

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

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In re:

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

Chapter 11
Case No. 09-36379-EPK
Case No. 09-36396-EPK
(Jointly Administered)

Debtors.

**SUMMARY OF FORTIETH POST CONFIRMATION FEE
APPLICATION FOR ALLOWANCE AND PAYMENT OF COMPENSATION AND
REIMBURSEMENT OF EXPENSES TO MELAND BUDWICK, P.A.,
AS COUNSEL TO CHAPTER 11 LIQUIDATING TRUSTEE**

1.	Name of Applicant:	Meland Budwick, P.A.
2.	Role of Applicant:	Counsel for Chapter 11 Liquidating Trustee
3.	Name of Certifying Professional:	Michael S. Budwick, Esquire
4.	Date case filed:	November 30, 2009
5.	Date of Retention Order:	February 12, 2010 [ECF No. 121], <i>nunc pro tunc</i> to February 2, 2010
IF INTERIM APPLICATION (POST CONFIRMATION), COMPLETE 6, 7 AND 8 BELOW:		
6.	Period for this Application:	November 1, 2023 to February 29, 2024
7.	Amount of Compensation Sought:	\$28,719.28
8.	Amount of Expense Reimbursement Sought:	\$598.90
IF FINAL APPLICATION, COMPLETE 9 AND 10 BELOW:		
9.	Total Amount of Compensation Sought during case:	N/A
10.	Total Amount of Expense Reimbursement Sought during case:	N/A
11.	Amount of Original Retainer(s) Please disclose both Fee Retainer and Cost Retainer if such a Retainer has been received:	\$0.00
12.	Current Balance of Retainer(s) remaining:	\$0.00
13.	Last monthly operating report filed (Month/Year and ECF No.):	PBF 12/2023 [ECF No. 3959] PBF II 12/2023 [ECF No. 3960]
14.	If case is Chapter 11, current funds in the Chapter 11 estate:	PBF \$2,403,924.69 a/o 12/31/2023 PBF II \$1,409,248.51 a/o 12/31/2023
15.	If case is Chapter 7, current funds held by Chapter 7 trustee:	N/A

Fee Application

Meland Budwick, P.A. (“**MB**”), having been approved by this Court as attorneys for Chapter 11 Liquidating Trustee, Barry E. Mukamal (“**Trustee**”), applies for allowance of final compensation for professional services rendered and reimbursement of the necessary expenses paid or incurred by MB in this Chapter 11 proceeding between November 1, 2023 and February 29, 2024. This application is filed pursuant to 11 U.S.C. §§ 330 and 331 and Bankruptcy Rule 2016 and meets the requirements set forth in the Guidelines incorporated in Local Rule 2016-1(B)(1). The exhibits attached to this application, pursuant to the Guidelines, are:

Exhibit “1” – Fee Application Summary Chart

Exhibits “2-A” and “2-B”- Summary of Professional and Paraprofessional Time.

Exhibit “3” - Summary of Requested Reimbursements of Expenses.

Exhibit “4” - The applicant's complete time records, in chronological order, by activity code category, for the time period covered by this application. The requested fees are itemized to the tenth of an hour.

Background

1. On November 30, 2009, Palm Beach Finance Partners, L.P. (together with Palm Beach Finance II, L.P., the “**Debtors**”) filed its Voluntary Petition for relief under chapter 11 of the United States Bankruptcy Code [ECF No. 1]. On December 1, 2009, this case was jointly administered with the estate of *In re Palm Beach Finance II, L.P.*, Case No. 09-36396-PGH [ECF No. 19].

2. On January 28, 2010, the Court entered the Agreed Order Directing Appointment of Chapter 11 Trustee and denying the United States Trustee’s Motion to Convert Cases to Cases under Chapter 7 [ECF No. 100].

3. On January 29, 2010, the United States Trustee appointed the Liquidating Trustee as Trustee in both estates [ECF No. 107].

4. On February 12, 2010, this Court entered an Order [ECF No. 121] granting the Debtor's Application to Employ Michael S. Budwick, Esq., and MB as counsel for the Liquidating Trustee, *nunc pro tunc* to February 2, 2010.

5. On July 26, 2010, the Liquidating Trustee's Motion to Approve Hybrid Form of Compensation for [MB] [ECF No. 193] was filed. On August 24, 2010, the Court approved the motion [ECF No. 223], as modified by the Order Granting Liquidating Trustee's (I) Motion to Modify Compensation Structure for [MB] as to Two Litigation Matters and (II) Application to Employ David S. Mandel and Mandel & Mandel LLP, *Nunc Pro Tunc* to February 17, 2014 [ECF No. 2197] (collectively, the "**Hybrid Compensation**").

