

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

In re:

CHAPTER 11

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

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

Debtors.

**TRUSTEE’S MOTION TO APPROVE SETTLEMENT WITH
(I) BACAP MULTI-STRATEGY HEDGE FUND, LLC – SERIES III;
(II) BA MULTI-STRATEGY FUND, LLC – SERIES 1;
(III) BACAP ALTERNATIVE MONTAGE FUND, LLC – SERIES D;
AND (IV) BACAP MULTI-STRATEGY HEDGE FUND, LLC – SERIES 1**

Any interested party who fails to file and serve a written response to this motion within 21 days after the date of service stated in this motion shall, pursuant to Local Rule 9013-1(D), be deemed to have consented to the entry of an order in the form attached to this motion. Any scheduled hearing may then be cancelled.

Barry E. Mukamal, in his capacity as liquidating trustee (“*Trustee*”) for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance Partners II Liquidating Trust (collectively, the “*Trusts*”), files this Motion to approve settlement with (I) BACAP Multi-Strategy Hedge Fund, LLC - Series III; (II) BA Multi-Strategy Fund, LLC; (III) BACAP Alternative Montage Fund, LLC - Series D; and (IV) BACAP Multi-Strategy Hedge Fund, LLC - Series 1 (collectively, the “*BACAP Funds*”). In support, the Trustee states as follows:

I. Factual Background

1. On November 30, 2009 (“*Petition Date*”), Palm Beach Finance Partners, L.P. (“*PBF I*”) and Palm Beach Finance Partners II, L.P. (“*PBF II*,” together with PBF I, the “*Debtors*”) commenced Chapter 11 bankruptcy cases by filing voluntary petitions for relief under

Chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida (“*Bankruptcy Court*”), Case Nos. 09-36379-PGH and 09-36396-PGH, respectively (“*Bankruptcy Cases*”). By subsequent Order of this Court, the Bankruptcy Cases are jointly administered.

2. On October 21, 2010, this Court entered its *Order Confirming Second Amended Plan of Liquidation* [ECF No. 444], creating the Trusts, appointing the Trustee and appointing Geoffrey Varga as Trust Monitor.

3. The BACAP Funds were each limited partners in PBF I. In connection with these limited partnership interests, the BACAP Funds realized a net gain, on a cash in, cash out basis, of \$5,783,327.11. Of this amount, \$1,168,473.11 was transferred to the BACAP Funds within four years of the Petition Date (“*Profit Distribution*”).

4. The Trustee, on behalf of the Palm Beach Finance Partners Liquidating Trust, asserts he has potential claims (“*Potential Claims*”) against the BACAP Funds to avoid and recover certain transfers pursuant to Fla. Stat. § 726.101 *et. seq.* or other applicable state law. The BACAP Funds expressly deny liability on any of the Potential Claims.

5. Following good faith negotiations, the Trustee and the BACAP Funds reached agreement on the terms of a settlement (the “*Settlement*”), and the Trustee and the BACAP Funds have executed the Stipulation of Settlement attached as Exhibit 1 (the “*Stipulation*”). The Trustee believes that the Settlement, on the terms set forth in the Stipulation, is in the best interests of the Debtors’ estates and should be approved.

II. Settlement Terms

6. The key aspects of the Settlement, as more particularly described in the Stipulation, are the following:

- a) **Settlement Payment** – The BACAP Funds shall jointly and severally pay (or cause to be paid) \$115,000 within thirty (30) business days after the entry of a final and non-appealable order by the Bankruptcy Court approving this Stipulation.
- b) **Mutual Releases** – The Trustee and the BACAP Funds shall exchange mutual releases effective upon payment of the Settlement Payment.

7. Pursuant to the Second Amended Joint Plan of Liquidation (“**Plan**”), approved by this Court’s Order dated October 21, 2010 [ECF No. 444], all monetary consideration received in conjunction with certain settlements will be allocated and apportioned among the Debtors as follows: 18% to PBF I and 82% to PBF II (“**Pro Rata Allocation Formula**”). However, in this situation, the Pro Rata Allocation Formula is inapplicable. This is because PBF I made all of the transfers that are at issue, and that would fall within the Potential Claims. Therefore, the Settlement Payment should be allocated wholly to and for the benefit of PBF I. Through this Motion, the Trustee seeks that specific relief.

