

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

In re:

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

CASE NO. 09-36379-BKC-PGH
CHAPTER 11

Debtors.

BARRY E. MUKAMAL, IN HIS
CAPACITY AS LIQUIDATING TRUSTEE
OF THE PALM BEACH FINANCE
PARTNERS LIQUIDATING TRUST AND
PALM BEACH FINANCE II
LIQUIDATING TRUST;

ADV. CASE NO. _____

Plaintiff,

v.

FULBRIGHT & JAWORSKI L.L.P.,

Defendant.

COMPLAINT FOR TORT DAMAGES

Barry E. Mukamal, 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 "***Palm Beach Liquidating Trusts***"), sues Fulbright & Jaworski L.L.P. ("***Fulbright***" or "***Defendant***"). In support, the Liquidating Trustee alleges as follows:

JURISDICTION, VENUE AND STANDING

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334.
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The Liquidating Trustee has standing to bring this action on behalf of the Palm Beach Liquidating Trusts, for damages suffered by the Palm Beach Funds (defined below).

PARTIES AND CERTAIN PERSONS / ENTITIES

4. Thomas Petters ("**Petters**") and others perpetrated the third largest financial fraud in the history of the United States of America. This fraudulent enterprise and conspiracy ("**Conspiracy**") in large part took the form of a *ponzi scheme*. As a result, Petters is serving a fifty year prison sentence.

5. The main Petters entity which arranged these purchase and financing transactions was Petters Company, Inc. ("**PCI**"). Single purpose entities ("**SPE**") affiliated with PCI were formed by Petters or his associates to handle loans for particular lenders that financed the transactions. PCI and the various SPEs are referred to collectively as the "**Petters Entities**."

6. The above captioned debtors, Palm Beach Finance Partners, L.P. ("**PBF I**") and Palm Beach Finance Partners II, L.P. ("**PBF II**," and together with PBF I, the "**Palm Beach Funds**"), were among the largest lenders to Petters' Entities. The Palm Beach Funds' financing took place from (approximately) 2002 through 2008.

7. The Palm Beach Funds were Delaware limited partnerships whose principal place of business was located in Palm Beach County, Florida.

8. Fulbright is one of the largest and most sophisticated law firms in the country.

9. Attorney Zack Clement ("**Attorney Clement**") has been a partner with Fulbright for over twenty years. Attorney Clement is a bankruptcy specialist, as set forth in his biographical page from Fulbright's website (a copy of which is attached as Exhibit "A"). Attorney Jonathan Bolton ("**Attorney Bolton**") is a bankruptcy specialist, board certified in business bankruptcy law, and an attorney with Fulbright at all material times. Attorney Barbara Jean D'Aquila ("**Attorney D'Aquila**") is a partner with Fulbright and a sophisticated attorney. Attorney Ronn Kreps ("**Attorney Kreps**") is a partner with Fulbright and a sophisticated attorney.

FACTUAL BACKGROUND

I. General Description of the Petters Business Strategy

10. Beginning in the 1990's, the Petters Entities began raising money by offering and selling promissory notes to members of the public. The Petters Entities offered and sold the notes to various lenders, including lenders which in turn typically raised their capital from private lenders and investors.

11. The Petters Entities represented to its lenders that the proceeds from the sale of the notes would be used to finance so-called "purchase order financing" transactions.

12. The Petters Entities claimed they would arrange for the sale and delivery of overstock consumer electronics ("**Merchandise**") from manufacturers or suppliers to certain "big box" retailers ("**Retailers**"). The Petters Entities would use the monies borrowed from its lenders to pay their suppliers ("**Suppliers**"), while they waited for payment from the Retailers. The Petters Entities would make the profit on the purchase and sale of the Merchandise, over and above the cost of the lender's monies plus other expenses.

13. The Palm Beach Funds were created to provide financing to the Petters Entities and became the second largest lender to the Petters Entities.

II. The Implosion of the Conspiracy

14. On September 24, 2008, the United States Government executed search warrants upon Petters and certain of the Petters Entities, and shut down their operations ("**Implosion of the Conspiracy**").

(i) The Petters Receivership

15. On October 2, 2008, the United States filed a complaint ("**United States Complaint**") and sought an asset freeze and receivership for the benefit of the victims of the Conspiracy against, among

others, Petters and certain of the Petters Entities [Case No. 08-5348 ADM/JSM, U.S.D.C. D.Minn.] (“**Receivership Case**”). As set forth, in pertinent part, in the United States’ Complaint:

In summary, the United States’ investigation has revealed that the Defendants have devised and implemented an elaborate scheme to defraud individual and group investors.

The magnitude of the fraud perpetrated by the Defendants is substantial and extends to at least 20 identified investors or investment groups. It is estimated that the Defendants have to date profited in excess of \$3 billion from their illegal activities.

The United States has probable cause to believe that the Defendants are dissipating, and will continue to dissipate, the proceeds of their fraud scheme.

16. In the Receivership Case, on October 6, 2008, Douglas Kelley (“**Mr. Kelley**”) was appointed as receiver for Petters and PCI and other persons and entities (“**Receivership Order**”). [Receivership Case, ECF No. 12].

17. Per the Receivership Order, Section IV(B)(4), Mr. Kelley was vested with the following authority:

[F]iling any bankruptcy petitions for any of the Entities to protect and preserve the assets of any of the Entities ...

(ii) The Petters Entities Bankruptcy Filing

18. On Saturday October 11, 2008, Mr. Kelley filed bankruptcy petitions for PCI and a number of other Petters Entities in the U.S. Bankruptcy Court for the District of Minnesota, Case No. 08-45257 (GFK) (“**Petters Bankruptcy Case**”).

19. One of the primary reasons that Mr. Kelley quickly caused PCI and other Petters Entities to file bankruptcy petitions was to preserve avoidance actions, including fraudulent transfer and preference actions, which are the primary assets of those estates.

IV. Retention of Fulbright and Scope of Services

20. As a result of the Conspiracy and its revelation, the institution of receivership and bankruptcy proceedings for certain of the Petters Entities, the allegations in the United States’

Complaint, other public information that Petters and the Petters Entities had defrauded their lenders, the fact that the Palm Beach Funds had lent nearly all of their money to the Petters Entities (a fraud), and that the Palm Beach Funds had their own obligations to third parties, the Palm Beach Funds (i) were financially devastated; (ii) insolvent; and (iii) required specialized legal counsel with expertise in, among other things, bankruptcy and insolvency matters.

21. On or about October 3, 2008, the Palm Beach Funds were introduced to Fulbright. Thereafter, Fulbright communicated with the Palm Beach Funds and others, relating to, among other things: (i) the Palm Beach Funds' business operations; (ii) the devastating financial effect that the Implosion of the Conspiracy had upon the Palm Beach Funds; and (iii) the Palm Beach Funds' retention of Fulbright.