6. The Hybrid Compensation provides, in pertinent part, that:

[MB] shall reduce its hourly rates for all litigation matters brought by it on behalf of the Debtors to 75% of its standard rates then in effect. [MB] shall file fee applications for the reduced hourly fees and may apply for such compensation without imposition of a holdback. [MB] shall be paid an additional 10% of any affirmative recovery received by the Debtors' estates and allocated to the Debtors from a litigation matter pursued by [MB], without further order of the Court. Any motion to approve a compromise pursuant to Rule 9019 shall identify the corresponding fee to be paid to [MB].

This hybrid form of compensation would apply whether a matter is resolved pre or post filing of a lawsuit, regardless of the stage of litigation, and apply to the pending litigation against Kaufman Rossin and any recovery allocated to the Debtors' estates. This form of compensation would apply to all pending litigation filed by [MB] and any litigation to be filed by [MB] on behalf of Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. [MB] will maintain a separate time category for each litigation matter and attempt to segregate time by each litigation matter as accurately as possible.

[MB] may seek compensation for non litigation matters, including all services associated with the Petters Bankruptcy Cases¹ at its standard hours, subject to Court approval via fee applications. Depending on the outcome and results achieved in connection with the Debtors' cases, including the results of and amounts of distributions from the Petters Bankruptcy Cases, [MB] shall be entitled to seek additional fees based on the results achieved, subject to application and approval by the Court.

The actual costs of prosecuting the litigation matters (such as photocopies and transcripts) shall be paid directly by the Debtors.

The form of compensation provided by this Order shall apply post confirmation of any plan of liquidation or conversion of these cases to Chapter 7. However, in the event that the Debtors are financially unable to pay the hourly portion of [MB]'s fees, the Trustee may seek to modify the form of hybrid compensation, subject to this Court's approval.

7. At the confirmation hearing held on October 19, 2010, the Court confirmed the Second Amended Joint Plan of Liquidation of Barry Mukamal, as Chapter 11 Trustee of Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. and Geoffrey Varga, as Joint Official Liquidator of Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd., dated September 3, 2010 [ECF No. 245] ("**Plan**") in the above referenced jointly administered bankruptcy proceeding. The Plan defines Confirmation Date as "the date on which the Bankruptcy Court enters the Confirmation Order on its docket." The Order Confirming Second Amended Joint Liquidating Chapter 11 Plan [ECF No. 444] ("**Confirmation Order**") was entered on the Court's docket on October 21, 2010.

8. Article 7 of the Plan provides in pertinent part:

¹ The Petters Bankruptcy Cases are the Chapter 11 bankruptcy cases of Petters Company, Inc. ("**PCT**"), Petters Group Worldwide, LLC, PC Funding, LLC; Thousand Lakes, LLC; SPF Funding, LLC; PL Ltd., Inc.; Edge One LLC; MGC Finance, Inc.; PAC Funding, LLC; Palm Beach Finance Holdings, Inc., all pending in the United States Bankruptcy Court for the District of Minnesota.

7.1.4 *PBF Liquidating Trust Management.* Barry Mukamal shall be PBF Liquidating Trustee with the power and authority set forth in the PBF Liquidating Trust Agreement.

7.1.5 *PBF Liquidating Trust Structure.* As more fully set forth in the PBF Liquidating Trust Agreement, the PBF Liquidating Trustee shall oversee and direct the PBF Liquidating Trust's operations and activities, including the retention of counsel.

7.1.7 *PBF II Liquidating Trust Monitor.* Geoffrey Varga, as Joint Official Liquidator for Offshore Funds shall be the PBF II Liquidating Trust Monitor with the power and authority set forth in the PBF II Liquidating Trust Agreement.

