

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-PGH
Case No.: 09-36396-PGH
(Jointly Administered)

Debtors.

**LIQUIDATING TRUSTEE'S APPLICATION TO EMPLOY ELLIOT B. KULA
AND KULA & SAMSON, LLP, NUNC PRO TUNC TO MARCH 5, 2013**

Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") of the Palm Beach Finance Partners Liquidating Trust and Palm Beach Finance II Liquidating Trust, by and through undersigned counsel and pursuant to 11 U.S.C. § 327(a) and *Fed. R. Bank. P.* 2014(a), respectfully requests that this Court enter an Order, *nunc pro tunc* to March 5, 2013, authorizing the employment of Elliot B. Kula ("*Mr. Kula*") and the firm of Kula & Samson, LLP ("*K&S*," and collectively with Mr. Kula, the "*Applicant*"). In support, the Liquidating Trustee states as follows:

1. On November 30, 2009, the Debtors filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code [ECF No. 1]. By subsequent Order of this Court, the cases are jointly administered.
2. On January 28, 2010, the Court entered the Agreed Order Directing Appointment of Chapter 11 Trustee and Denying 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 Chapter 11 Trustee in both of the Debtors' estates [ECF No. 107].

4. The Liquidating Trustee is the Liquidating Trustee by virtue of this Court's Order Confirming Second Amended Joint Plan of Liquidation dated October 21, 2010 [ECF No. 444].

5. The Liquidating Trustee desires to employ the Applicant as a consultant, *nunc pro tunc* to March 5, 2013. The Applicant will advise and consult with the Liquidating Trustee on a wide range of appellate matters that may arise, and in any other related role as the Liquidating Trustee deems necessary.

6. Mr. Kula is a partner with K&S and his hourly rate for this engagement will be \$500. The hourly rates of other K&S attorneys and staff, if utilized by Mr. Kula, range from \$75 to \$400.

7. The Liquidating Trustee believes that the Applicant is qualified to be retained by the Liquidating Trustee. In support, attached as Exhibit 1 is Mr. Kula's curriculum vitae.

8. To the best of the Liquidating Trustee's knowledge, other than on attached Exhibit 2, the Applicant does not (i) have any connection with the Debtors or the Debtors' estates; or (ii) represent any interest adverse to the Liquidating Trustee, the Debtors or the Debtors' estates.

9. Attached as Exhibit 2 is Mr. Kula's fully executed and notarized affidavit demonstrating that he is disinterested as required by 11 U.S.C. § 327(a) and a verified statement as required under *Fed. R. Bank. P.* 2014.

10. The Liquidating Trustee believes that the employment of the Applicant is in the best interest of the Debtors' estates and their creditors.

WHEREFORE, the Liquidating Trustee respectfully requests the Court enter an Order (similar in form to the attached Exhibit 3) (i) authorizing the retention of the Applicant, *nunc pro*

tunc to March 5, 2013, as his consultant upon the terms and conditions set forth above; and (ii) for all other relief this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on March 12, 2013, a true and correct copy of the foregoing was served via the Court's Notice of Electronic Filing upon all Registered Users listed on the attached Exhibit A and via U.S. Regular Mail upon all parties listed on the attached Exhibit B.

s/ Solomon B. Genet
Solomon B. Genet, Esquire
Florida Bar No. 617911
sgenet@melandrussin.com
MELAND RUSSIN & BUDWICK, P.A.
3200 Southeast Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 358-6363
Telecopy: (305) 358-1221

Attorneys for Liquidating Trustee

Elliot B. Kula
Kula & Samson, LLP
www.kulaandsamson.com
17501 Biscayne Blvd., Suite 430 ▪ Aventura, FL 33160
Office: (305) 354-3858 ▪ Mobile: (305) 773-4992
elliott@kulaandsamson.com

Elliot practices exclusively as an appellate attorney. He has experience representing clients in both state and federal courts, in a variety of substantive areas of the law. Elliot also provides litigation support during every phase of the litigation in order to optimize the client's position and create efficient and effective strategies for trial counsel. Elliot has argued in every District Court of Appeal in Florida, as well as the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Southern and Middle Districts of Florida.

PROFESSIONAL EXPERIENCE

KULA & SAMSON, LLP (January 2011 – Present)

Principal Partner

Handles a wide variety of proceedings in the appellate courts, including appeals of final judgments and interlocutory rulings, petitions for writs of certiorari and mandamus, certified questions, appellate motion practice, and the representation of amici curiae; works closely and collaboratively with litigators, to formulate issues and themes, draft dispositive motions, craft jury instructions.