22. Upon information and belief, between October 3, 2008 and October 16, 2008, Fulbright (i) monitored the Receivership Case and the Petters Bankruptcy Case; (ii) reviewed documents related to the operations of the Palm Beach Funds; and (iii) considered issues related to the possible representation of the Palm Beach Funds.

23. Between October 3 and 16, 2008, Fulbright represented to the Palm Beach Funds its extensive bankruptcy experience and expertise. The Palm Beach Funds relied on these representations in deciding to retain Fulbright as their legal counsel.

24. The Palm Beach Funds retained Fulbright by executing a representation agreement ("**Agreement**") dated October 16, 2008 ("**Retention Date**"), a copy of which is attached as Exhibit "B".

The Agreement provides, in part, as follows:

This letter confirms that Fulbright & Jaworski L.L.P. will represent [the Palm Beach Funds] in connection with their claims against and collection of funds owed by Petters Group Worldwide, LLC Petters Company, Inc. ("PCI"), and/or Palm Beach Finance Holdings, Inc. ("PBFH") and/or any of their affiliates and subsidiaries (the "Matter"), including any bankruptcy or insolvency cases involving PCW, PCI, PBFH, and/or their affiliates and subsidiaries, and efforts to lift the asset freeze as it relates solely to

the Funds.

It is understood and agreed that our engagement is limited to the Representation. We are not being retained as general counsel. Our acceptance of this engagement does not imply any undertaking to provide legal services other than those set forth in this letter. The firm will only represent the Funds.

On behalf of and in representation of the Funds, it is understood and agreed that the Firm will work closely with and be entitled to make full disclosure to the people and entities/bodies (e.g., a steering committee of the Funds) with whom/which the Funds direct, including but not limited to the General Partners of the Funds, the Limited Partners of the Funds, and other officers, employees, and/or agents of the Funds, Palm Beach Capital Management, LLC, and/or the Limited Partners in the Funds.

The Firm can not and does not undertake representation of and will not be directly adverse to (e.g., sue on behalf of the Funds) General Partners or Limited Partners of the Funds and/or Palm Beach Capital Management, LLC, as the Funds themselves are the Firm's clients in this Matter.

Barbara D' Aquilla, Zack Clement, and Ronn Kreps will be spearheading the work on the Matter, and you may call, write, or email us whenever you have any questions about the Representation.

25. Notwithstanding this identified scope of Fulbright's representation, Fulbright's actual professional services rendered for the Palm Beach Funds ("***Actual Scope of Services***") far exceeded this literal language. The Actual Scope of Services included, but was not limited to:

a) Considering, investigating and analyzing the status of funds frozen by district court orders related to the Receivership Case and held at U.S. Bank, N.A., and attempting to get them released to the Palm Beach Funds;

b) Seeking to have a representative of the Palm Beach Funds appointed as a member of the official committee of unsecured creditors in the Petters Bankruptcy Case and preventing another party from being appointed to serve in that position;

c) Considering, investigating and analyzing whether Mr. Kelley should place a specific Petters Entity for which he served as receiver into bankruptcy and then urging that he do so;

d) Considering, analyzing, drafting and acting upon corporate governance issues, including the formation, procedures and operation of a 'steering committee' which would receive certain specified authority and powers from the Palm Beach Funds' general partner;

e) Evaluating, investigating and then (upon information and belief) asserting claims on behalf of the Palm Beach Funds against Atradius Trade Credit Insurance, Inc. and The Christensen Group, Inc. based on credit insurance policies procured by the Palm Beach Funds;

f) Considering potential claims against an individual involved in the Palm Beach Funds' due diligence on Petters;

g) Considering "[s]hould the Funds file a civil lawsuit against non-bankruptcy parties?";

h) Analyzing the rights of the Palm Beach Funds to participate via criminal remission in assets seized by the United States of America;

i) Considering "possible mismanagement claims against the [Palm Beach Fund's] general partner;" and

j) Considering, investigating and analyzing whether Palm Beach Offshore, Ltd. ("**PBF I Offshore**") and Palm Beach Offshore II, Ltd. ("**PB II Offshore**," and together with PB Offshore, "**PBF Offshore**"), a multi-hundred million dollar lender to PBF II, could have its loans to the Palm Beach Funds re-characterized as equity, rather than debt; Fulbright filed a lawsuit on behalf of the Palm Beach Funds against PBF Offshore in the United States District Court for the District of Minnesota, Case No. 08-6138-ADM-JSM.

26. According to Attorney Kreps, in a written communication to a limited partner of one of the Palm Beach Funds, "*I am a trial lawyer and our retention by Funds I and II is to get recoveries from Petters and other third-parties.*"

27. Fulbright spent an extraordinary amount of time representing the Palm Beach Funds from the start of the retention. From the Retention Date until October 31, 2008 ("**First 16 Days**") (i) Attorney Clement billed 37 hours, at \$800 per hour (\$29,600); and (ii) Attorney Bolton billed over 57 hours, at \$475 per hour (\$24,267.50). Altogether, Fulbright's 10 lawyers and 2 non-lawyers billed 492.65 hours (\$209,720.50) during the First 16 Days.

V. By the Close of the First 16 Days, Fulbright Had Internally Considered Whether the Palm Beach Funds Should Seek Insolvency Protection

28. During the First 16 Days, Fulbright internally considered whether the Palm Beach Funds should seek insolvency protection. In a memorandum dated October 20, 2008, Attorney Bolton queried

to Attorneys Kreps, D'Aquila and Clement "[w]hether the Funds should be put into Receivership?"

This memorandum was not shared with the Palm Beach Funds.

29. Fulbright neither timely and adequately communicated commencement of an insolvency proceeding as a meaningful option to the Palm Beach Funds, nor did it timely and adequately explain to the Palm Beach Funds the possible advantages and benefits of a bankruptcy filing in particular.

VI. During the First 16 Days, Fulbright Knew that Similarly Situated Entities Sought Bankruptcy / Insolvency Protection

30. During the First 16 Days, Fulbright knew that entities substantially similar and similarly situated to the Palm Beach Funds had sought and obtained bankruptcy / insolvency relief and protection.

(i) PCI and Certain Affiliates Had Filed for Bankruptcy Protection

31. Fulbright knew that a primary reason Mr. Kelley filed bankruptcy petitions for PCI and certain of the Petters Entities was to preserve valuable avoidance actions.

(ii) PBF Offshore Entered Liquidation Proceedings

32. PBF Offshore were offshore vehicles created to raise money to invest with the Petters Entities via loans through PBF II. They were substantial creditors of PBF II, as well as affiliates of the Palm Beach Funds.

33. During the First 16 Days, PBF Offshore commenced liquidation proceedings in the Cayman Islands. Fulbright knew this, and understood the significant and substantial similarities between PBF Offshore and the Palm Beach Funds.

(iii) Lancelot Filed for Bankruptcy Protection

34. On October 20, 2008, five investment funds managed by Lancelot Investment Management (together, "**Lancelot**") filed bankruptcy petitions ("**Lancelot Bankruptcy Case**"). Lancelot was similarly situated to the Palm Beach Funds, as it too raised huge sums of monies from third parties to lend to the Petters Entities.

