

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

In re:

CHAPTER 11

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

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

Debtors.

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

Barry E. Mukamal, in his capacity as liquidating trustee ("**Trustee**") for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance Partners II Liquidating Trust (together, "**Liquidating Trusts**"), files this Motion (1) to approve the settlement ("**Settlement**") with General Electric Company as successor by merger to General Electric Capital Corporation ("**GE**"); and (2) to approve payment of counsel's contingency fee ("**Motion**"). In support, the Trustee states:

I. Factual Background

A. Procedural Background

1. Prepetition, Palm Beach Finance Partners, L.P. ("**PBF I**") and Palm Beach Finance II, L.P. ("**PBF II**"), and together with PBF I, the "**Debtors**") operated as hedge funds.

2. The Debtors' principal investment strategy was to invest in purchase financing transactions supposedly sourced by Thomas Petters and his company, Petters Company, Inc. and its affiliated entities (together, "**PCI**").

3. However, Mr. Petters and PCI were perpetrating a massive fraud and *Ponzi* scheme ("**Petters Ponzi**").

4. 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.

5. On January 29, 2010, the United States Trustee appointed the Trustee as Chapter 11 trustee for both Debtors' estates. [ECF No. 107].

6. On October 21, 2010, this Court entered its Order Confirming Second Amended Plan of Liquidation ("**Plan**") [ECF No. 444], creating the Liquidating Trusts, appointing the Trustee as Trustee and appointing Geoffrey Varga as Trust Monitor. In December 2018, Mr. Varga resigned as Trust Monitor.

B. The GE Litigation

7. On August 18, 2010, the Trustee issued Rule 2004 discovery to GE to investigate a potential tort claim owned by the Debtors' estates. [Main Case, ECF No. 217]. The Trustee withdrew this discovery and entered into a tolling and discovery standstill agreement with GE. Subsequently, the Trustee reissued the Rule 2004 discovery and GE filed a motion to quash [ECF Nos. 1120 & 1170]. GE's motion claimed the Trustee could not assert any claim and merely sought discovery as a pretext to assist the PCI Chapter 11 Trustee in the pursuit of his (then pending) clawback claims against GE. Following oral argument, this Court permitted the Trustee's Rule 2004 discovery to proceed and on August 9, 2012, the Trustee examined GE through a senior officer.

8. The Plan provides for the Trustee's (undersigned) counsel's method of compensation to pursue litigation claims to be on a hybrid fee basis, at 75% of hourly rates and a 10% contingency. The Plan also provides that the Trust Monitor must approve the filing of any litigation claims on behalf of PBF II. While the Trustee's counsel was investigating potential claims against GE, the Trust Monitor refused to consent to the Trustee proceeding with his

investigation on behalf of PBF II, stating that it would be an inappropriate use of estate resources. As a result, the Trustee's counsel offered to investigate, and if appropriate, file and pursue any claims, on a pure contingency fee basis; the Court approved this modified compensation. Ultimately, in 2014 Mandel & Mandel LLP was retained as co-counsel. In 2017, Mandel and Mandel LLP ceased serving as co-counsel and the Trustee retained Kozyak Tropin & Throckmorton, P.A. to serve as co-counsel.

9. On September 29, 2012, the Trustee filed suit against GE, Adv. Case No. 12-01979 ("**GE Action**"). The GE Action asserted nine counts against GE. On August 23, 2013, this Court entered its Order on GE's motion to dismiss, dismissing all counts other than Count I for civil conspiracy to commit fraud [ECF No. 56]. Through Count I, the Trustee alleged that GE learned of the Petters Ponzi and joined as a co-conspirator, thereby becoming joint and severally liable with PCI and Petters for the Debtor's fraud losses.

10. In 2014 (after this Court's Order denying in part GE's motion to dismiss), three other Petters-lenders (or their successors-in-interest) filed near-identical copy cat claims against GE: (1) Frances Gecker ("**Trustee Gecker**") as Chapter 7 trustee for Ark Discovery II, L.P. which lost over \$100,000,000 in the Petters Ponzi; (2) Greenpond South LLC ("**Greenpond**") as successor Acorn Capital Group LLC, which lost over \$140,000,000 in the Petters Ponzi; and (3) Ritchie Capital ("**Ritchie Capital**"), which lost over \$160,000,000 in the Petters Ponzi (collectively, the "**Copycat Cases**").