GREENBERG TRAUIG, P.A. (September 1999 – January 2011)

Partner and Administrative Department Head of Appellate Practice

Served as appellate counsel to numerous litigation partners within the firm's offices throughout Florida and across the United States; managed administration of firm's principal appellate department located in the Miami office.

MILLER, KAGAN, RODRIGUEZ & SILVER, P.A. (July 1996 – August 1999)

Associate; Principal Appellate Counsel

Insurance related appellate litigation. Represented insurance carriers, employers and professionals in all aspects of appellate litigation on coverage and substantive issues in areas of workers compensation and liability.

ATTORNEY GENERAL'S OFFICE, STATE OF FLORIDA (August 1993 – June 1996)

Assistant Attorney General, Appeals Division

Represented the State of Florida in all aspects of appellate litigation before state and federal courts, primarily in criminal prosecution and involving constitutional issues.

BAR ADMISSIONS

The Florida Bar
U.S. Court of Appeals for the Eleventh Circuit
U.S. Court of Appeals for the Tenth Circuit
U.S. District Court for the Southern District of Florida
U.S. District Court for the Middle District of Florida

EDUCATION

J.D., Hamline University School of Law, St. Paul, MN 1993
B.A., English, University of Minnesota, Minneapolis, MN 1989

PROFESSIONAL AND COMMUNITY INVOLVEMENT

Appellate Court Rules Committee of The Florida Bar, 2009 – present
Chair of General Practice Subcommittee, 2012 – present
Appellate Practice and Advocacy Section of the Florida Bar
Dade County Bar Association
Appellate Courts Committee, Past Chair and Vice Chair
Florida Statewide Nominating Commission for Judges of Compensation Claims, 2007 – 2011
Workers' Compensation Section of the Florida Bar
Palm Beach County Bar Association
American Bar Association
Miami Dade Justice Association
Board of Directors, Miami Beach Jewish Community Center, 2005 – 2008
Attorney At Law Magazine, Advisory Board Member

AWARDS AND RECOGNITION

Board certified in appellate law by The Florida Bar, 2010
U.S. News & World Report Best Law Firms in America (for Kula & Samson, LLP)
Florida Trend's Legal Elite, 2012
Listed, The Best Lawyers in America, 2006-2012
Selected, Super Lawyers magazine, 2008-2012
Rated, AV® Preeminent™ 5.0 out of 5*

*AV® Preeminent™ and BV® Distinguished™ are certification marks of Reed Elsevier Properties Inc., used in accordance with the Martindale-Hubbell certification procedures, standards and policies.

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Debtors. (Jointly Administered)

AFFIDAVIT OF ELLIOT B. KULA

STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

Elliot B. Kula, being duly sworn, says:

1. I am over the age of eighteen and of sound mind.
2. I am a partner with the law firm of Kula & Samson, LLP ("*Firm*").
3. Neither I nor the Firm represents any interest adverse to the Liquidating Trustee,

the Debtors or the estate with respect to the matters for which I am to be employed. Further, I am "disinterested" as that term is used in 11 U.S.C. § 327(a).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

4. Except for the performance of services for the Liquidating Trustee, I do not and will nor represent any other entity in connection with this case, and I will not accept any fee from any other party or parties in this case in connection with my work in the instant case.

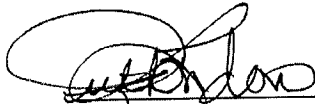
FURTHER AFFIANT SAYETH NAUGHT.



ELLIOT B. KULA

Sworn to and Subscribed before me

March 8th, 2013:



Notary Public, State of Florida

My Commission Expires:



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**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF
ELLIOT B. KULA AND KULA & SAMSON, LLP,
NUNC PRO TUNC TO MARCH 5, 2013**

THIS CAUSE came before the Court on _____, 2013 at _____ a.m./p.m.
upon the Liquidating Trustee's *Application to Employ Elliot B. Kula ("Mr. Kula") and Kula &
Samson, LLP ("K&S"), nunc pro tunc to March 5, 2013* [ECF No. ____] ("*Application*"). Upon
the representations that Mr. Kula and K&S (i) are duly qualified, (ii) hold no interest adverse to
the Debtors' estates in the matters upon which they are engaged, (iii) are disinterested persons as
required by 11 U.S.C. § 327(a), (iv) have disclosed any connections with parties set forth in *Fed.*

R. Bankr. P. 2014, and (v) their employment is necessary and would be in the best interests of the Debtors' estates and their creditors, it is

ORDERED as follows:

1. The Application is **GRANTED**, *nunc pro tunc* to March 5, 2013.
2. The Liquidating Trustee is authorized to retain Mr. Kula and K&S as consultants pursuant to 11 U.S.C. §§ 327, 330 and 331, and the terms set forth in the Application.