35. During the First 16 Days, Fulbright communicated regularly with Lancelot's chapter 7 trustee, Ron Peterson, Esq. ("*Trustee Peterson*") on a multitude of issues pertaining to the Petters Entities.

VII. Fulbright Urged Mr. Kelley to File a Bankruptcy Petition for a Petters Entity Which Had Not Originally Filed for Bankruptcy

36. Although Mr. Kelley (as Receiver) filed bankruptcy petitions for certain Petters Entities on October 11, 2008, Mr. Kelly did not file a petition on behalf of one particular affiliate, Palm Beach Finance Holdings, Inc. ("*PBF Holdings*").

37. On Friday October 17, 2008, Fulbright communicated with Mr. Kelley's counsel and scheduled a further call for Sunday October 19, 2008.

38. During the October 19th conference call, Fulbright urged Mr. Kelley to place PBF Holdings into bankruptcy. Later that day, Mr. Kelley responded to Fulbright that he would do so [*See* Case No. 08-45392, United States Bankruptcy Court District of Minnesota].

VIII. Fulbright Failed to Timely and Adequately Counsel the Palm Beach Funds to Consider the Filing of a Bankruptcy Petition

39. During the First 16 Days, Fulbright: (i) understood the Palm Beach Funds were insolvent; (ii) knew the Palm Beach Funds were the victims of a massive *ponzi* scheme; (iii) queried internally whether the Palm Beach Funds should file an insolvency proceeding; (iv) knew that Lancelot had filed bankruptcy petitions; (v) directly communicated with Trustee Peterson; (vi) learned that PBF Offshore had entered liquidation proceedings; (vi) knew that Mr. Kelley filed bankruptcy petitions for multiple Petters Entities within five days of being appointed Receiver; and (vii) urged Mr. Kelley to immediately place PBF Holdings into bankruptcy.

40. Yet, Fulbright failed in a timely and meaningful manner to advise and counsel the Palm Beach Funds to consider bankruptcy protection for themselves, and identify the possible benefits and advantages of same, or alternatively to seek this advice from another attorney.

IX. Had Fulbright Properly Advised the Palm Beach Funds, the Palm Beach Funds Would Have Filed Bankruptcy Petitions

41. Had Fulbright adequately advised the Palm Beach Funds to timely consider a bankruptcy filing, and the advantages and disadvantages of same, the Palm Beach Funds would have filed bankruptcy petitions. Further, had Fulbright instead counseled and advised the Palm Beach Funds to obtain this advice from another attorney, the Palm Beach Funds would have done so.

42. Indeed, the Palm Beach Funds filed for bankruptcy on November 30, 2009 ("*Petition Date*"), approximately 410 days following the Retention Date.

X. Fulbright's Failures Caused the Palm Beach Funds Damages

43. Fulbright's failure to adequately advise the Palm Beach Funds to consider filing for bankruptcy protection and the benefits and advantages of same, or to obtain such counsel from another attorney, caused the Palm Beach Funds damages.

44. These damages include, but are not limited to: (i) the loss of claims which could have been asserted under 11 U.S.C. § 547 against insider and non-insider transferees; (ii) the loss of claims which could have been asserted under 11 U.S.C. § 544 or 548 against insider and non-insider transferees; and (iii) the loss of claims which could have been asserted under 11 U.S.C. §§ 541, including pursuant to the applicable Uniform Fraudulent Transfer Act against transferees of persons with tort or other liability to the Palm Beach Funds.

45. Further, these damages also include, but are not limited to, the increased insolvency of the Palm Beach Funds due to the inability to assert claim objections pursuant to 11 U.S.C. § 502(d) due to the loss of potential Chapter 5 avoidance claims.

COUNT I
PROFESSIONAL MALPRACTICE AND NEGLIGENCE

46. The Plaintiff incorporates by reference paragraphs 1-45 above.

47. All prerequisites, requirements or conditions for bringing this claim are satisfied, performed or waived.

48. The Palm Beach Funds and Fulbright were in privity. The Palm Beach Funds retained Fulbright as their attorney.

49. The Actual Scope of Services was broad and far reaching.

50. The Palm Beach Funds understood that the scope of the attorney-client relationship, and the advice and counsel Fulbright was to provide to the Palm Beach Funds, was broad and far reaching.

51. Fulbright knew that the Palm Beach Funds should have considered bankruptcy as an option, and of the potential benefits and advantages to the Palm Beach Funds if the Palm Beach Funds filed for bankruptcy.

52. It was readily apparent to Fulbright that the Palm Beach Funds should have considered bankruptcy as an option, and that there would be potential benefits and advantages to the Palm Beach Funds if the Palm Beach Funds filed for bankruptcy.

53. Fulbright owed a duty of care to the Palm Beach Funds, including to timely and adequately provide advice and counsel on all issues which were readily apparent to Fulbright given the Palm Beach Funds' specific circumstances. Fulbright had a duty to perform its professional services in a non-negligent manner, and in accordance with applicable care, skill, prudence and diligence that members of the legal profession commonly, and bankruptcy specialists particularly, possess and exercise.

54. Fulbright could have satisfied its duties to the Palm Beach Funds by either properly providing this advice and counsel or advising the Palm Beach Funds to seek this advice and counsel from another attorney.

55. Fulbright failed to comply with its duties to the Palm Beach Funds and the applicable standard of care. As a result, the Palm Beach Funds suffered damages.

WHEREFORE, the Liquidating Trustee respectfully requests a judgment in its favor and against Fulbright in an amount consisting of (i) actual compensatory and consequential damages in an amount to be proven; (ii) pre-and post-judgment interest; and (iii) all other relief this Court deems to be just and proper.

COUNT II
BREACH OF FIDUCIARY DUTY

56. The Plaintiff incorporates by reference paragraphs 1-45 above, as if set forth in full herein.

57. All prerequisites, requirements or conditions for bringing this claim are satisfied, performed or waived.

58. The Palm Beach Funds and Fulbright were in privity. The Palm Beach Funds retained Fulbright as their attorney. The Palm Beach Funds had a fiduciary relationship with Fulbright, including that of trust, confidence and repose.

59. The scope of the fiduciary relationship, and the advice and counsel Fulbright was to provide to the Palm Beach Funds, was broad and far reaching.

60. The Palm Beach Funds understood that the scope of the fiduciary relationship, and the advice and counsel Fulbright was to provide to the Palm Beach Funds, was broad and far reaching.

61. It was readily apparent to Fulbright that the Palm Beach Funds should have considered bankruptcy as an option and that there would be potential benefits and advantages to the Palm Beach Funds if the Palm Beach Funds filed for bankruptcy.

62. Fulbright had a duty to represent the Palm Beach Funds with undivided loyalty and to disclose any material matters bearing upon the representation of the Palm Beach Funds.

63. Fulbright could have satisfied its duties to the Palm Beach Funds by either properly providing this advice and counsel or advising the Palm Beach Funds to seek this advice and counsel from another attorney.