7.1.11 *Compensation of Professionals Retained by the Liquidating Trustees and the PBF II Liquidating Trust Monitor.* Professionals retained by the PBF II Liquidating Trust Monitor and the Liquidating Trustee shall be entitled to monthly interim compensation for fees and expenses incurred in carrying out their duties consistent with the Plan and the Liquidating Trust Agreements; provided, however, that the PBF II Liquidating Trust Monitor or the Liquidating Trustee shall provide to the other, and the United States Trustee, notice of such requested fees and expenses on a monthly basis. Following such notice, if no objections to the fees and expenses set forth in the monthly statement are received in writing within 10 business days, 100% of such professional's fees and expenses shall be paid. Notice of objections to such fees and expenses shall be made via e-mail and/or facsimile. If objections to the fees and expenses are made and cannot be resolved, such objections will be heard and resolved by the Bankruptcy Court. Any such fees and expenses shall be payable from the Trust Asset of the Liquidating Trusts. The PBF II Liquidating Trust Monitor and the Liquidating Trustee shall, no less frequently than once every four (4) months, submit applications to the Bankruptcy Court for final approval of reimbursement of fees and expenses paid to their professionals.

The Liquidating Trustees' general and litigation counsel shall be [MB]. The terms of compensation for [MB] shall be the same in all respects as those requested in the Trustee's Motion to Approve Hybrid Form of Compensation for Litigation Counsel, as may be amended with the consent of [MB] and as approved by the Bankruptcy Court.

9. This application is submitted pursuant to 11 U.S.C. §§ 330 and 331 for the allowance and payment to MB in the amount of \$28,719.28 plus \$598.90 for costs incurred between November 1, 2023 and February 29, 2024, for a total request of \$29,318.18.

10. All of the services rendered by MB were performed for and on behalf of the Liquidating Trustee.

Summary of Services Rendered

11. MB rendered varied services on behalf of the Trustee for the period between November 1, 2023 and February 29, 2024. MB is requesting \$28,719.28 in attorneys' fees for services rendered. MB logged a total of 43.7 hours at hourly rates ranging from \$290 for paralegals to \$795 for partners.

12. Many of the fee categories are interrelated. However, MB has attempted to categorize certain of its services as follows:

a) **Case Administration (4189-2) and (4190-3).** MB devoted 3.5 hours for a total of \$2,354.50 in Case Administration matters for both the PBF II and PBF estates. The tasks included reviewing filings in the Debtors' cases, handling updates to the case information website, addressing issues regarding returned mail and corrections needed to the case service list, responding to substantive and non-substantive inquiries from stakeholders and interested parties, communicating with stakeholders and other interested parties regarding the status of the cases, and communicating with the Trustee along with his other professionals as appropriate. As the Debtors' cases approach conclusion, this category includes addressing preliminary steps for case-closing matters.

b) **Fee Application/Employment (4189-7).** MB devoted 10.7 hours for a total of \$4,947.50 to prepare, file and attend hearings regarding the fee applications of the Trustee's professionals, including MB. In addition, MB reviewed the monthly invoices and fee applications of all professionals retained by the Trustee, and where appropriate redacted certain time entries to ensure confidentiality.

c) **Petters Company, Inc. (4189-13)**. MB devoted 28 hours for a total of \$20,503.50 in connection with the Petters Bankruptcy Cases.¹ On April 15, 2016, the Minnesota bankruptcy court confirmed a Chapter 11 Plan of Liquidation (“**PCI Plan**”) for which the Trustee was a co-proponent. In addition, the Trustee serves as one of five voting members of the Post Confirmation Liquidating Trust Committee (“**Trust Committee**”) which manages all litigation pursued by the PCI Trust. MB supports the Trustee’s role as a member of the Trust Committee, including the post-confirmation PCI Trust’s prosecution of its claims. During the application period, MB devoted time assisting the Trustee in his role as a Trust Committee member to maximize recoveries from the Petters Bankruptcy Estates. This includes (1) monitoring and strategizing regarding ongoing litigation; and (2) interacting with PCI Trust professionals and committee members. Prior to the application period, Doug Kelley, in his capacity as the Trustee of the BMO Litigation Trust (he is also the trustee of the PCI Trust that works with the Trust Committee), prepared for and then went to trial against BMO Harris Bank, N.A. in Case No. 19-1756 (D. Minn.). The Trustee has a limited interest in the proceeds of that litigation due to a multi-layered arrangement the Trustee put forward years ago that was approved by this Court, *see e.g.*, Main Case ECF Nos. ECF Nos. 2670, 2689, & 2810, but necessitates some Trustee and MB-professional involvement.² During the

¹ During the application period, MB served as oversight special counsel in connection with virtually all litigation prosecuted by the PCI Trust (per the Trust Committee’s request). In consultation with the Liquidating Trustee, MB works with the PCI Trust to maximize the value of the PCI Trust’s litigation assets. MB’s time in this application is distinct from any services performed in its oversight capacity which is billed to the PCI Trust.