###

Submitted By:

Solomon B. Genet, Esquire
Florida Bar No. 617911
sgenet@melandrussin.com
MELAND RUSSIN & BUDWICK, P.A.
Counsel for Liquidating Trustee
3200 Southeast Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 358-6363
Telefax: (305) 358-1221

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.

4. The Liquidating Trustee is the Liquidating Trustee by virtue of this Court's Order Confirming Second Amended Joint Plan of Liquidation dated October 21, 2010 [ECF No. 444].

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Attorneys for Liquidating Trustee

Elliot B. Kula

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FURTHER AFFIANT SAYETH NAUGHT.



ELLIOT B. KULA

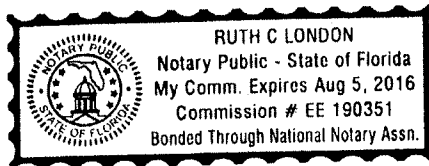
Sworn to and Subscribed before me

March 8th, 2013:



Notary Public, State of Florida

My Commission Expires:



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MELAND RUSSIN & BUDWICK, P.A.
Counsel for Liquidating Trustee
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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.

Mailing Information for Case 09-36379-PGH

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

- Geoffrey S. Aaronson gaaronson@aspalaw.com, tdmckeown@mckeownpa.com;sbeiley@aspalaw.com
- Melissa Alagna mma@segallgordich.com, jxp@segallgordich.com;skm@segallgordich.com
- Keith T Appleby kappleby@hwhlaw.com, lbecker@hwhlaw.com
- Paul A Avron pavron@bergersingerman.com, efile@bergersingerman.com
- Marc P Barmat ndixon@furrcohen.com, mbarmat@furrcohen.com
- Steven M Berman sberman@slk-law.com, bgoodall@slk-law.com
- Mark D Bloom bloomm@gtlaw.com, Mial.itDock@gtlaw.com;miaecfbky@gtlaw.com
- Noel R Boeke noel.boeke@hklaw.com, brooke.tanner@hklaw.com
- Michael S Budwick mbudwick@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com
- Dennis M. Campbell dcampbell@campbelllawfirm.net, gschmied@campbelllawfirm.net;lartigas@campbelllawfirm.net
- Francis L. Carter flc@katzbarron.com, lcf@katzbarron.com
- Lisa M. Castellano lcastellano@becker-poliakoff.com, thenry@becker-poliakoff.com;tfrtiz@becker-poliakoff.com
- Helen Davis Chaitman hchaitman@beckerny.com, jgorchkova@beckerny.com;cdavis@beckerny.com
- Helen Davis Chaitman hchaitman@beckerny.com, jgorchkova@beckerny.com;lblanco@beckerny.com;cdavis@beckerny.com
- Franck D Chantayan fchantayan@carltonfields.com, kdemar@carltonfields.com;wpbecf@cfdom.net
- Daniel DeSouza ddesouza@becker-poliakoff.com, culpiz@becker-poliakoff.com
- John R. Dodd doddj@gtlaw.com, miaecfbky@gtlaw.com;mialitdock@gtlaw.com
- Heidi A Feinman Heidi.A.Feinman@usdoj.gov
- Jonathan S. Feldman jfeldman@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com
- G Steven Fender efileu1113@gmlaw.com, efileu1094@gmlaw.com;efileu1092@gmlaw.com
- David S Foster david.foster@lw.com, chefiling@lw.com
- Robert G Fracasso Jr rfracasso@shutts.com, jgoodwin@shutts.com
- Robert C Furr bnasralla@furrcohen.com
- Solomon B Genet sgenet@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com
- John H Genovese jgenovese@gjb-law.com, hburke@gjb-law.com;gjbecf@gjb-law.com
- Michael I Goldberg michael.goldberg@akerman.com, charlene.cerda@akerman.com