64. However, Fulbright failed to do either. Fulbright violated its duties by failing to timely and adequately provide counsel and advice to the appropriate decision makers for the Palm Beach Funds. Moreover, Fulbright understood that certain limited partners of the Palm Beach Funds with which it communicated and interacted had conflicting loyalties. Fulbright should have properly counseled the appropriate decision makers for the Palm Beach Funds, their sole clients, without regard to the financial interests of a particular limited partner(s) of the Palm Beach Funds or advised that alternative counsel should be obtained.

65. Fulbright failed to comply with its duties to the Palm Beach Funds and the applicable standard of conduct. As a result, the Palm Beach Funds suffered damages.

[REMAINDER OF PLEADING INTENTIONALLY LEFT BLANK]

WHEREFORE, the Liquidating Trustee respectfully requests a judgment in its favor and against Fulbright in an amount consisting of (i) actual compensatory and consequential damages in an amount to be proven; (ii) pre-and post-judgment interest; and (iii) all other relief this Court deems to be just and proper.

s/ Michael S. Budwick
Michael S. Budwick, Esquire
Florida Bar No. 938777
mbudwick@melandrussin.com
Solomon B. Genet, Esquire
Florida Bar N. 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 Plaintiff

FULBRIGHT & Jaworski L.L.P.

BIOGRAPHY: Zack A. Clement



Zack A. Clement
zclement@fulbright.com
D: +1 713 651 5434

Houston

Fulbright Tower
1301 McKinney
Suite 5100
Houston, TX 77010-3095
T: +1 713 651 5151
F: +1 713 651 5246

Experience

- 30-year record of obtaining good results
- Buying assets from troubled companies
- Lending to troubled companies
- Investing in troubled companies as they come out of bankruptcy
- Restructuring troubled companies

Industries

- Airlines
- Energy and Utilities
- Banking and Finance

Austin
Beijing
Dallas
Denver
Dubai
Hong Kong
Houston
London
Los Angeles
Minneapolis
Munich
New York
Pittsburgh-Southpointe
Riyadh
San Antonio
St. Louis
Washington, D.C.

Zack A. Clement
Partner

AREAS OF CONCENTRATION

- Business Restructure and Litigation
- Bankruptcy Plans of Reorganization
- Litigation Concerning Asset and Enterprise Valuation
- Asset Purchases and Sales
- Secured Lending
- Investments in Plans of Reorganization
- Executory Contracts
- Fraudulent Conveyance
- Involuntary Bankruptcy
- International Jurisdiction
- Municipal Bankruptcy & Insolvency

EXPERIENCE

Zack Clement spends his life in the middle of corporate financial difficulty. In complex, ambiguous, often fluid circumstances, he finds a way to achieve something useful for his clients, preferably through a deal, through a trial if necessary. He has a 30-year record of obtaining good results for a wide range of clients.

Since joining Fulbright & Jaworski's Houston office as a partner in January, 1991, Zack has handled a wide range of clients in business restructure and insolvency litigation matters. Clients turn to him for assistance in (1) buying assets from troubled companies, (2) lending to troubled companies, (3) investing in troubled companies as they come out of bankruptcy, (4) restructuring troubled companies, or (5) dealing with the broad range of litigation that springs up around financial difficulty. He has successfully completed these kinds of matters involving billions of dollars in the aggregate.

Significant experience includes:

Business Restructure and Valuation Litigation

Zack has successfully restructured in Chapter 11 the debt of a number of major companies and acted as bankruptcy litigation counsel in plan confirmation and adequate protection litigation, including trials about enterprise valuation of public companies and asset valuations of collateral involving billions of dollars.

These Chapter 11 restructure clients have included (1) a major steel processing company, (2) numerous real estate companies, (3) a Houston based race track, and (4) biotech companies needing to refinance and:

A Major Russian Oil Company in its U.S. Chapter 11 and 15 Cases

Zack represented a major Russian oil company in its efforts (1) to deal with major tax disputes with its Government through a U.S. Chapter 11 case in Houston, and (2) to resist a proposed liquidation of the company that emerged in relation to a U.S. Chapter 15 case in New York.

A Major Houston Based Airline in its Chapter 11 Case

Zack represented a major Houston based airline in a substantial litigation during its Chapter 11 case in Delaware concerning (1) debtor in possession financing, (2) the application of Section 1110 of the Bankruptcy Code, (3) adequate protection for aircraft collateral and (4) confirmation for a plan reorganization involving a \$500 million investment upon confirmation (this litigation was ultimately resolved pursuant to the mootness doctrine after the Plan was consummated in the face of pending appeals).

Asset Sales and Investments in Plans of Reorganization

Zack has served as bankruptcy counsel for the purchase or sale of billions of dollars of assets from various Chapter 11 debtors and numerous plans of reorganization involving investments made at the emergence from bankruptcy, some consummated in the face of an appeal.

He represented a successful competing bidder who purchased substantially all the assets of Stone & Webster, a major construction engineering company, for \$700 million in an auction conducted in the Delaware Bankruptcy Court. At the onset of the case, he obtained a reduction in the first bidder's break-up fee and obtained rule clarification for the conduct of the auction that gave his client the opportunity to bid on a level playing field.

Secured Lender Representation

Zack has represented a number of secured lenders in workouts and Chapter 11, including negotiation for debtor-in-possession financing and cash collateral use, and litigation concerning adequate protection. He has been lead counsel in trials concerning collateral valuation and is experienced in the lender liability and fraudulent conveyance issues presented by spin-offs of subsidiaries and leveraged buyouts.

Executory Contract Issues

Zack has substantial experience with executory contract issues concerning commodity trading companies, intellectual property, oil and gas, real estate, construction and other industries.

International Involuntary Bankruptcy

Zack has represented a number of major foreign banks in a successful trial and subsequent appeal of an involuntary bankruptcy petition in the United States against foreign citizens who defaulted on more than \$300 million of debt in their country of origin, then came to live in the United States. This case presented numerous international jurisdiction issues.

Insolvency Fiduciaries and Securities Fraud

Zack has represented a number of insolvency fiduciaries, including creditors' committees and receivers. He has defended a foreign receiver of a troubled company who is being sued for alleged securities violation in the United States. He obtained a summary judgment dismissing a more than \$200 million securities litigation claim against a major firm client.

He has served as lead counsel for a receiver appointed by the SEC to supervise liquidation of a group of affiliated companies, including a broker dealer, an investment manager and two offshore investment funds. He was able to secure approval of a plan of liquidation in the district court three months after the case started, which enabled the return of in excess of \$130 million to investors.

International Jurisdiction

In connection with these cases, Zack has developed an expertise

concerning international jurisdiction, including personal jurisdiction over foreign nationals and extra-territorial effect of U.S. bankruptcy and securities law.

