



ORDERED in the Southern District of Florida on September 26, 2012.

A handwritten signature in black ink that reads "Paul G. Hyman".

**Paul G. Hyman, Chief Judge
United States Bankruptcy Court**

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 (1) GRANTING MOTION TO APPROVE
SETTLEMENT WITH US BANK NATIONAL ASSOCIATION,
(2) APPROVING PAYMENT OF CONTINGENCY FEE AND (3) GRANTING
ENTRY OF BAR ORDER IN FAVOR OF US BANK NATIONAL ASSOCIATION**

THIS MATTER came before the Court on September 25, 2012 at 9:30 a.m., upon the *Liquidating Trustee's Motion to Approve Settlement with US Bank National Association* (the "*Motion*") [ECF No. 1368].¹ The Court has reviewed the Motion, considered the arguments of counsel and is otherwise duly advised in the premises.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

In its Motion, the Liquidating Trustee, on behalf of the Liquidating Trusts, Debtors and their respective bankruptcy estates, seeks entry of an order barring certain claims against US Bank National Association (“**Bank**”) as described in detail below (the “**Bar Order**”).

The Court has noted that notice of the Motion and the request for a Bar Order was given to those potentially interested parties identified on the service list referenced in the Motion. The Court has reviewed and considered the Motion, any other submissions to this Court and provided an opportunity to be heard to all persons requesting to be heard. Accordingly, it is:

ORDERED as follows:

1. The Motion is **GRANTED**.
2. The Settlement is **APPROVED**.
3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and authority to enter this Order pursuant to 11 U.S.C. § 105(a).
4. Bank shall pay (or cause to be paid) \$1,700,000 to the Liquidating Trusts (the “**Settlement Payment**”) within 10 days of (a) this Order becoming final and non-appealable, and (b) receipt by Bank of taxpayer identification information and wire transfer information for each of the Liquidating Trusts.
5. The Settlement Payment will be allocated and apportioned among the estates as follows: 18% to Palm Beach Finance Partners, L.P. and 82% to Palm Beach Finance II, L.P. (the “**Pro Rata Allocation Formula**”) and the wire transfers referenced in paragraph 4 above shall be made in the amounts in accordance with this allocation.
6. MRB’s Contingency Fee in the amount of \$561,000 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 Settlement Payment.

7. Bank agrees that it shall not be entitled to any distribution from the Liquidating Trusts or the Debtors. The following claims shall be disallowed and stricken from the claims registry:

- a. Claim No. 10-1 filed in Case No. 09-36379-PGH; and
- b. Claim No. 9-1 filed in Case No. 09-36396-PGH.

8. The form and means of the notice of the Bar Order and the Motion are determined to have been the best notice practicable under the circumstances and to be good and sufficient notice to all persons whose interests would or could be affected by this Order.

9. The Court has been apprised of the negotiations that preceded the Stipulation and finds that the Motion and request for Bar Order is a result of arms'-length bargaining among the parties. There is no evidence that the settlement reached by the Liquidating Trustee with Bank is the result of collusion among the parties or that there has been any intent to prejudice any interested parties.

10. The Court finds that entry of this Order is appropriate in order to achieve the finality and repose that is contemplated as a term of the proposed settlement and that good cause therefore exists for the entry of this Order, and is fair and equitable. *See In re U.S. Oil & Gas Litigation*, 967 F.2d 489, 495-96 (11th Cir. 1992); *Munford, Inc. v. Munford, Inc.*, 97 F.3d 449, 454-55 (11th Cir. 1996); *In re Jiffy Lube Securities Litigation*, 927 F.2d 155 (4th Cir. 1991); *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995).

11. The following additional definitions apply to the provisions of this Order barring certain claims as set forth in paragraph 12 below:

- a. “**Releasor**” or “**Releasors**” shall mean (a) all past or present creditors of either Palm Beach Finance Partners, LP and Palm Beach Finance II, LP (collectively, the “**Debtors**”); and (b) all investors and interest holders of either or both of the Debtors, including without limitation, any past or

present limited partners or general partners of either or both of the Debtors. Except with respect to the PBF Claims (as defined below), the terms Releasor and Releasors shall not include (x) Palm Beach Offshore Ltd. and Palm Beach Offshore II Ltd. (the “*Offshore Funds*”); (y) an investor in, or creditor of, the Offshore Funds; or (z) the Offshore Funds’ liquidators (the persons and entities listed in subsections (x), (y) and (z) of this Paragraph 11 are collectively referred to as the “*Offshore Parties*”).

- b. “*Claim*” or “*Claims*” shall mean any obligations, causes of action, demands of any type that a party may presently have, may have or have had in the past, upon or by reason of any matter, cause or thing whatsoever, including without limitation any and all obligations, claims, causes of actions and demands of any kind whatsoever, at law or in equity, indirect, derivative, or direct, known or unknown, discovered or undiscovered that relate in any manner whatsoever to Petters Company, Inc. or the Debtors.
- c. “*Released Bank Entities*” shall mean (i) Bank; (ii) the parent, sister, and direct and indirect subsidiary companies of Bank (“*Bank Affiliates*”); and (iii) current and former employees, officers, directors, agents and attorneys of Bank or the Bank Affiliates, and each of their respective spouses, heirs, executors and assigns.
- d. “*PBF Claim*” or “*PBF Claims*” shall mean (a) any Claim against the Released Bank Entities that belongs to either or both of the Debtors; and (b) any Claim held by Jonathan Spring and Spring Investor Services, Inc. that could be asserted.

12. Releasors are permanently barred and enjoined from commencing, prosecuting, or asserting either directly or in any other capacity, against the Released Bank Entities, any Claims

that any Releasor now has, ever had or may claim to have in the future; provided that nothing in this Order shall (i) enjoin, impair or delay the Securities and Exchange Commission (“*SEC*”) from commencing or continuing any Claims, proceedings or investigations against any person or entity, including the Released Bank Entities, (ii) release or discharge any person or entity, including the Released Bank Entities, from any Claims, rights, powers or interests held or assertable by the SEC; (iii) enjoin, impair, delay or impact the Offshore Parties from commencing, asserting, pursuing or continuing any Claims, other than the PBF Claims which are barred, against any person or entity, including the Released Bank Entities; or (iv) release or discharge any person or entity, including the Released Bank Entities, from any Claims, rights, powers or interests held or assertable by the Offshore Parties, other than the PBF Claims which are barred.

13. In connection with any claim asserted against KBC Financial Products (Cayman Islands) Ltd. (“*KBC*”) by the Liquidating Trustee (the “*KBC Adversaries*”), upon request of KBC, the court or tribunal determining such claim shall determine whether the Released Bank Entities and the USB Affiliates would have been liable to KBC in the absence of this Bar Order (a “*Barred Claim*”). If the court or tribunal so determines, it shall reduce any judgment against KBC in an amount equal to the amount the Released Parties would have been liable on a Barred Claim in the absence of this Bar Order. Nothing herein shall prejudice or operate to preclude the right of KBC to (i) provide notice of this Bar Order to the court or tribunal hearing the KBC Adversaries at any point, or (ii) raise any other issues, claims or defenses regarding judgment reduction or proportionate share of fault in the court or tribunal hearing the KBC Adversaries at any point in accordance with applicable law or procedure.

14. This Order does not modify any prior Orders of this Court which bar the Offshore Parties from bringing Claims against parties that are the subject of those Orders.

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

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Submitted By:

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Copies to:

Michael S. Budwick, Esq.

(Attorney Budwick is directed to mail a conformed copy of this Order upon all interested parties and to file a certificate of service.)