- Lawrence Gordich LAG@segallgordich.com, jxp@segallgordich.com;mma@segallgordich.com
- Scott M. Grossman grossmansm@gtlaw.com, postiy@gtlaw.com;postiy@gtlaw.com;MiaLitDock@gtlaw.com;FTLLitDock@GTLaw.com;miaecfbky@gtlaw.com
- Jennifer Hayes jhayes@foley.com, KCavanaugh@foley.com
- Mark D. Hildreth mhildreth@slk-law.com, dcooper@slk-law.com
- Kenneth M Jones kjones@moodyjones.com
- Michael A Kaufman michael@mkaufmanpa.com, diamondmk@aol.com;kaufmanesq@gmail.com;tpatykula@mkaufmanpa.com;gstolzberg@mkaufmanpa.com
- Stephen J Kolski Jr stevekolski@catlin-saxon.com
- Harris J. Koroglu hkroglu@shutts.com, jgoodwin@shutts.com
- James A Lodoen jlodoen@lindquist.com
- Joshua A Marcus jmarcus@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com
- Paul J McMahon pjmc@pjmawmiami.com
- Brian M Mckell brian.mckell@wilsonelser.com, frances.weiss@wilsonelser.com
- Barry E Mukamal bankruptcy@marcumllp.com, FL64@ecfbis.com
- David J Myers myers@fsblegal.com
- Office of the US Trustee USTPRegion21.MM.ECF@usdoj.gov
- Paul L. Orshan paul@orshanpa.com, maria@orshanpa.com;estone@orshanpa.com
- Leslie S. Osborne rappaport@kennethrappaportlawoffice.com
- John E Page jpage@sfl-pa.com, scusack@sfl-pa.com;lrosetto@sfl-pa.com
- Chad S Paiva chad.paiva@gmlaw.com, katrina.bankert@gmlaw.com
- Kristopher E Pearson kpearson@stearnsweaver.com, mmasvidal@stearnsweaver.com;bank@stearnsweaver.com;ross@stearnsweaver.com;mmesones-mori@stearnsweaver.com;dillworthcdp@ecf.epiqsystems.com;larrazola@stearnsweaver.com;sanderson@stearnsweaver.com;cgraver@stearnsweaver.com
- Chad P Pugatch cpugatch.ecf@rprslaw.com
- Cristopher S Rapp csrapp@jones-foster.com
- Patricia A Redmond predmond@stearnsweaver.com, jmartinez@stearnsweaver.com;bank@stearnsweaver.com;ross@stearnsweaver.com;mmesones-mori@stearnsweaver.com;dillworthcdp@ecf.epiqsystems.com;sanderson@stearnsweaver.com;nlevine@akingump.com
- Jason S Rigoli jrigoli@furrcohen.com, ndixon@furrcohen.com
- James N Robinson jrobinson@whitecase.com, jjordan@whitecase.com
- Kenneth B Robinson krobinson.ecf@rprslaw.com
- Joseph Rodowicz bankruptcy@rodowiczlaw.com, rodowiczlaw@gmail.com
- Robin J. Rubens rjr@lklaw.com, cag@lklaw.com
- Franklin H Sato fsato@wickersmith.com, alazaro@wickersmith.com
- Bradley M Saxton bsaxton@whww.com, scolgan@whww.com;rweinman@whww.com;breece@whww.com
- Michael L Schuster mschuster@gjb-law.com, gjbecf@gjb-law.com
- Michael D. Seese mseese@seeselaw.com, sseward@seeselaw.com
- Steven E Seward sseward@seeselaw.com
- Bradley S Shraiberg bshraiberg@sfl-pa.com, dwoodall@sfl-pa.com;vchapkin@sfl-pa.com;lrosetto@sfl-pa.com;scusack@sfl-pa.com;blee@sfl-pa.com
- Paul Steven Singerman singerman@bergersingerman.com, mdiaz@bergersingerman.com;efile@bergersingerman.com
- James S Telepman jst@fcohenlaw.com
- Charles W Throckmorton cwt@kttlaw.com, lf@kttlaw.com;yc@kttlaw.com
- Trustee Services Inc 2 court@trusteeservices.biz, sandirose.magder@gmail.com
- Skipper J Vine jonathan.vine@csklegal.com
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- Morris D. Weiss morrisw@hts-law.com, sherris@hts-law.com;annmariej@hts-law.com
- George L. Zinkler gzinkler.ecf@rprslaw.com