8. In agreeing to the above terms, the Trustee considered the substantive defenses asserted by the BACAP Funds, as well as other factors including the costs (fees and expenses) and risks of litigation. For example, the BACAP Funds have asserted that while the funds had been owned by Bank of America, the funds were sold in or around 2014 (after receiving the transfers), and then subsequently the funds ceased operating. While definitive proof of the sale and any cessation of business operations was not provided to the Trustee, the BACAP Funds, through their counsel, did provide some limited information which appeared to support the BACAP Funds assertions.

III. Relief Requested

9. The Trustee seeks an Order from this Court approving the Settlement.

10. Federal Rule of Bankruptcy Procedure 9019(a) provides in relevant part that "[o]n motion ... and after notice and a hearing, the Court may approve a compromise or settlement."

11. Approval of a settlement in a bankruptcy proceeding is within the sole discretion of the Court and will not be disturbed or modified on appeal unless approval or disapproval is an abuse of discretion. *In re Arrow Air*, 85 BR 891 (Bankr. S.D. Fla. 1988).

12. The standards for approval are well settled and require the Court to inquire into the reasonableness of the proposed settlement. *See, e.g., Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *Florida Trailer and Equip. Co. v. Deal*, 284 F.2d 567, 571 (5th Cir. 1960). The inquiry need only determine whether the settlement falls below the lowest point on the range of reasonableness. *See W.T. Grant Co.*, 699 F.2d at 608; *see also In re Martin*, 91 F.3d 389 (3rd Cir. 1996); *In re Louise's Inc.*, 211 B.R. 798 (D. Del. 1997) (setting forth considerations by the Court for approval of a settlement, including: (i) the probability of success in litigation, (ii) the likely difficulties in collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (iv) the paramount interest of the creditors).

A. *The Settlement Should be Approved*

13. Based upon the above legal principles, the Trustee asserts that the Settlement falls well above the lowest point on the range of reasonableness and thus, should be approved.

Probability of success in litigation

14. This consideration militates in favor of approval of the Settlement. Although the Trustee believes the Potential Claims have merit, the BACAP Funds are equally convinced in the merits of their defenses, deny any and all liability, and the probability of success cannot be gauged with certainty. For example, the BACAP Funds has expressed its intent to assert the applicability

of the safe harbor set forth in Section 546(e) of the Code. In addition, the BACAP Funds could argue that the majority of the transfers sought to be avoided by the Trustee are outside a four year look period. Moreover, the BACAP Funds have asserted arguments that a shorter look back period is mandated under Delaware law because PBF was incorporated in Delaware and therefore any claim of a “golden creditor” is controlled by Delaware law.

Collectability

15. This is not an issue with respect to the Settlement.

Complexity of litigation and attendant expense, inconvenience and delay

16. This consideration militates in favor of approval of the Settlement. Unless the Settlement is approved, the Trusts' assets will be depleted by the material litigation costs and expenses incurred if litigation was commenced against the BACAP Funds.

Paramount interest of creditors

17. This consideration militates in favor of approval of the Settlement. The Settlement provides for payment of the Settlement Payment to the Trustee and prevents further expenditure of estate assets on a potentially expensive litigation against a sophisticated litigation adversary. Moreover, it brings these Bankruptcy Cases one step closer to completed administration. As such, the Settlement is in the paramount interest of the Debtors' stakeholders.

B. The Contingency Fee Should Be Approved

18. Pursuant to the Plan and this Court's Order Approving the Trustee's Motion to Approve Hybrid Form of Compensation [ECF No. 223], Meland Budwick, P.A. (“**MB**”)¹ is compensated on a hybrid basis: 75% of its hourly rates plus a fee of 10% of any affirmative recovery received by the Debtors' estates from a litigation matter pursued by the firm without

¹ Formerly Meland Russin & Budwick, P.A.

further order of the Court (“*Contingency Fee*”). Accordingly, the Trustee requests that the 10% Contingency Fee be approved, and that he be authorized and directed to pay this amount to MB.