11. In November 2014, in connection with the GE Action and the Copycat Cases, GE filed a motion for transfer and consolidation pursuant to 28 U.S.C. § 1407, proposing the actions be transferred to District Judge Susan Nelson in the District of Minnesota. *See In re General Electric Capital Corp. Thomas Petters Inv. Lit.*, MDL No. 2603 (U.S. Judicial Panel on

Multidistrict Litigation). Following court filings and oral argument, the MDL Panel issued its Order Denying Transfer [*Id.* at ECF No. 19].

12. All three Copycat Cases, representing approximately \$400,000,000 in losses in the Petters Ponzi, failed. Trustee Gecker's case was dismissed at the motion to dismiss stage in Illinois federal court and no appeal was pursued. Greenpond's case was dismissed by a Minnesota state court trial judge, affirmed by the Minnesota intermediate appellate court, and the Minnesota supreme court denied review. Ritchie Capital's case was dismissed by the district court for the Southern District of New York and affirmed by the Second Circuit Court of Appeals. All three Copycat Cases were dismissed for lack of standing and each plaintiff received no recovery.¹

13. While the Copycat Cases were filed and pending, and through and following their dismissal, the Parties in the GE Action engaged in very active fact discovery. Aside from extensive document discovery and related motion practice, the Parties deposed approximately 68 fact witnesses in Kansas City, Seattle, Atlanta, Denver, Long Beach, Los Angeles, Minneapolis, Chicago, New York, Boston, Milwaukee, San Francisco, Washington D.C., Orlando and South Florida.² Many depositions took place in federal prisons, including Leavenworth Penitentiary. Certain depositions took place over multiple days.

14. Following fact discovery, the Parties engaged in expert discovery including depositions of 13 initial and rebuttal expert witnesses on topics such as due diligence by hedge funds, federal and state regulatory compliance obligations of a New York State chartered bank,

¹ See *Gecker v. Gen. Elec. Capital Corp.*, 2015 WL 5086398 (N.D. Ill. July 27, 2015); *Ritchie Capital Mgmt., L.L.C. v. Gen. Elec. Capital Corp.*, 121 F.Supp.3d 321 (S.D.N.Y. 2015), *aff'd* 821 F.3d 349 (2d Cir. 2016); *Greenpond S., LLC v. Gen. Elec. Capital Corp.*, 886 N.W.2d 649, 651 (Minn. Ct. App. 2016).

² As examples, the deponents included former employees of the Debtors' management company, the Debtors' former accounting and legal professionals, PCI's former employees, GE's former and current employees, investors/equity holders of the Debtors, PCI's former bankers and the Trustee.

money laundering, lending practices and damages. After expert discovery concluded, the Parties filed and briefed *Daubert* motions.

15. Since many of the witnesses were located out of state, the Parties prepared and exchanged designations of videotaped deposition testimony intended to be offered by each witness, along with objections.

16. The pace of fact and expert discovery was extraordinary. Trustee's counsel travelled extensively to interview witnesses, conduct depositions and develop the factual record to oppose an anticipated motion for summary judgment and prevail at trial.

17. On September 26, 2016, GE sought summary judgment before this Court [ECF No. 510]. GE claimed that (1) the Trustee's claim is barred by *in pari delicto* based on wrongdoing by the Debtor's pre-petition management; (2) the evidence is inadequate to permit a fact finder to conclude that GE learned of and joined the Petters Ponzi; and (3) that the Trustee lacks standing to bring his claim.

18. This Court directed the Parties to meet and negotiate the form of a factual stipulation. The Parties met in-person for many days over multiple weeks in good faith and reached an extensive factual stipulation. [ECF Nos. 537 & 540]. During this process, GE withdrew all portions of its summary judgment motion other than standing, abandoning its arguments based on *in pari delicto* and that the Trustee had not developed the necessary record evidence that GE learned of and joined the Petters Ponzi. [ECF Nos. 538 & 539]. The Trustee was able to develop this record evidence only after years of investigation and discovery, described only generally above.

19. On June 15, 2017, this Court denied GE's motion for summary judgment [ECF No. 609], which would have led to a prompt jury trial before this Court.

20. On June 19, 2017, now retired Bankruptcy Judge Paul G. Hyman, Jr. recused himself from this adversary given the expectation that the trial would begin in October 2017 and that with post-trial motions, the adversary might not conclude before his January 2018 retirement. [ECF No. 614].