EXHIBIT A

Palm Beach Diversified Income, LLP
by and through David Harrold, its officer
963 Evergreen Drive
Delray Beach, FL 33483

West Capital Management
1818 Market St, #3323
Philadelphia, PA 19103

Albert Liguori
16590 Crownsbury Way, #201
Ft. Myers, FL 33908

Amy Davenport
PO Box 3511
Midland, TX 79702

Robert Davenport
3 Greenwich Dr
Midland, TX 79705

Robert Davenport, Jr.
104 S. Pecos Street
Midland, TX 79701

ARIS Capital Management
645 Fifth Avenue, Suite 903
New York, NY 10022

ARIS Multi-Strategy Fund, LP
Aris Capital Management
645 Fifth Avenue, Suite 903
New York, NY 10022

Armadillo Fund
40 Random Farms Cir
Chappaqua, NY 10514

BTA Oil Producers
104 S Pecos St
Midland, TX 79701

Lynda Beal
104 S Pecos St
Midland, TX 79701

Nancy Beal
104 S Pecos St
Midland, TX 79701

Spencer Beal
104 S Pecos St
Midland, TX 79701

Barry Beal
104 S Pecos St
Midland, TX 79701

Keleen Beal
104 S Pecos St
Midland, TX 79701

Kelly Beal
104 S Pecos St
Midland, TX 79701

BayRoc Associates
c/o JamiScott
15 W 53rd St. #24-B
New York, NY 10019

JamiScott LLC
15 W 53rd St #24-B
New York, NY 10019

Leslie Schneider
c/o JamiScott
15 W 53rd St., #24-B
New York, NY 10019

Scott Schneider
c/o JamiScott
15 W 53rd St, #24-B
New York, NY 10019

Leonard & Lillian Schneider
c/o JamiScott LLC
15 West 53rd St #24-B
New York NY 10019

Blackpool Absolute Return Fund, LLC
c/o John E. Page, Esquire
Shraiberg Ferrara & Landau, PA
2385 NW Executive Ctr Dr #300
Boca Raton, FL 33431

Beacon Partners, Ltd
3030 McKinney Ave, #305
Dallas, TX 75204

Blackpool Partners, LP
701 Harger Rd, #190
Oak Brook, IL 60523

Centermark Asset Management
21320 Baltic Dr
Cornelius, NC 28031

Claude Lestage
4893 N Kay
Palm Beach Gardens, FL 33418

Attn: Andrew N. Friedman, Esq.
Cohen Milstein Sellers & Toll, PLLC
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, D.C. 20005

MIO Partners Inc
c/o Robin E. Keller, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022

McKinsey Master Retirement Trust
c/o Robin Keller, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022

Special Situations Investment Fund, L.P. c/o
Robin Keller, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022

Deer Island, LP
4 Nason Hill Lane
Sherborn, MA 01770

Dennis Dobrinich
3860 Dogwood Ave
Palm Beach Gardens, FL 33410

Douglas A. Kelley, Chapter 11 Trustee
Attn: James A. Rubenstein, Esq.
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Douglas A. Kelley, Chapter 11 Trustee
Attn: Terrence J. Fleming, Esq.
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

Father's Heart Family Foundation Inc.
8292 Nashua Dr
Palm Beach Garden, FL 33418

Frank Carruth
5407 S Flagler Dr
West Palm Beach, FL 33405

Freestone Entities
c/o Mr. Justin Young
1918 Eighth Avenue, Suite 3400
Seattle, WA 98101

Fulbright & Jaworski
2100 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2112

Geoffrey Varga and Neil Morris
Joint Liquidators of Palm Beach Offshore/
c/o Mark W. Eckard, Esq.
1201 N. Market Street, Suite 1500
Wilmington, DE 19801

Edward J. Estrada, Esquire
Christopher A. Lynch, Esquire
Reed Smith LLP
599 Lexington Avenue, 22nd Floor
New York, NY 10022

George & Nancy Slain
59-1089 Maluhi Pl
Kamuela, HI 96743

Golden Gate VP Absolute Return Fund, LP
c/o Michael J. Cordone, Esq.
Stradley Ronon Stevens & Young, LLP
2600 One Commerce Square
Philadelphia, PA 19103

Golden Sun Multi-Manager Fund, LP
Golden Sun Capital Management
Attn: Solomon Halpern
885 Arapahoe Avenue
Boulder, CO 80302