PROFESSIONAL ACTIVITIES AND MEMBERSHIPS

- American Bar Association
- American Bankruptcy Institute
- International Insolvency Institute
- International Bar Association
- State Bar of Texas
 - Business Bankruptcy Committee
- Houston Bar Association
 - Bankruptcy Committee

PROFESSIONAL HONORS

- *Chambers USA*, Bankruptcy, Restructuring: Texas (2010-2012)
- American College of Bankruptcy, Fellow
- International Insolvency Institute, Fellow
- *The Best Lawyers in America*
- "Texas Super Lawyer," Thomson Reuters (2003-2012)
- "Houston Top 100," *Super Lawyers*, Thomson Reuters (2003-2005)

PUBLICATIONS

- Co-author with David Rosenzweig and Robert Black, "Important Issues in a Chapter 9 Case for a Municipality," *Fulbright Briefing*, October 24, 2011
- "Offensive and Defensive Use of Bankruptcy," May 2003
- "Please God, Can I Just Get Paid," State Bar of Texas, Advanced Bankruptcy Seminar, 2002
- How to Restructure Technology Rich Companies, *Managing Intellectual Property Magazine*, July-August 2001
- "A Tale of Two Old Messes, Discharge of Environmental Claims," University of Texas Bankruptcy Conference, 2000
- "Mootness of Appeals of Orders Approving Asset Sales, Loans and Plans of Reorganization," University of Texas Bankruptcy Conference, 1994

EDUCATIONAL BACKGROUND

1975 - J.D., University of Virginia School of Law
1970 - 1972 - U.S. Navy Air Intelligence Officer
1970 - A.B., *cum laude*, Public and International Affairs (Economics), Princeton University

Zack is licensed to practice law in Texas, the District of Columbia, Virginia, and Illinois. He is also admitted to practice in the U.S. District Courts in Texas, the U.S. Courts of Appeal for the Third, Fifth, Eleventh, and D.C.

Circuits, and the U.S. Supreme Court.

INTERESTS

A three-time Virginia Junior Golf Champion, Zack enjoys spending time on the golf course and listening to Texas music, especially in Gruene Hall and Luckenbach and at the annual Houston Rodeo. Zack also provides fundraising support for his alma maters, Princeton University and University of Virginia, and various political causes.

CIVIC INVOLVEMENT

- Houston Livestock Show and Rodeo, Lifetime Member
- Habitat for Humanity

FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP
2100 IDS CENTER
80 SOUTH EIGHTH STREET
MINNEAPOLIS, MINNESOTA 55402-2112
WWW.FULBRIGHT.COM

BARBARA D'AQUILA
PARTNER
BDAQUILA@FULBRIGHT.COM

DIRECT DIAL: (612) 321-2201
TELEPHONE: (612) 321-2200
FACSIMILE: (612) 321-2208

October 16, 2008

Bruce Prevost
Palm Beach Capital Management, LLC
3601 PGA Blvd., Suite 301
Palm Beach Gardens, FL 33410

Re: *Palm Beach Finance Partners, LP and Palm Beach Finance II, LP*

Dear Mr. Prevost:

This letter confirms that Fulbright & Jaworski L.L.P. will represent Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (collectively the "Funds") in connection with their claims against and collection of funds owed by Petters Group Worldwide, LLC ("PCW"), Petters Company, Inc. ("PCI"), and/or Palm Beach Finance Holdings, Inc. ("PBFH"), and/or any of their affiliates and subsidiaries (the "Matter"), including any bankruptcy or insolvency cases involving PCW, PCI, PBFH, and/or their affiliates and subsidiaries, and efforts to lift the asset freeze as it relates solely to the Funds. Our acceptance of that representation (the "Representation") becomes effective upon the execution and return of the enclosed copy of this letter and the retainer.

Terms of Engagement

This letter sets out the terms of our engagement in the Representation. Certain of those terms are included in the body of this letter, and additional terms are contained in the attached document, entitled *Additional Terms of Engagement*. That document is expressly incorporated into this letter, and it should be read carefully. The execution and return of the enclosed copy of this letter constitutes an unqualified agreement to all the terms set forth in this letter and in the attached *Additional Terms of Engagement*.

It is understood and agreed that our engagement is limited to the Representation. We are not being retained as general counsel. Our acceptance of this engagement does not imply any undertaking to provide legal services other than those set forth in this letter. The firm will only represent the Funds. We have not and do not undertake to represent and owe no duty to Palm Beach Capital Management, LLC or any of the officers, directors or employee of the Funds, or of Palm Beach Capital Management, LLC in their individual capacities. On behalf of and in representation of the Funds, it is understood and agreed that the Firm will work closely with and

75426769.1

AUSTIN • BEIJING • DALLAS • DENVER • DUBAI • HONG KONG • HOUSTON • LONDON • LOS ANGELES • MINNEAPOLIS
MUNICH • NEW YORK • RIVAD • SAN ANTONIO • ST. LOUIS • WASHINGTON DC

Bruce Prevost
Palm Beach Capital Management, LLC
October 16, 2008
Page 2

be entitled to make full disclosure to the people and entities/bodies (e.g., a steering committee of the Funds) with whom/which the Funds direct, including but not limited to the General Partners of the Funds, the Limited Partners of the Funds, and the other officers, employees, and/or agents of the Funds, Palm Beach Capital Management, LLC, and/or the Limited Partners in the Funds. The Firm can not and does not undertake representation of and will not be directly adverse to (e.g., sue on behalf of the Funds) General Partners or Limited Partners of the Funds and/or Palm Beach Capital Management, LLC, as the Funds themselves are the Firm's clients in this Matter.

Our Personnel Who Will Be Working on the Matter

Barbara D'Aquila, Zack Clement, and Ronn Kreps will be spearheading the work on the Matter, and you may call, write, or e-mail us whenever you have any questions about the Representation. Other firm personnel, including firm lawyers and legal assistants, will participate in the Representation if, in our judgment, their participation is necessary or appropriate.

Our Legal Fees and Other Charges

Legal fees and costs are difficult to estimate. Accordingly, we have made no commitment concerning the maximum fees and charges that will be necessary to resolve or complete the Representation.

It is expressly understood that payment of our fees and charges is in no way contingent on the ultimate outcome of the Representation.

Our fees in the Matter will be based on the time spent by firm personnel, primarily firm lawyers or legal assistants, who participate in the Representation. We will charge for all time spent by such personnel in the Representation in increments of tenths of an hour. For example, we charge for time spent in the following: telephone and office conferences with clients, representatives of clients, opposing counsel, and others; conferences among our attorneys and legal assistants; factual investigation; legal research; responding to requests from third parties; drafting letters and other documents; and travel, if needed.

We will bill the Funds on a monthly basis. We will use our standard billing format which lists each timekeeper, the amount of time spent on the Matter by that timekeeper each day, and the charges for that timekeeper for that day.

Billing rates for attorneys, legal assistants, and other personnel will be at the Firm's standard rates, which we will provide to you upon request. Billing rates are reviewed annually and generally are revised at the beginning of each year.