21. In anticipation of a jury trial, the Trustee and his counsel continued to engage in mock jury simulations to assess the strengths and vulnerabilities of his case and prepare for trial.

22. However, before the case was set for trial, the district court (following briefing before this Court and the district court) granted GE leave to pursue an interlocutory appeal on standing and the Eleventh Circuit agreed to hear a direct appeal from this Court. *See* Case No. 17-80788 (U.S.D.C. for the S.D. Fla.) & Case No. 18-10797 (11th Cir.). Thereafter, the Parties fully briefed the appellate issues and prepared for oral argument, which was set for May 2019.

23. During the pendency of the appeal and the corresponding stay of this adversary, a key witness -- Robert White -- passed away. Mr. White, along with Deanna Coleman, were the government's key cooperating witnesses in the criminal prosecution of Tom Petters. Mr. White would have testified in-person at trial in the Trustee's case-in-chief as to GE's knowledge and joinder in the Petters Ponzi scheme.³

24. Also during the pendency of the appeal, the Trustee's lead expert, Dr. Sharon Brown-Hruska, accepted a position as chief economist for the U.S. State Department, requiring the Trustee to begin to identify a replacement. Dr. Brown-Hruska had prepared an extremely detailed and lengthy report [*See* ECF No. 599 at page 32 *et seq.*] and would have been a critical witness at trial.

25. At varying times, the Parties have engaged in formal and informal settlement communications, to no avail.

³ GE did not depose Mr. White.

26. On Friday March 15, 2019, the Trustee and GE mediated before retired Minnesota state court judge Rick Solum. The Parties had previously mediated with Judge Solum in 2013 and engaged in other formal and informal settlement conferences in 2017 and 2018. This time, the Parties reached a complete resolution of the GE Action. Judge Solum is an extraordinary mediator and the Parties thank him for his efforts.

II. Settlement

27. A copy of the Settlement Agreement is attached as Exhibit A.

28. In summary, and as more fully set forth in the Settlement Agreement:

- a) GE shall pay \$49,000,000 to the Trustee (“***Settlement Payment***”); and
- b) GE and the Trustee shall exchange mutual releases.

29. Pursuant to the Plan, the Settlement Payment will be allocated among the Debtors as follows: 18% to PBF I and 82% to PBF II (“***Pro Rata Allocation Formula***”).

III. Relief Requested

30. The Trustee seeks an Order from this Court approving the Settlement and directing payment of the Contingency Fee (defined below). 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.”

31. 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 BR 891 (Bankr. S.D. Fla. 1988).

32. 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 Settlement Ought to be Approved*

33. The Trustee asserts that the Settlement falls well above the lowest point of the range of reasonableness and thus should be approved.

Probability of success in litigation

34. This is a significant consideration in favor of approval of the Settlement.

35. While the Trustee believes he is correct on the standing issue and that this Court's Order denying GE's motion for summary judgment is well-reasoned, the Trustee recognizes that all three Copycat Cases failed in their entirety with no recovery.

36. GE has asserted in its briefing to the Eleventh Circuit that the *Greenpond* decision is the definitive statement of Minnesota law on what claims are held by Minnesota-based PCI, and thus controls. Further, as the district court in granting leave to appeal stated, GE relies "upon six recently decided, on-point cases, all involving the same Ponzi scheme as the instant case, in which courts held that analogous claims vested solely with the [PCI] bankruptcy estate and the bankruptcy trustee."⁴ The Trustee faced meaningful risk on the pivotal standing issue.

⁴ *Gen. Elec. Capital Corp. v. Mukamal*, 2017 WL 7792615, at *2 (S.D. Fla. Nov. 9, 2017).

37. And even if the Trustee were to prevail on standing, the Trustee faced substantial risk at trial. To be clear, the Trustee believes there is a meaningful likelihood a jury would (i) find that PCI and Petters defrauded the Debtors as part of the Petters Ponzi; (ii) find that GE learned of and joined the Petters Ponzi and committed at least one overt act in furtherance thereof; and (iii) award damages of \$651,000,000 representing the Debtors' cash-on-cash fraud losses, subject to a setoff for ancillary recoveries.⁵

38. However, there are substantial risks inherent in all litigation and in particular this litigation. GE's summary judgment motion (the portions relating to *in pari delicto* and discovery/joiner in the conspiracy) and its expert reports identify certain of those challenges, including that the Debtor's former management personnel pled guilty to certain crimes related to the Petters Ponzi scheme.