WHEREFORE, the Trustee respectfully requests that this Court enter an Order as set forth in attached Exhibit 2: (1) approving the Settlement - without application of the Pro Rata Allocation Formula - and directing the Settlement Payment be paid solely to PBF I; (2) directing payment of the Contingency Fee to MB; and (3) granting such other and further relief as this Court deems just and proper.

Dated: January 13, 2021.

/s/James C. Moon

James C. Moon, Esquire

Florida Bar No. 938211

jmoon@melandbudwick.com

MELAND BUDWICK, P.A.

3200 Southeast Financial Center

200 South Biscayne Boulevard

Miami, Florida 33131

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Attorneys for the Liquidating Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on January 13, 2021, via the Court’s Notice of Electronic Filing upon registered Users listed on the attached Exhibit 3, via Regular U.S. Mail upon the parties listed on the Court’s Manual Notice List attached as Composite Exhibit 4, the Court’s Matrices in Case No. 09-36379-BKC-PGH and Case No. 09-36396-BKC-PGH attached as Composite Exhibit 5², and those additional addresses set forth on Composite Exhibit 6.

/s/James C. Moon
James C. Moon, Esquire

² “ADDL” means these additional parties served as a courtesy. See Composite Exhibit 6.

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

“DUP” means that the address appears more than once on this exhibit and is only being served one time by mail.

“NEF” means that service was made by Notice of Electronic Filing as set forth on Exhibit 3 and is not being additionally served by mail.

“NNR” means no notice is required.

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

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

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“*Stipulation*”) is entered into on this 10th day of December, 2020 by and between (a) Barry E. Mukamal, not in his individual capacity, but solely in his capacity as liquidating trustee (“*Liquidating Trustee*”) of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, “*Palm Beach Liquidating Trusts*”); and (b) AEGIS HOLDINGS (ONSHORE INC.), fbo BACAP Multi Strategy Hedge Fund, LLC (n/k/a Man FRM Alternative Multi-Strategy Fund LLC f/k/a Excelsior Multi-Strategy Hedge Fund of Funds LLC); BACAP ALTERNATIVE MONTAGE FUND LLC-SERIES D (n/k/a Man FRM Global Relative Value Fund (a Series of Man FRM Hedge Fund Solutions LLC) f/k/a BA Alternative Investment Solutions (MF)-BA Global Relative Value Fund; and BACAP MULTI-STRATEGY HEDGE FUND, LLC-SERIES I (n/k/a Man FRM Alternative Multi-Strategy Fund QP (a Series of Man FRM Multi-Strategy Fund LLC) f/k/a Excelsior Multi-Strategy Hedge Fund OP) (collectively, the “*BACAP Funds*”) (the Liquidating Trustee and the BACAP Funds are at times individually referred to herein as a “*Party*” or collectively, the “*Parties*”). The terms of this Stipulation are as follows:

DEFINED TERMS

Capitalized terms used in this document are defined terms (“*Defined Terms*”) that are defined in the Recitals section of the Stipulation and at various other points above or elsewhere herein. Such Defined Terms shall apply throughout this Stipulation.

RECITALS

The following Recitals are material terms of the Stipulation. The Stipulation is made with reference to and in contemplation of the following facts and circumstances:

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

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

C. The Liquidating Trustee represents and warrants that pursuant to the Plan, the Confirmation Order, and the Bankruptcy Code, among other things, that all claims and causes of action, including actions to avoid and recover transfers of property by the Debtors arising under Chapter 5 of Title 11 of the United States Code (the "*Bankruptcy Code*") or Fla. Stat. § 726.101 *et. seq.* or other applicable state law, were transferred to the Palm Beach Liquidating Trusts, and the Liquidating Trustee is vested with the sole right and authority to pursue and settle any claims and causes of action on behalf of the Palm Beach Liquidating Trusts and that the Debtors no longer have any right to pursue such claims;

D. The Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, asserts he may have and can prosecute claims against the BACAP Funds to avoid and recover certain transfers pursuant to Fla. Stat. § 726.101 *et. seq.* or other applicable state law. The BACAP Funds expressly denies those claims; and

E. To avoid the continued expense and risk of adverse outcome arising from litigation between the Parties, as well as incurring costs and expenses associated therewith, among other

reasons, the Parties agreed to resolve all claims and disputes amongst them, subject to the terms and conditions of this Stipulation and Bankruptcy Court approval (“*Settlement*”).