75426769.1

Bruce Prevost
Palm Beach Capital Management, LLC
October 16, 2008
Page 3

Retainer

It is agreed that we will commence the Representation upon the deposit of an initial retainer from the Funds in the amount of \$50,000.00. It is understood and agreed that the ultimate retainer amount may need to be increased after the representation begins and we become more aware of the scope and extent of work necessary. The retainer (in whatever the final amount is) will be treated as unearned advance and will be placed in a pooled interest-bearing trust account. That trust account is established and governed by rules adopted by the bar associations in the jurisdictions in which we practice, and all accrued interest will be paid to a charitable fund in accordance with those rules.

We will hold the retainer until the conclusion of the Representation, at which time we will apply it to any unpaid fees and expenses and will return any balance. It is agreed that we may, in our sole discretion, apply the retainer to our interim bills for fees and expenses, and each invoice will clearly show the amount of the retainer that is so applied.

Electronically Stored Information. Information management, e-discovery services, and technology support are highly specialized services that may be required in the Representation. Fulbright & Jaworski L.L.P. provides a range of these services in connection with the identification, preservation, collection, review and production of electronic information. Such technical and practice support services will be performed by Fulbright attorney and non-attorney personnel. We strive to assign tasks as appropriate and on a cost effective basis. For this reason, you may be charged for multiple practice support personnel on your invoice. In addition, you will be charged for outside vendor costs associated with processing electronic data and other aspects of the discovery life cycle. These tasks, services, and costs may become necessary to the Representation and may be required by the nature and volume of electronically stored information that must be accessed and organized to provide effective representation in the Matter and the discovery obligations imposed by generally applicable rules and case law.

Conflicts of Interest

Before accepting the Representation, we have undertaken reasonable and customary efforts to determine whether there are any potential conflicts of interest that would bar our firm from representing the Funds in the Matter. Based on the information available to us, we are not aware of any potential disqualification. We reviewed that issue in accordance with the rules of professional responsibility adopted in Minnesota. We believe that those rules, rather than the rules of any other jurisdiction, are applicable to the Representation; and the execution and return of the enclosed copy of this letter by the Funds represents an express agreement to the applicability of those rules.

We have disclosed to you that we may be retained by additional clients in matters adverse to PCW, PCI, PBFH, and/or other Petters' entities or that might arise out of or in connection with the bankruptcy case of PCW, PCI, PBFH, and/or any entities and/or subsidiaries related to

75426769.1

Bruce Prevost
Palm Beach Capital Management, LLC
October 16, 2008
Page 4

Thomas J. Petters. As more fully set forth in the attached *Additional Terms of Engagement*, your signature to this letter will evidence your agreement to grant and agree to the waivers of conflicts and agreements concerning our concurrent representation of other existing and/or future clients as described in said *Additional Terms of Engagement*.

Conclusion

This letter and the attached *Additional Terms of Engagement* constitute the entire terms of the engagement of Fulbright & Jaworski L.L.P. in the Representation. These written terms of engagement are not subject to any oral agreements or understandings, and they can be modified only by further written agreement signed both by the Funds and Fulbright & Jaworski L.L.P. Unless expressly stated in these terms of engagement, no obligation or undertaking shall be implied on the part of either the Funds or Fulbright & Jaworski L.L.P.


Please carefully review this letter and the attached *Additional Terms of Engagement*. If there are any questions about these terms of engagement, or if these terms are inaccurate in any way, please let me know immediately. If both documents are acceptable, please sign and return the enclosed copy of this letter, together with the agreed retainer, so that we may commence the Representation.

Very truly yours,


Barbara Jean D'Aquila

Palm Beach Finance Partners, LP and Palm Beach Finance II, LP
Agree to and Accept this Letter and the Attached Terms of Engagement:

Palm Beach Finance Partners, LP


By: 
Title: MANAGING DIRECTOR
Date: 10-16-2008

By: Palm Beach Capital Management, LP, General Partner
By: Palm Beach Capital Corp. General Partner

75426769.1

Bruce Prevost
Palm Beach Capital Management, LLC
October 16, 2008
Page 5

Palm Beach Finance II, LP

By: 
Title: MANAGING DIRECTOR
Date: 10-16-2008

By: Palm Beach Capital Management, LP, General Partner
By: Palm Beach Capital Corp. General Partner

75426769.1

FULBRIGHT & JAWORSKI L.L.P.***Additional Terms of Engagement***

This is a supplement to our engagement letter, dated October 15, 2008. The purpose of this document is to set out additional terms of our agreement to provide the representation described in our engagement letter (the "Representation") concerning our representation of Palm Beach Finance Partners, LP and Palm Beach Finance II, LP (the "Funds") as described in the engagement letter dated October 15, 2008. Because these additional terms of engagement are a part of our agreement to provide legal services, you should review them carefully and should promptly communicate to us any questions concerning this document. We suggest that you retain this statement of additional terms along with our engagement letter and any related documents.

The Scope of the Representation

As lawyers, we undertake to provide representation and advice on the legal matters for which we are engaged. It is important for our clients to have a clear understanding of the legal services that we have agreed to provide. Thus, if there are any questions about the scope of the Representation that we are to provide in the Matter, please raise those questions promptly, so that we may resolve them at the outset of the Representation.

Any expressions on our part concerning the outcome of the Representation, or any other legal matters, are based on our professional judgment and are not guarantees. Such expressions, even when described as opinions, are necessarily limited by our knowledge of the facts and are based on our views of the state of the law at the time they are expressed.

Upon accepting this engagement on the Funds' behalf, Fulbright & Jaworski L.L.P. agrees to do the following: (1) provide legal counsel in accordance with these terms of engagement and the related engagement letter, and in reliance upon information and guidance provided by the Funds; and (2) keep the Funds reasonably informed about the status and progress of the Representation.

To enable us to provide effective representation, the Funds agree to do the following: (1) disclose to us, fully and accurately and on a timely basis, all facts and documents that are or might be material or that we may request, (2) keep us apprised on a timely basis of all developments relating to the Representation that are or might be material, (3) attend meetings, conferences, and other proceedings when it is reasonable to do so, and (4) otherwise cooperate fully with us.

Our firm has been engaged to provide legal services in connection with the Representation in the Matter, as specifically defined in our engagement letter. After completion of the Representation, changes may occur in the applicable laws or regulations that could affect the Funds' future rights and liabilities in regard to the Matter. Unless we are actually engaged after the completion of the Representation to provide additional advice on such issues, the firm has no continuing obligation to give advice with respect to any future legal developments that may pertain to the Matter.

It is our policy and the Funds' agreement that the person or entity that we represent is the one identified in our engagement letter, and that our attorney-client relationship does not include any

related persons or entities. For example, if a corporation, partnership, or other organization is identified as our client in our engagement letter referenced above, we do not represent any related parent companies, subsidiaries, affiliates, employees, officers, directors, shareholders, partners, members, commonly owned corporations or partnerships, or other such persons, entities, or affiliates, whether becoming such by virtue of merger, dissolution, acquisition, or any other means. Accordingly, it is understood that we may represent another client with interests adverse to any such affiliated or related person or entity without first obtaining consent from the Funds.