Collectability

39. Given GE's enterprise value and market capitalization, the Trustee did not consider collectability to be a significant consideration.

Complexity of litigation and attendant expense, inconvenience and delay

40. This is a significant consideration in favor of approval of the Settlement.

41. The Trustee was appointed in January 2010, his formal investigation as to GE began in August 2010, he examined GE under Rule 2004 in August 2012 and he commenced the GE Action in September 2012.

42. If the Trustee were to prevail on the standing issue before the Eleventh Circuit, GE would presumably seek *en banc* review and then seek certiorari to the Supreme Court asserting conflict with the Second Circuit's decision in *Ritchie Capital*. If further review were denied, a trial would likely not occur until 2021: twenty-one years from the time that the Trustee

⁵ Excluding the Settlement and the Settlement Payment, the Trustee has recovered to date more than \$170 Million (gross) for the benefit of creditors and expects additional recoveries.

alleges GE joined the Petters Ponzi. A grant of further review by the Supreme Court might add two more years. Post-trial appeals could last another 2-3 years.

43. Mr. White's passing and the loss of his unique, first-hand testimony posed a challenge. Dr. Brown-Hruska's replacement would be expensive and all experts would be required to ramp up substantially for trial. And other fact and expert witnesses might become unavailable.

44. And this points back to the decisions in the Copycat Cases – in which the Trustee was not a party - that prevented this case from being tried in 2017, created risk for this case's survival and created the likelihood of enormous further delay. All of this materially affected the Trustee's valuation of his claim.

45. Further, putting aside pre-trial procedures, motions *in limine* and other related items (*e.g.*, writs of habeas corpus *ad testificandum*), trial in the GE Case would likely last several weeks and involve complex logistical, legal, factual and evidentiary issues across a wide spectrum.

46. The Settlement addresses all of these concerns.

Paramount interest of creditors

47. This is a significant consideration in favor of approval of the Settlement.

48. The Settlement Payment provides a meaningful payment on the Trustee's claims against GE when measured against GE's defenses and litigation risk, as well as delay and costs associated therewith, and as compared to the results in the Copycat Cases. While each of the three copycat-plaintiffs brought claims in three different courts (and two appellate courts) and recovered nothing, the Trustee will recover \$49,000,000. Upon information and belief, this Settlement is the largest tort recovery by any party in any way associated with the Petters Ponzi. As such, the Settlement is in the paramount interest of the Debtors' stakeholders.

B. *The Contingency Fee Ought to be Approved*

49. Pursuant to ECF Nos. 3206 and 3239, Meland Russin & Budwick, P.A. is entitled to a fee of 29%, Kozyak Tropin & Throckmorton, P.A. 6% and Mandel and Mandel LLP 3%, of the Settlement Payment (collectively, the “*Contingency Fee*”).

50. The Trustee requests that the Contingency Fee for all three law firms be approved and that he be authorized and directed to pay this amount when the Settlement Payment is made.

IV. Conclusion

51. The Trustee and his counsel extend their appreciation to the Court and now retired Judge Hyman for the time and efforts presiding over this complex and challenging adversary proceeding for so many years.

52. The Trustee also appreciates GE’s efforts to consensually resolve this matter that was so zealously litigated, and the professionalism of its counsel: Sean Berkowitz, Esq. and Miles Ruthberg, Esq. of Latham & Watkins, LLP.

WHEREFORE, the Trustee respectfully requests that this Court (1) enter an Order as set forth in attached Exhibit B approving the Settlement and directing payment of the Contingency Fee; and (2) grant such other relief this Court deems just and proper.

Dated: March 26, 2019.

s/ Michael S. Budwick
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Attorneys for the Liquidating Trustee

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was served on March 26, 2019, via the Court's Notice of Electronic Filing upon registered Users listed on the attached **Exhibit 1**, via U.S. Mail upon the parties listed on the attached Manual Notice List attached as **Composite Exhibit 2**, upon the Court's Matrices in Case No. 09-36379-BKC-PGH and Case No. 09-36396-BKC-PGH attached as **Composite Exhibit 3**⁶, and upon those additional addresses set forth on **Composite Exhibit 4**.

s/ Michael S. Budwick
Michael S. Budwick, Esquire

⁶ "ADDL" means these additional parties served as a courtesy. See **Composite Exhibit 4**.