Guy M. Hohmann, Esq. and
Mesrrs. Taube, Weiss and Taylor
Hohmann, Taube & Summers, L.L.P
100 Congress Ave, 18th Floor
Austin, TX 78701

Harvest Investments LP
Red Bird Farm
4 Nason Hill Rd
Sherborn, MA 01770

Attn: Mitchell Herr
Holland & Knight, LLP
701 Brickell Ave, Suite 3000
Miami, FL 33131

Integrity Partners Investment Company ,LLC
by and through Kevin Clark,
its Registered Agent
50 Oak Court, Suite 110
Danville, CA 94526

James Corydon
6650 N Tower Circle Dr
Lincolnwood, IL 60712

Janette Bancroft
9052 SW 103 Ave
Ocala, FL 34481

Janet Bonebrake
7169 150th Ct N
Palm Beach Gardens, FL 33418

John Daniel
225 Wellington Ln
Cape Girardeau, MO 63701

Judith Goldsmith
3 Water Ln
Manhasset, NY 11030

K&K Capital Management, Inc.
3545 Lake St, #201
Wilmette, IL 60091

Kaufman Rossin & Co.
2699 S Bayshore Dr
Miami, FL 33133

Kenneth A. Ralston
c/o John E. Page, Esquire
Shraiberg Ferrara & Landau, PA
2385 NW Executive Ctr Dr #300
Boca Raton, FL 33431

LAB Investments Fund, LP
1875 S Grant St, #600
San Mateo, CA 94402

Laulima Partners, LP
c/o Smithfield Trust Co.
Attn: Robert Kopf Jr.
20 Stanwix St, #650
Pittsburgh, PA 15222

M. Lee Toothman
216 Barbados Dr
Jupiter, FL 33458

MB Investments, LLC
180 N Wacker Drive, Lower 1
Chicago, IL 60606

Marder Investment Advisors Corp.
8033 Sunset Blvd, #830
Los Angeles, CA 90046

Mark Prevost
2372 Hidden Ridge Ln
Jasper, AL 35504

Martin Casdagli
554 E Coronado Rd
Santa Fe, NM 87505

Maxine Adler
c/o US Trust/Bank of America
and Patrici
150 E. Palmetto Park Road, Suite 200
Boca Raton, FL 33432

Nancy Dobrinich
3860 Dogwood Ave
Palm Beach Gardens, FL 33410

Nancy Hollingsworth
7107 Arrowood Rd
Bethesda, MD 20187

NetWide Capital LLC
P.O. Box 957
Boulder, CO 80306

Palm Beach Finance Holdings, Inc.
c/o Lindquist & Vennum, PLLP
80 South Eighth Street, Ste 4200
Minneapolis, MN 55402

Pemco Partners, LP
8 Lyman St, #204
Westborough, MA 01581

Petters Company, Inc.
c/o Lindquist & Vennum, PLLP
80 South Eighth Street, Ste 4200
Minneapolis, MN 55402

Quantum Family Office Group, LLC
1500 San Remo Avenue, Suite 210
Coral Gables, FL 33146

Raymond Feldman
4644 Balboa Ave
Encino, CA 91316

Raymond G. Feldman Family Ventures, LP
c/o John E. Page, Esquire
Shraiberg Ferrara & Landau, PA
2385 NW Executive Ctr Dr #300
Boca Raton, FL 33431

Randall Linkous
1174 SW 27 Ave
Boynton Beach, FL 33426

Ron Priestley
5565 N Espina Rd
Tuscon, AZ 85718

Ronald R. Peterson
Jenner & Block LLP
353 North Clark St.
Chicago, IL 60654

Ronald R. Peterson
c/o Lazar P. Raynal, Esquire
McDermott Will & Emery
227 West Monroe Street
Chicago, Illinois 60606-5096