It is further agreed that the attorney-client relationship terminates upon our completion of the services for which we have been retained in the Representation.

Who Will Provide the Legal Services

As our engagement letter confirms, Fulbright & Jaworski L.L.P. will represent the Funds in the Matter. Fulbright & Jaworski L.L.P. is a registered limited liability partnership that has elected to adopt the Texas Revised Partnership Act.

Although our firm will be providing legal services, each client of the firm customarily has a relationship principally with one attorney, or perhaps a few attorneys. At the same time, however, the work required in the Representation, or parts of it, may be performed by other firm personnel, including lawyers and legal assistants. Such delegation may be for the purpose of involving other firm personnel with experience in a given area or for the purpose of providing services on an efficient and timely basis.

Our Relationships With Others

Our law firm represents many companies and individuals. In some instances, the applicable rules of professional conduct may limit our ability to represent clients with conflicting or potentially conflicting interests. Those rules of conduct often allow us to exercise our independent judgment in determining whether our relationship with one client prevents us from representing another. In other situations, we may be permitted to represent a client only if the other clients consent to that representation.

Rules concerning conflicts of interest vary with the jurisdiction. In order to avoid any uncertainty, it is our policy that the governing rules will be those applicable to the particular office of our firm that prepares the engagement letter for a particular matter. The acceptance by the Funds of our engagement letter constitutes an express agreement with that policy, unless the engagement letter specifically states that some other rules of professional responsibility will govern our attorney-client relationship.

In addition to our representation of other companies and individuals, we also regularly represent lawyers and law firms. As a result, opposing counsel in the Matter may be a lawyer or law firm that we may represent now or in the future. Likewise, opposing counsel in the Matter may represent our firm now or in the future. Further, we have professional and personal relationships with many other attorneys, often because of our participation in bar associations and other professional organizations. It is our professional judgment that such relationships with other attorneys do not adversely affect our ability to represent any client. The acceptance of these

terms of engagement represents an unqualified consent to any such relationships between our firm and other lawyers or law firms, even counsel who is representing a party that is adverse to the Funds in the Matter that is the subject of this engagement or in some other matter.

Representation of Other Clients Regarding This Debtor

We have informed you that other existing or prospective clients of our firm (all such other existing or prospective Clients being herein called "Other Clients") have engaged or may engage our firm (the "Other Bankruptcy Representation") to represent them in connection with contractual relationships or dealings with PCW and PCI and to advise them regarding their rights and possible courses of action to be taken in the PCI's bankruptcy case. Other Clients may engage us in the Other Bankruptcy Representation in asserting claims as creditors or lessors of aircraft or other properties against the estate or properties of the debtor, in defending claims against such Other Clients that are asserted by or on behalf of the debtor's estate or the debtor or by shareholders or other investors in the debtor, or in seeking to buy or buying assets from the debtor or from the debtor's estate in the debtor's Bankruptcy Case. Our representation of Other Clients in connection with the Other Bankruptcy Representation is herein referred to as the "Other Client Representation." In some instances, you and such Other Clients may have common interests, and in other instances you and such Other Clients may have some divergent interests, primarily financial in nature, with respect to their relationships and dealings with the Debtor and with respect to the relative rights of you and the Other Clients as among each other. We believe that with appropriate disclosures and waivers, our firm can effectively represent both you and Other Clients in connection with various matters arising out of or related to PCI's bankruptcy case notwithstanding such possible divergent interests and without prejudice to the interests of you or Other Clients resulting from the fact that our firm is representing all of them in connection with such matters, instead of having each of them represented by a separate law firm. In fact, our experience in similar situations is that there can be economies effected benefiting multiple clients represented by a single law firm in connection with a major bankruptcy case in avoiding duplication of effort, monitoring activity in the case, and handling the representation of such multiple clients before the court or in discovery or other proceedings or activities. In addition, we have disclosed to you that certain of the Other Clients have engaged or may engage our firm to represent such Other Clients in matters not directly related to PCI or PCW or you.

Your Consent to Our Representation of Other Clients Regarding This Debtor

As a condition of our undertaking our engagement to represent you in this Matter, we ask you to agree, and consent to, our firm representing Other Clients in connection with any or all of the Other Client Representation described above; and by signing the attached engagement letter you expressly agree and consent to our firm representing Other Clients in connection with any or all of the Other Client Representation and expressly waive any conflict of interest as between you and Other Clients in connection with the Matter and such Other Client Representation and expressly waive and agree not to assert any right to disqualify or seek to disqualify our firm from representing any Other Clients in connection with any Other Client Representation; provided that our firm must require any Other Client that engages our firm to represent such Other Client in connection with any Other Client Representation to grant a similar waiver of conflicts of interest as between such Other Client and you and to waive and agree not to assert any right to disqualify or seek to disqualify our firm from continuing to represent you in connection with the Matter. Further you expressly acknowledge that, in its representation of Other Clients in connection with Other Client Representation, our firm may obtain information from one or more of the Other Clients that might adversely affect the interests of the Other Clients should you learn of the information; and you specifically agree that our firm will not be required to and will have no duty to provide that information to you and specifically waive any right to receive such information from our firm.

In connection with requesting you to consent to our firm representing Other Clients in connection with Other Client Representation, you expressly acknowledge that we have disclosed to and discussed with you the fact that in some circumstances the interests of Other Clients in connection with Other Client Representation may be adverse to your interests, and that you have consulted with and been advised by other counsel regarding such potential conflicts of interests and regarding your consent and waiver with respect to our firm's representation of Other Clients in Other Client Representation. Specifically, we have disclosed to you that a possibility exists that the assets of the Debtor available for payment of creditors may not be adequate to provide full payment to creditors of the Debtor, and the interests of Other Clients asserting claims as creditors against the Debtor or the estate of the debtor in connection with Other Client Representation may thus be adverse to your financial interests. Similarly the interests of Other Clients (who may include, without limitation, existing or former officers or directors of the Debtor, investment banking firms, brokers and underwriters, and banks or other lenders or lessors who have extended credit or granted leases to the Debtor) in defending claims asserted against them in connection with Other Client Representation by or on behalf of the Debtor or the estate of the debtor or by shareholders or investors in the Debtor may be adverse to your interests, because the success of such Other Clients in defending against or reducing such claims may, directly or indirectly, reduce the amount of the assets available to apply toward payment of claims of you and other creditors of the Debtor. The interests of Other Clients in buying or seeking to buy assets of the Debtor or the estate of the debtor may also be adverse to your interests in the event you also desire to buy such assets (in which event our firm may be unable to represent you in seeking to buy such assets if an Other Client has engaged us to represent the Other Client in seeking to buy such assets prior to your requesting us to represent you in seeking to buy such assets).

Agreement of Other Clients to Waive Conflicts Regarding This Debtor

Any Other Client currently represented by our firm in connection with Other Client Representation has already agreed to appropriate waivers allowing our firm to represent you in connection with the Matter.