"BAD" means that it is a known bad address; hence, no service by mail.

"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 1** and is not being additionally served by mail.

"NNR" means no notice is required. Examples are professionals retained.

"N-WD" means no notice required as such party has filed a Notice of Withdrawal with this Court.

"PBFP" means that entity appears on both matrices and only being served once.

⁶ See footnote 1.

SETTLEMENT AGREEMENT

This Settlement Agreement (“***Agreement***”) is entered by and among (a) Barry E. Mukamal, solely in his capacity as liquidating trustee (“***Liquidating Trustee***”) of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, the “***Liquidating Trusts***”) and (b) General Electric Company as successor by merger to General Electric Capital Corporation (“***GE***”) (GE and the Liquidating Trustee are sometimes referred to individually as a “***Party***” or collectively, the “***Parties***”). The terms of this Agreement are as follows:

RECITALS

A. On November 30, 2009 (the “***Petition Date***”), Palm Beach Finance Partners, L.P. (“***PBF I***”) and Palm Beach Finance Partners II, L.P. (“***PBF II***” together with PBF I, the “***Debtors***”) commenced Chapter 11 bankruptcy cases by filing voluntary petitions for relief under Chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida (“***Bankruptcy Court***”), Case Nos. 09-36379 and 09-36396 respectively (“***Bankruptcy Cases***”);

B. On October 21, 2010, the Bankruptcy Court entered its Order Confirming Second Amended Plan of Liquidation [ECF No. 444], creating the Liquidating Trusts and appointing the Liquidating Trustee as liquidating trustee.

C. The Liquidating Trustee, solely on behalf of the Palm Beach Liquidating Trusts, has asserted claims and causes of action against GE in the lawsuit filed by the Liquidating Trustee against GE, Adv. Case No. 12-01979 (“***GE Adversary***”).

D. GE expressly denies any liability in connection with the GE Adversary;

E. The Liquidating Trustee and GE have engaged in settlement negotiations and discussions to resolve the GE Adversary;

F. To avoid the continued expense and risk of adverse outcome arising from the GE Adversary, as well as incurring costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve the GE Adversary subject to the terms and conditions of this Agreement (“*Settlement*”) and Bankruptcy Court approval.

G. The term “*Claims*” shall mean any obligations, causes of action, demands of any type that a person or entity 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, and whether alleged (or could be, or could have been, alleged) as arising under the Bankruptcy Code, applicable non-bankruptcy law, or any other theory of recovery whatsoever. Without limiting the generality of the foregoing, when the term “*Claims*” is used with respect to any Claims relating to, or that were asserted or that could be asserted against, any of the GE Parties, it shall include, without limitation: (i) any and all Claims against any of the GE Parties in any way related to, or based directly or indirectly upon facts, events, transactions or scenarios related to, alleged in, could have been alleged in, embraced by, or otherwise referred to at any time in the GE Adversary; (ii) any and all Claims subsequently alleged or otherwise brought, whether by the Liquidating Trustee or otherwise, in any adversary proceeding or other action seeking any type of recovery against any of the GE Parties for the benefit of any creditors of or other parties-in-interest in the Bankruptcy Cases relating in any way to the GE Adversary; (iii) any and all Claims against any of the GE Parties arising under federal, state, or local statute, law, regulations or common law; and (iv) any

and all Claims against any of the GE Parties in any way related to Thomas Petters, Petters Company, Inc., Redtag, redtagoutlet.com, Inc., Petters Capital, Inc., Palm Beach Finance Partners, L.P., Palm Beach Finance II, L.P., and/or any Petters related or affiliated company including, without limitation, those companies and entities that were or are debtors in the PCI Bankruptcy Cases (as that term is defined below) and those companies and entities that were placed into receivership in that certain receivership action captioned *United States v. Petters* pending in the United States District Court for the District of Minnesota under Case No. 08-SC-05348.

H. The term “***Eleventh Circuit Appeal***” shall mean that certain appeal captioned *General Electric Capital Corporation v. Barry E. Mukamal, in his capacity as liquidating trustee of the Palm Beach Finance Partners Liquidating Trust and Palm Beach Finance II Liquidating Trust* pending in the Eleventh Circuit Court of Appeals under Case No. 18-10797.

I. The term “***GE Parties***” shall mean: GE, GE’s current and former parent, affiliate and subsidiary companies and all successors and assigns of such companies, including without limitation GE Capital Holdings, LLC and General Electric Capital Corporation, their respective current and former officers, directors, employees, agents, attorneys, professionals, predecessors, indemnitors and insurers.