SALI Fund Services, LLC
6836 Austin Center Street, Suite 320
Austin, TX 78731

SSR Capital Partners, LP
4514 Cole Ave, #1000
Dallas, TX 75205

Sage Capital Resources
3006 Julia St W, Unit A
Tampa, FL 33629

Sandra Linkous
1174 SW 27 Ave
Boynton Beach, FL 33426

Second City Alternatives
801 Park Ave
Wilmette, IL 60091

Select Access Management
15 Valley Dr
Greenwich, CT 06831

Sims Moss Kline & Davis, LLP
Three Ravinia Drive
Suite 1700
Atlanta, GA 30346

Spring Investor Services Inc.
Red Bird Farm
4 Nason Hill Lane
Sherborn, MA 01770

Sterling Management Inc.
160 White Oaks Ln
Vadnais Heights, MN 55127

Steven Bakaysa
2251 Wigwam Pkwy, Apt. 1026
Henderson, NV 89074

Strategic Stable Return Fund (ID), LP
4514 Cole Ave, #1000
Dallas, TX 75205

Strategic Stable Return Fund II, LP
4514 Cole Ave, #1000
Dallas, TX 75205

Table Mountain Capital, LLC
850 Quince Ave
Boulder, CO 80304

Ted Goldsmith
3 Water Ln
Manhasset, NY 11030

Tradex Global Advisors
35 Mason St, 4th Fl
Greenwich, CT 06830

Tradex Global Master Fund
c/o Andrew N. Friedman, Esquire
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, DC 20005

Umbach Financial Group, LLC
525 South Flagler Drive, #100
West Palm Beach, FL 33401

VAS Partners, LLC
Attn: Vincent P Allegra
4401 W Roosevelt Rd
Hillside, IL 60162

Vincent Allegra
449 S Evergreen St
Bensenville, IL 60106

Wilbur Hobgood
2189 Radnor Ct
North Palm Beach, FL 33408

Gonzalo R Dorta
334 Minorca Ave
Miami, FL 33134

Steven W Thomas
14 27 Ave
Venice, CA 90291

Joel Barnett
Barnett Capital Ltd.
450 Skokie Blvd., # 604
Northbrook, IL 60062

Ocean Gate Capital Management, LP
5 Sewall Street
Marblehead, MA 01945

Santa Barbara Investment Capital
2220 Santiago Rd
Santa Barbara, CA 93103

Investment Law Group of Gillett,
Mottern & Walker, LLP
1230 Peachtree Street, N.E., Suite 2445
Atlanta, Georgia 30309
Attn: Bob Mottern / Sky Bell

Pete L DeMahy, Esquire
DeMahy Labrador et al.
150 Alhambra Circle
Coral Gables, FL 33134

Debevoise & Plimpton LLP
Attn: Edwin G. Schallert, Esquire
919 Third Avenue
New York, NY 10022

Bruce Prevost
8292 Nashua Dr
Palm Beach Gardens, FL 33418

David Harrold
963 Evergreen Dr
Delray Beach, FL 33483

Lewis B. Freeman & Partners, Inc.
c/o Kenneth A. Welt, Receiver
1776 North Pine Island Road, Suite 102
Plantation, FL 33322

Lionheart Insurance Fund Series Interests of
the SALI Multi-Fund Series Fund, LP
6836 Austin Center Blvd. Ste 320
Austin, TX 78731

U.S. Bank National Association
c/o Richard G. Wilson, Esquire
Maslon Edeman Borman & Brand, LLP
90 S. 7th Street, Suite 3300
Minneapolis, MN 55402-4140

Sarah Stroebel, Snr Corp Counsel
U.S. Bank National Association
800 Nicollet Mall
Minneapolis, MN 55402-4140

Genesis Capital LLC
Attention: Mike Dubinsky
7191 Wagner Way NW, Suite 302
Gig Harbor, WA 98335

Robin J. Rubens, Esquire
Levine Kellogg Lehman, et al.,
201 South Biscayne Blvd.
22nd Floor, Miami Center
Miami, FL 33131

Prateek Mehrotra, CFA, CAIA
Sumnicht & Associates
W6240 Communication Ct, #1
Appleton, WI 54914-8549

Ron Robertson, President
Strategic Capital Group
7191 Wagner Way NW, Suite 302
Gig Harbor, WA 98335

Globefin US Advisors, LLC
Attn: Andrew Hoffman
980 6th Avenue, 4th Floor
New York, NY 10018

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

John Docherty
United States Attorney's Office
316 North Robert Street, Suite 404
Saint Paul, MN 55101

Andrew P. O'Brien, Esquire
U.S. Securities and Exchange Commission
Chicago Regional Office
175 West Jackson Blvd., Suite 900
Chicago, IL 60604

Sean O'D. Bosack
780 N. Water Street
Milwaukee, WI 53202

John L. Kirtley
780 N Water Street
Milwaukee, WI 53202

Matia L. Kreiter
780 N Water Street
Milwaukee, WI 53202

Daniel N. Rosen, Esquire
Parker Rose, LLC
300 First Avenue North, Suite 200
Minneapolis, MN 55401