² A verdict of \$484 million in compensatory damages and \$79 million in punitive damages was awarded in favor of the plaintiff. An appeal has been filed and the litigation continues.

application period (and since), this involvement has increased given appellate briefing as well as some issues and disputes related to the trusts.³

13. The applicant believes that the requested fee of \$28,719.28 for 43.7 hours worked, is reasonable considering the nature, extent, and the value of such services, taking into account all relevant factors, including:

a) The time spent on such services.

14. The transcribed time records and details of services rendered by MB are attached as Exhibit 4. The attorneys of MB have devoted 43.7 hours in time in providing services to the Liquidating Trustee between November 1, 2023 and February 29, 2024. A summary of the hours are attached as Exhibit 2-A.

15. All attorneys and legal assistants of MB record the time expended in the rendition of professional services for the Liquidating Trustee by recording a detailed description of such professional services rendered.

16. All professionals involved in the rendering of services in this proceeding to the extent practicable avoided any unnecessary duplication of work and time expended. Certain time incurred by Michael S. Budwick, a shareholder of MB, was not recorded to avoid potential duplicate time charges to the estate.

b) The rates charged for such services.

17. MB logged a total of 43.7 hours at hourly rates ranging from \$290 for paralegals to \$775 for partners during this time period for which professional services were required. The rates charged by the attorneys providing services to the Liquidating Trustee are well within the reasonable range for hourly rates charged by attorneys of comparable skills in bankruptcy

³ See e.g., *Kelley v. Taft Mountain Funding, LLC*, 23-04085 (U.S.B.C. D. Minn.) [ECF No. 1] (complaint).

proceedings in the Southern District of Florida. Pursuant to various Orders of this Court, MB's mode of compensation has been hourly for certain aspects of this case and hybrid or contingency for various litigation, including reduced hourly rates.

c) Whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of the case.

18. The services provided by MB were necessary to the administration of, and beneficial to the estates at the time at which the services were rendered as well as towards the completion of the cases.

d) Whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed.

19. MB submits that the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issues and tasks addressed.

e) With respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field.

20. MB submits that the attorneys assigned to these cases have the requisite experience, seniority and skills necessary to effectively and efficiently meet the requirements of the task of these proceedings. MB believes it has demonstrated the requisite, substantial legal expertise to skillfully deal with the novel and difficult problems encountered in these proceedings and has handled all legal issues efficiently and effectively.

21. MB is a specialized commercial litigation and transactional firm having substantial experience in bankruptcy and complex commercial litigation. MB represents clients throughout the Southern District of Florida and appears regularly in the Southern District

Bankruptcy Courts. The quality of work performed by MB in this proceeding attests to the firm's experience, reputation and ability.

22. Michael S. Budwick received his Juris Doctor with Honors from the University of Florida College of Law in December 1991 and was admitted to the Florida Bar in 1992. He received his Bachelor of Science in Business Administration with Honors from the University of Florida in 1988. During the summer of 1991, he interned for the Honorable Robert A. Mark, U.S. Bankruptcy Judge for the Southern District of Florida. Mr. Budwick is a past Director, Treasurer, and First Vice President of the Bankruptcy Bar Association of the Southern District of Florida and is admitted to practice before the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Middle and Southern Districts of Florida. Mr. Budwick is AV rated by Martindale-Hubbell and has been recognized by Chambers and Partners USA.

23. Further, Mr. Budwick has significant Chapter 11 reorganization experience. He has represented debtors, creditors and trustees in cases involving a wide range of industries including retail, telecommunications, manufacturing, self-storage, healthcare and real estate development. Mr. Budwick's experience includes financial fraud and *Ponzi* scheme cases. He has been appointed receiver by a United States District Judge in the case of *In re: Pheonix (sic) Investments, Inc.* (a \$19 million Ponzi scheme). Since 1993, he has represented trustees, receivers, creditors and investors in some of the largest financial fraud cases in South Florida including *In re: Premium Sales Corporation*, *In re Evergreen Security, Ltd.*, *In re Lancer Partners, L.P.*, *In re Model Imperial, Inc.*, *In re Phoenix Diversified Investment Corporation*, *In re Innovida Holdings, LLC*, *In re Puig, Inc.* and *In re Rothstein Rosenfeldt Adler P.A.*

24. Solomon B. Genet is a Partner with MB, and focuses his practice on corporate insolvency/bankruptcy, financial fraud, and commercial litigation. He has represented corporate debtors and alleged debtors, creditors, creditors' committees, and trustees in state and federal insolvency proceedings, often stemming from financial frauds and *Ponzi* schemes. Prior to joining MB, Mr. Genet served as the Judicial Law Clerk for the Honorable Robert A. Mark, U.S. Bankruptcy Judge for the Southern District of Florida. In addition to his professional legal experience, Mr. Genet was an Adjunct Professor at the University of Miami School of Law and the St. Thomas Aquinas School of Law. Mr. Genet is AV rated by Martindale-Hubbell and has been recognized by Chambers and Partners USA.

