the Liquidating Trustee to effectuate the Settlements set forth in the PCI Plan. The PCI Plan clearly requires the Liquidating Trustee to obtain this Court’s authorization for the Liquidating Trustee to act as a Creditor Proponent. In addition, this Court’s authorization is required to allow the Liquidating Trustee to vote in favor of the PCI Plan as it may be amended prior to entry of the Confirmation Order. Section 105(a) of the Bankruptcy Code provides additional support to the authority set forth in Rule 9019 of the Bankruptcy Code for the Court to grant the requested relief.

**G. 11 U.S.C. § 363**

52. Section 363(b)(1) of the Bankruptcy Code provides in pertinent part: “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Here, although the Liquidating Trustee is not selling property of the estate, it is agreeing to the terms of the PCI Plan through which the Palm Beach Claims and the PCI Trustees’ proofs of claim are compromised. For example, the Liquidating Trustee must use estate funds to make the PBF Payments described above, although the PBF Payments shall be made either by (x) Cash payment on the Effective Date or (y) withholding of such amount from the first distributions to be made from the PCI Liquidating Trust. As a result, the PCI Plan may be considered an agreement entered into or use of estate property outside of the ordinary course. Accordingly, in addition to other statutory predicates set forth herein, the § 363(b)(1) of the Bankruptcy Code provides additional support to the authority set forth above for the Court to grant the requested relief.

**III. ORDER**

The Court, being fully advised in the premises and for the reasons set forth above, hereby **ORDERS AND ADJUDGES** that:

1. The Motion is **GRANTED** as set forth herein.
2. The Settlements described in the PCI Plan are approved.
3. The Interlachen Settlement is approved.
4. The Liquidating Trustee is authorized to take the following actions without further authority required from this Court:
  - a. Vote in favor of the PCI Plan and execute any and all documents necessary and take any and all actions necessary to effectuate the

PCI Plan.

- b. Act as a Creditor Proponent of the PCI Plan.
- c. Exercise his reasonable business judgment to agree to any amendments or modifications to the PCI Plan (not inconsistent with the provisions of the Palm Beach BMO Settlement) as may be agreed among the interested parties prior to entry of a confirmation order.
- d. Discharge his duties as a member of the PCI Liquidating Trust Committee in his reasonable business judgment and to take any and all reasonable, necessary or appropriate action in furtherance of same.

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**Submitted By:**

Solomon B. Genet, Esquire

Florida Bar No. 617911

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**Copies Furnished To:**

Solomon B. Genet, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service