NOW, THEREFORE, it is stipulated, consented to, and agreed, by and among the Parties as follows:

1. **No admission of Liability.** The Parties acknowledge that this Stipulation is a compromise and settlement of any and all claims they may have against one another. No Party admits, and each expressly denies, any liability on its part.

2. **Entire Agreement.** This Stipulation constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and there are no other stipulations, agreements, representations, or warranties other than those specifically set forth herein.

3. **Settlement Payment.** BACAP Funds will pay the Liquidating Trustee one hundred and fifteen thousand dollars (\$115,000) (the “*Settlement Payment*”) in full payment for the General Release set forth below. This sum will be paid by ACH to the Liquidating Trustee within thirty days of the Effective Date (or, if the thirtieth day is not a business day, the following business day). “Effective Date” means the day following the occurrence of both (i) the date the order approving this Settlement Agreement becomes final and non-appealable and (ii) the date the BACAP Funds receive a W-9 properly executed and completed by the Liquidating Trustee. The Liquidating Trustee agrees he will not seek any additional payment or other consideration from the BACAP Funds or the BACAP Released Parties (as defined below). The Liquidating Trustee also acknowledges that the BACAP Funds has made no representations or warranties concerning any tax obligation that may arise from this payment, and any such obligation will be the Liquidating Trustee's sole responsibility.

4. **General Release.**

A. Upon approval of this Stipulation by the Bankruptcy Court and payment of the Settlement Payment, and without the need for the execution and delivery of additional documentation or the entry of any additional orders of the Bankruptcy Court, the Liquidating Trustee, on his behalf and on behalf of the Liquidating Trusts and the Palm Beach Funds (the "***Palm Beach Releasing Parties***"), waives and releases, now and forever, the BACAP Funds, BACAP Multi Strategy Hedge Fund, LLC-Series III; BA Multi-Strategy Fund, LLC; BACAP Alternative Montage Fund, LLC; and BACAP Multi-Strategy Hedge Fund, LLC and their current and former employees, agents, attorneys, officers and directors, each of its members, managers, principals, associates, representatives, and trustees, and general and limited partners and each of their respective administrators, heirs, beneficiaries, assigns, directors, officers, affiliates, subsidiaries, predecessors, predecessors in interest, successors, and successors in interest administrators and sponsors (including without limitation Bank of America Capital Advisors LLC, Bank of America Capital Management LLC and Merrill Lynch Alternative Investments LLC) and each of their respective successors, assigns, transferees, affiliates, agents and employees (collectively, the "***BACAP Released Parties***") from any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, covenants, contracts, agreements, promises, damages, judgments, claims, debts, encumbrances, liens, remedies and demands, of any and every kind, character or nature whatsoever (including unknown claims), whether liquidated or unliquidated, asserted or unasserted, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, now existing or hereafter arising, in law, at equity or otherwise, which the Palm Beach Releasing Parties, or anyone claiming through them, on their behalf or for their benefit, may have or claim to have, now or in the future, against the BACAP Released Parties;

provided that nothing herein will be deemed to release, waive, or otherwise limit any rights or obligations arising out of this Stipulation.

B. Upon payment of the Settlement Payment, the tolling agreements previously entered into among the parties shall be deemed void *ab initio* and of no further force and effect.

5. **Representation of the BACAP Funds.** The individual executing this Stipulation on behalf of the BACAP Funds represents and warrants that he or she has the authority to execute this Stipulation on behalf of each of the BACAP Funds and bind each of the BACAP Funds to its terms.

6. **Representation of the Liquidating Trustee.** The individual executing this Stipulation on behalf of the Liquidating Trustee represents and warrants that he has the authority to execute this Stipulation on behalf of the Liquidating Trusts and bind them to its terms.

7. **Review/No Duress.** Each of the Parties acknowledges that he, she, or it has read all of the terms of this Stipulation, has had an opportunity to consult with counsel of his, her, or its own choosing or knowingly and voluntarily waived such opportunity, and enters into those terms voluntarily and without duress.