25. Mr. Genet received his J.D. degree, *magna cum laude*, from the University of Miami School of Law, where he was an associate editor of the University of Miami Law Review. He received his B.A. degree from Yeshiva University. Mr. Genet is a member of the Florida Bar, authorized to practice before the Florida State courts, the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Southern District of Florida. He is also a member of the New York Bar, admitted to practice before New York State Courts and the United States District Court for the Southern District of New York.

f) Whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.

26. The applicant represents that the fees applied for are in conformity with the fees allowed in similar proceedings for similar services rendered and results obtained. MB respectfully requests that the Court take notice of the awards which have been made in similar proceedings.

Allocation Between Debtors' Estates

27. In many instances work performed by MB on behalf of the Liquidating Trustee was done on behalf of both estates.

28. Section 1.76, entitled “Pro Rata Allocation Formula,” of the Second Amended Joint Plan of Liquidation dated September 3, 2010 [ECF No. 245] provides for a *pro rata* allocation formula derived from the Compiled Financial Statements, dated April 30, 2008, for each of the Debtors by Kaufman Rossin & Co. The data contained therein supports an 18%/82% allocation between PBF and PBF II, respectively, based upon the total assets of each entity as of the date of such compilations. Based on the circumstances, the Liquidating Trustee believes that this formula is the proper methodology to allocate certain fees and expenses between the two estates.

29. Attached as Composite Exhibit A are spreadsheets reflecting the *pro rata* allocation between the two estates. Specifically, MB requests the Court to approve the following allocation:

Estate	Fees	Costs
Palm Beach Finance Partners, L.P.	\$5,169.47	\$107.80
Palm Beach Finance II, L.P.	\$23,549.81	\$491.10

Request for Final Approval

30. Pursuant to Article 7.1.11 of the Plan: “The PBF II Liquidating Trust Monitor and the Liquidating Trustee shall, no less frequently than once every four (4) months, submit applications to the Bankruptcy Court for final approval of reimbursement of fees and expenses paid to their professionals.”

WHEREFORE, MB requests that (i) it be allowed the full compensation and reimbursement of expenses sought under this application as a final award; (ii) the award of fees

and costs be per the allocation set forth above; and (iii) the Court grant such other and further relief as this Court deem just and proper.

CERTIFICATION

1. I have been designated by Meland Budwick, P.A. ("***Applicant***") as the professional with responsibility in this case for compliance with the "Guidelines for Fee Applications for Professionals in the Southern District of Florida in Bankruptcy Cases" ("***Guidelines***").

2. I have read the Applicant's application for compensation and reimbursement of expenses ("***Application***"). The application complies with the Guidelines, and the fees and Expenses sought fall within the Guidelines, except as specifically noted in this certification and described in the application.

3. The fees and expenses sought are billed at rates and in accordance with practices customarily employed by the Applicant and generally accepted by the Applicant's clients.

4. In seeking reimbursement for the expenditures described on Exhibit 2, the Applicant is seeking reimbursement only for the actual expenditure and has not marked up the actual cost to provide a profit or to recover the amortized cost of investment in staff time or equipment or capital outlay (except to the extent that the Applicant has elected to charge for in-house photocopies and outgoing facsimile transmissions at the maximum rates permitted by the Guidelines).

5. In seeking reimbursement for any service provided by a third party, the Applicant is seeking reimbursement only for the amount actually paid by the Applicant to the third party.

6. The following are the variances with the provisions of the Guidelines, the date of each court order approving the variance, and the justification for the variance: none.

I HEREBY CERTIFY that the foregoing is true and correct.

I HEREBY CERTIFY that, pursuant to that certain Order Authorizing Professionals Employed by the Liquidating Trustee and Monitor to Provide Notice of their Post Confirmation Fee Applications for Compensation in Summary Form [ECF No. 648], a Notice of Filing, which will include a Certificate of Service for the foregoing, will be filed at a later date.

Dated: April 19, 2024.

s/ Michael S. Budwick
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