Possibility of Future Material Adversity Resulting in Disqualification

If direct, material adversity should arise between you and any or all of the Other Clients on a specific issue, we would ask that you and such Other Clients attempt to resolve such differences between themselves without the involvement of our firm, since you and the Other Clients would both be current clients of our firm; and if such differences cannot be resolved in this manner, we may not be able to represent or advise any of the parties with respect to issues where such adversity exists.

Communications and Confidentiality

We have available Internet communication procedures that allow our attorneys to use e-mail for client communications in many instances. Accordingly, unless the Funds specifically direct us otherwise, we may use unencrypted e-mail sent on the Internet to communicate with the Funds and to send documents we have prepared or reviewed.

We recognize our obligation to preserve the confidentiality of attorney-client communications as well as client confidences, as required by the governing rules of professional responsibility. If the Matter involves transactions, litigation or administrative proceedings or like proceedings in which our firm appears as counsel of record the Funds in publicly available records, we reserve

the right to inform others of the fact of our representation of the Funds in the Matter and (if likewise reflected of record in publicly available records) the results obtained, unless the Funds specifically direct otherwise.

Retainers

Clients are often asked to deposit a retainer with the firm. If a retainer has been agreed upon, it is further agreed that we have a security interest in that deposit. Retainers are usually considered to be unearned advances. They are placed in trust accounts, usually placed in pooled interest-bearing trust accounts governed by rules adopted by the bar associations in the jurisdictions in which we practice. All accruing interest is paid to a charitable fund established by those bar associations.

Disclaimer

Fulbright & Jaworski L.L.P. has made no promises or guarantees to the Funds about the outcome of the Representation or the Matter, and nothing in these terms of engagement shall be construed as such a promise or guarantee.

Termination

At any time, the Funds may, with or without cause, terminate the Representation by notifying us of your intention to do so. Any such termination of services will not affect the obligation to pay for legal services rendered and expenses and charges incurred before termination, as well as additional services and charges incurred in connection with an orderly transition of the Matter.

We are subject to the codes or rules of professional responsibility for the jurisdictions in which we practice. There are several types of conduct or circumstances that could result in our withdrawing from representing a client, including, for example, the following: non-payment of fees or charges; misrepresentation or failure to disclose material facts; fraudulent or criminal conduct; action contrary to our advice; and conflict of interest with another client. We try to identify in advance and discuss with our clients any situation that may lead to our withdrawal.

A failure the Funds to meet any obligations under these terms of engagement shall entitle Fulbright & Jaworski L.L.P. to terminate the Representation. In that event the Funds will take all steps necessary to release Fulbright & Jaworski L.L.P. of any further obligations in the Representation or the Matter, including without limitation the execution of any documents necessary to effectuate our withdrawal from the Representation or the Matter. The right of Fulbright & Jaworski L.L.P. to withdraw in such circumstances is in addition to any rights created by statute or recognized by the governing rules of professional conduct.

Billing Arrangements and Terms of Payment

Our engagement letter specifically explains our fees for services in the Matter. We will bill on a regular basis, normally each month, for fees and expenses and charges. It is agreed that the Funds will make full payment within 10 days of receiving our statement. We will give notice if an account becomes delinquent, and it is further agreed that any delinquent account must be paid upon the giving of such notice. If the delinquency continues and the Funds do not arrange

satisfactory payment terms, we may withdraw from the Representation and pursue collection of our account.

Document Retention

At the close of any matter, we send our files in that matter to a storage facility for storage at our expense. The attorney closing the file determines how long we will maintain the files in storage. After that time, we will destroy the documents in the stored files.

At the conclusion of the Representation, we return to the client any documents that are specifically requested to be returned. As to any documents so returned, we may elect to keep a copy of the documents in our stored files.

Charges for Other Expenses and Services

Typically, our invoices will include amounts, not only for legal services rendered, but also for other expenses and services. Examples include charges for photocopying, long-distance telephone calls, travel and conference expenses, messenger deliveries, computerized research, and facsimile and other electronic transmissions. In addition, we reserve the right to send to the Funds for direct payment any invoices delivered to us by others, including experts and any vendors.

In situations where we can readily determine the exact amount of expenses for products and services provided by third parties to be charged to your account, our invoices will reflect the cost to us of the products and services. In many situations, however, the precise total cost of providing a product or service is difficult to establish, in which case we will use our professional judgment on the charges to be made for such product or service, which charges may vary from or exceed our direct cost of such product or service. In some situations, we can arrange for ancillary services to be provided by third parties with direct billing to the client. Attached is a copy of our current recharge schedule for expenses and services, which is subject to change from time to time.

Standards of Professionalism and Attorney Complaint Information

Pursuant to rules promulgated by the Texas Supreme Court and the State Bar of Texas, we are to advise our clients of the contents of the Texas Lawyer's Creed, a copy of which is attached. In addition, we are to advise clients that the State Bar of Texas investigates and prosecutes complaints of professional misconduct against attorneys licensed in Texas. A brochure entitled *Attorney Complaint Information* is available at all of our Texas offices and is likewise available upon request. A client that has any questions about State Bar's disciplinary process should call the Office of the General Counsel of the State Bar of Texas at 1-800-932-1900 toll free.

THE TEXAS LAWYER'S CREED — A MANDATE FOR PROFESSIONALISM

The Texas Supreme Court and the Texas Court of Criminal Appeals adopted this Creed, with the requirement that lawyers advise their clients of its contents when undertaking representation.

I am a lawyer; I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that Professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this Creed for no other reason than it is right.

I. OUR LEGAL SYSTEM. A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism. I am passionately proud of my profession. Therefore, "My word is my bond." I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life. I commit myself to an adequate and effective pro bono program. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed. I will always be conscious of my duty to the judicial system.

II. LAWYER TO CLIENT. A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest. I will advise my client of the contents of this Creed when undertaking representation. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice. I will advise my client that civility and courtesy are expected and are not a sign of weakness. I will advise my client of proper and expected behavior. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party. I will advise my client that we will not pursue tactics which are intended primarily for delay. I will advise my client that we will not pursue any course of action which is without merit. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. LAWYER TO LAWYER. A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct. I will be courteous, civil, and prompt in oral and written communications. I will not quarrel over matters of form or style, but I will concentrate on matters of substance. I will identify for other counsel or parties all changes I have made in documents submitted for review. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when

hearings, depositions, meetings, conferences or closings are canceled. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence. I will not arbitrarily schedule a deposition, Court appearance, or hearing until a good faith effort has been made to schedule it by agreement. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party. I will refrain from excessive and abusive discovery. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

IV. LAWYER AND JUDGE. Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol. I will conduct myself in court in a professional manner and demonstrate my respect for the Court and the law. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility. I will be punctual. I will not engage in any conduct which offends the dignity and decorum of proceedings. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage. I will respect the rulings of the Court. I will give the issues in controversy deliberate, impartial and studied analysis and consideration. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.