J. The term “***Final Order***” shall mean an order that is final for purposes of 28 U.S.C. § 158 or § 1291, is no longer subject to appeal or a petition for certiorari, and no such proceedings are pending.

K. The term “***PB Parties***” shall mean the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, Palm Beach Finance Partners, L.P., Palm Beach Finance Partners II, LP., the Debtors and their estates, and their successors and assigns, including without limitation

any other estate representative, administrator, creditor or other party in interest, claiming on behalf of or through the Debtors and their estates.

L. The term “*PCI Bankruptcy Cases*” shall mean the substantively consolidated Petters Company, Inc. bankruptcy case(s) pending in the United States Bankruptcy Court for the District of Minnesota, substantively consolidated under Case No. 08-45257 and any successors including the PCI Liquidating Trust.

NOW, WHEREFORE, the Parties agree as follows:

1. This Agreement is a compromise and settlement of a controversy. No Party admits, and each expressly denies, any liability on its part.

2. This Agreement 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 Agreement.

3. GE shall pay (or cause to be paid) forty-nine million dollars (\$49,000,000) (“*Settlement Payment*”) to the Liquidating Trustee by no later than the Settlement Payment Date (as that term is defined below), via two wire transfers (18% or \$8,820,000 to be allocated to the Palm Beach Finance Partners Liquidating Trust and 82% or \$40,180,000 to be allocated to the Palm Beach Finance II Liquidating Trust) pursuant to written instructions to be provided by the Liquidating Trustee to GE.

4. The Settlement Payment Date shall be the fifth (5th) business day from the date on which the Bankruptcy Court’s order approving this Agreement becomes a Final Order.

5. The Liquidating Trustee shall (with the cooperation of GE) file stipulations of dismissal with prejudice of the GE Adversary and the Eleventh Circuit Appeal within five (5) business days following the receipt in cleared funds of the Settlement Payment. If GE is required to be the party to file the dismissal of the Eleventh Circuit Appeal due to its status as appellant, then GE shall do so with the Liquidating Trustee's cooperation.

6. Upon approval of this Agreement by Final Order of the Bankruptcy Court after appropriate notice and opportunity for a hearing, and payment of the Settlement Payment, the PB Parties shall be deemed to fully waive, release, hold harmless, and discharge, now and forever, the GE Parties from any and all Claims that the PB Parties now have, have ever had, or may hereafter have, against the GE Parties, at any time up to and including the date of execution of this Agreement ("***GE Released Claims***"); provided that nothing in this Paragraph 6 shall be deemed to release, waive or otherwise limit any rights or obligations arising out of this Agreement; and provided, further, that nothing in this Agreement shall be deemed to impair, limit or release any claims that the Liquidating Trustee may have against any parties other than the GE Parties.

7. Upon approval of this Agreement by Final Order of the Bankruptcy Court after appropriate notice and opportunity for a hearing, and payment of the Settlement Payment, the GE Parties shall be deemed to fully waive, release, hold harmless, and discharge, now and forever, the PB Parties and their agents, attorneys and professionals from any and all Claims that the GE Parties now have, have ever had, or may hereafter have, against the PB Parties and their agents, attorneys or professionals, at any time up to and including the date of execution of this Agreement; provided that nothing in this Paragraph 7 shall be deemed to release, waive or otherwise limit any rights or obligations arising out of this Agreement; and provided, further, that nothing in this Agreement

shall be deemed to impair, limit or release any claims that the GE Parties may have against any parties other than the PB Parties and their agents, attorneys or professionals.

8. The Parties acknowledge and agree that the Parties have entered into the Settlement set forth in this Agreement in good faith, after negotiation between the Parties, with the Liquidating Trustee and GE each represented by legal counsel of their own choosing. In the event that any third party asserts any claim for contribution, indemnity, indemnification, or based upon any other grounds or nature in the future against GE related in any way to the subject matter of the GE Adversary or this Agreement (a “***Claim Over***”), GE reserves the right to seek a court order determining and confirming that the Settlement set forth in this Agreement was made in good faith and therefore bars such a Claim Over against the GE Parties. The Liquidating Trustee agrees not to oppose any such requested relief by GE.