Kenneth A. Welt
8255 West Sunrise Blvd., # 177
Plantation, FL 33322

Palm Beach Offshore Ltd.
Anchorage Centre, 2nd Floor
PO Box 32021 SMB
Grand Cayman, Cayman Islands

Palm Beach Offshore II, Ltd.
Admiral Financial Center, 5th Floor
90 Fort Street, PO Box 32021
Grand Cayman KY-1208
Cayman Islands

Scotia Capital
The Bank of Nova Scotia
Global Alternative Asset Group
40 King Street W, 68th Fl
Toronto Ontario M5W 2X6

Citco Global Securities Services
2600 Airport Business Park
Kinsale Road
Co.Cork
Ireland

Lane E. Roesch
White & Case, LLP
200 S. Biscayne Blvd., Suite 4900
Miami, FL 33131

Monica Hanlet
PO Box 321255
Palm Coast, FL 32135-1255

Michael R. Band, Esquire
Band Law Firm
169 East Flagler Street, Suite 1200
Miami, FL 33131

Andy Hall
Soffer Charbonnet LLP
7300 France Avenue South, Suite 210
Minneapolis, MN 55435

Frank Vennes
2440 N. Courtenay Pkwy.
Merritt Island, FL 32953

Frank Vennes
3152 S.W. Porpoise Circle
Stuart, FL 34997

Deutsche Bank (Cayman) Ltd
c/o Deutsche International Trust Corporation
Mauritius Limited
Level 5 Altima Building,
56 Ebene Cybercity
Mauritius

HSBC SECURITIES (USA) INC
452 Fifth Avenue - T3
New York, NY 10018

Carlton Beal Family Trust
104 S Pecos Street
Midland, TX 79701

Beal Family trust FBO Kelly Beal
104 S Pecos Street
Midland, TX 79701

The Beal Trust U/A
104 S Pecos Street
Midland, TX 79701

Beal GST Exemption Trust
104 S Pecos Street
Midland, TX 79701

Carlton Beal Family Trust
104 S Pecos Street
Midland, TX 79701

Thomas J. Ginley Life Ins. Trust
Dated 1-22-97
6650 N Tower Circle Drive
Lincolnwood, IL 60712

Zcall, LLC
c/o Edward Toptani, Esq.
127 East 59th Street
New York, NY 10022

Scall, LLC
c/o Edward Toptani, Esq.
127 East 59th Street
New York, NY 10022

U.S. Trust and Patricia Scwab
Successor Trustees, TUA Maxine B Adler
POB 842056
Dallas, TX 75284

James L. Volling, Esquire
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

Dana L. Choi, Esquire
Holland & Knight LLP
701 Brickell Avenue, Suite 3000
Miami, FL 33131

Palm Beach Links Capital, LP
12200 N Stemmos Fwy, Suite 316
Dallas, TX 75234

Scott M. Grossman
Greenberg Traurig, P.A.
401 East Las Olas Blvd., Suite 2000
Fort Lauderdale, FL 33301

Hillcrest Properties
c/o Stephen Willia
59 Damonte Ranch Pkwy, #B-360
Reno, NV 89521

David S. Foster, Esq.
Latham & Watkins LLP
233 South Wacker Drive
Chicago, IL 60606

John Bergman,
c/o Erika L. Morabito, Esq.
FOLEY & LARDNER LLP
3000 K Street, N.W., Suite 600
Washington, D.C. 20007

Cathy Ta, Esq.
Best Best & Krieger
3750 University Avenue
Riverside, CA 92502-10208

James F. Bendernagel, Jr., Esq.
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005

Bradley M. Saxton, Esq.
Ryan E. Davis, Esq.
Winderweedle Haines et al.
390 N. Orange Avenue, Ste. 1500
Orlando, Florida 32802

Zimmer Lucas Capital LLC
7 West 54th Street
New York, NY 10019

James A. Lodoen, Esq.
Lindquist & Vennum PLLP
4200 IDS Center
80 S. 8th Street
Minneapolis, MN 55402

Agile Sky Alliance Fund, LP
Paul J McMahon, Esq.
Paul Joseph McMahon, P.A.
The Wiseheart Building
2840 SW 3 Ave
Miami, FL 33129