9. Each of the Parties acknowledges that he or it has read all of the terms of this Agreement, has had an opportunity to consult with counsel of his or its own choosing and enters into those terms voluntarily and without duress.

10. Each Party shall bear its own attorneys’ fees and costs in connection with the GE Adversary, the negotiation and drafting of this Agreement and the submission of such motions and orders as may be necessary to obtain the approval of the Bankruptcy Court; provided that in the event of any litigation between the Parties under this Agreement or arising as a result of a default under this Agreement, the prevailing Party shall be entitled to reasonable attorneys’ fees and costs including those incurred at all trial and appellate levels.

11. This Agreement and any of the specific items, covenants, and conditions contained herein, may not be waived, changed, altered or modified except by an instrument in writing signed by the Party against whom enforcement of such change is sought.

12. This Agreement shall be effective upon execution by all of the Parties, subject only to approval of this Agreement by Final Order. Upon it becoming effective, this Agreement shall be binding on all of the Parties' successors or assigns.

13. If the Bankruptcy Court does not approve this Agreement, then the Agreement shall be of no further force or effect, and the Parties shall be restored to their rights as they existed prior to the execution of this Agreement. Notwithstanding the foregoing, if the Bankruptcy Court does not approve this Agreement because any of the Parties have failed to provide the Bankruptcy Court with adequate information to rule on the merits of the Agreement, the Parties will use their best efforts to seek reconsideration of any order declining to approve the Agreement, or to file an amended motion to approve the Agreement.

14. This Agreement shall in all respects be construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed wholly within the State of Florida and by federal law to the extent the same has preempted the laws of the State of Florida.



15. This Agreement 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 Agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement.

16. This Agreement shall be deemed to have been jointly drafted by the parties, and in construing and interpreting this Agreement, no provision shall be construed and interpreted for or against any of the Parties because such provision or any other provision of the Agreement as a whole is purportedly prepared or requested by such Party.

17. The Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement.

18. The individuals signing below represent and warrant that they have the authority to execute this Agreement on behalf of the persons / entities identified and as set forth herein.

STIPULATED AND AGREED TO BY:

<p>By: </p> <p>Barry E. Mukamal, solely in his capacity as liquidating trustee of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust</p>	<p>General Electric Company as successor by merger to General Electric Capital Corporation</p> <p>By: </p> <p>Name: <u>Christopher D Moore</u></p> <p>Its: <u>Vice President & General Counsel</u></p>
--	--

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

In re:

CHAPTER 11

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

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

Debtors.

**ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION TO APPROVE (1)
SETTLEMENT WITH GENERAL ELECTRIC COMPANY;
AND (2) PAYMENT OF CONTINGENCY FEE**

THIS CAUSE came before the Court on _____, 2019 at _____ a.m./p.m.
upon the *Liquidating Trustee's Motion to Approve (1) Settlement with General Electric
Company; and (2) Payment of Contingency Fee* [ECF No. _____] ("**Motion**").¹ The Court has
reviewed the Motion and is otherwise duly advised in the premises. Accordingly, it is:

ORDERED as follows:

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

1. The Motion is **GRANTED**.
2. The Settlement is **APPROVED**. The Settlement Agreement is approved in its entirety and is fully binding and enforceable pursuant to its terms.
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. General Electric Company shall pay (or cause to be paid) to the Palm Beach Liquidating Trusts forty-nine million dollars (\$49,000,000) ("***Settlement Payment***") by no later than the Settlement Payment Date, as defined in the Settlement Agreement.
5. The Settlement Payment will 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 ("***Pro Rata Allocation Formula***").
6. The Contingency Fee in the total amount of \$18,620,000 is approved.
 - a) Meland Russin & Budwick, P.A. is entitled to \$14,210,000 of the Contingency Fee;
 - b) Kozyak Tropin & Throckmorton, P.A. is entitled to \$2,940,000 of the Contingency Fee; and
 - c) Mandel and Mandel LLP is entitled to \$1,470,000 of the Contingency Fee.
7. The Liquidating Trustee is authorized and directed to make pay each firm its share 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

###

Submitted By:

Michael S. Budwick, Esquire

Florida Bar No. 938777

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Attorneys for the Liquidating Trustee

Copies Furnished To:

Michael S. Budwick, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.

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

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Manual Notice List for both cases: 09-36379 and 09-36396

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Southern District of Florida
West Palm Beach
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Added as a courtesy. We filed a Notice of Change of Address but matrix was not updated.