8. **Amendments/Waiver.** This Stipulation may not be terminated, amended or modified in any way except in a writing signed by all the Parties. No waiver of any provision of this Stipulation shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

9. **Assignability.** No Party may assign its rights under this Stipulation without the prior written consent of the other Party.

10. **Successors Bound.** This Stipulation shall be binding upon and inure to the benefit of each Party and their successors and permitted assigns, including any subsequently-appointed trustee of the Liquidating Trusts.

11. **No Third-Party Beneficiary.** The Parties do not intend to confer any benefit by or under this Stipulation upon any person or entity other than (i) the Parties hereto and their respective successors and permitted assigns and (ii) those parties included in the definition of the BACAP Released Parties.

12. **Attorneys' Fees and Costs.** Each Party shall bear their own attorneys' fees and costs in connection with the negotiation of this Stipulation and motions and orders as may be necessary to obtain the approval of this Stipulation by the Bankruptcy Court; provided that in the event of any litigation between the Parties under this Stipulation or arising as a result of a default under this Stipulation, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs related thereto, including without limitation those incurred at all trial and appellate levels.

13. **Effective Date.** This Stipulation shall be effective upon execution by all of the Parties hereto, subject only to approval of this Stipulation by final, non-appealable order of the Bankruptcy Court. Upon it becoming effective, this Stipulation shall be binding on the Parties and all Parties' successors or assigns.

14. **No Effect.** If the Bankruptcy Court does not approve this Stipulation, then the Stipulation shall be of no further force or effect, the Parties shall be restored to their rights as they existed prior to the execution of this Stipulation, and any portions of the Settlement Payment paid by the BACAP Funds to the Liquidating Trustee shall be returned to the BACAP Funds by the Liquidating Trustee. Notwithstanding the foregoing, if the Bankruptcy Court does not approve this Stipulation because any of the Parties has failed to provide the Bankruptcy Court with adequate

information to rule on the merits of the Stipulation, the Parties will use their best efforts to seek reconsideration of any order declining to approve the Stipulation, or to file an amended motion to approve the Stipulation.

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

16. **Counterparts.** This Stipulation may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Stipulation. Delivery of an executed counterpart of a signature page to this Stipulation in PDF format and by electronic mail (e-mail) shall be effective as delivery of a manually executed counterpart of this Stipulation.

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

18. **Jurisdiction.** Jurisdiction to enforce the terms of this Stipulation shall rest exclusively with the Bankruptcy Court, and the Parties agree to bring any controversy arising under this Stipulation only before the Bankruptcy Court.

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STIPULATED AND AGREED BY:



Date:

1/11/2021

Barry E. Mukamal, Liquidating Trustee

-and-

AEGIS HOLDINGS (ONSHORE INC.) FBO BACAP MULTI STRATEGY HEDGE FUND, LLC (N/K/A MAN FRM ALTERNATIVE MULTI-STRATEGY FUND LLC F/K/A EXCELSIOR MULTI-STRATEGY HEDGE FUND OF FUNDS LLC)



Date:

Dec 10, 2020

Name: Colin Bettison

Title: PFO

BACAP ALTERNATIVE MONTAGE FUND LLC-SERIES D (N/K/A MAN FRM GLOBAL RELATIVE VALUE FUND (A SERIES OF MAN FRM HEDGE FUND SOLUTIONS LLC) F/K/A BA ALTERNATIVE INVESTMENT SOLUTIONS (MF)-BA GLOBAL RELATIVE VALUE FUND (MF))

By: FRM Investment Management (USA) LLC, its manager



Date:

Dec 10, 2020

Name: Lisa Munoz

Title: Assistant Secretary

BACAP MULTI-STRATEGY HEDGE FUND, LLC-SERIES I (N/K/A MAN FRM ALTERNATIVE MULTI-STRATEGY FUND QP (A SERIES OF MAN FRM MULTI-STRATEGY FUND LLC) F/K/A EXCELSIOR MULTI-STRATEGY HEDGE FUND QP)

By: FRM Investment Management (USA) LLC, its manager



Date:

Dec 10, 2020

Name: Lisa Munoz

Title: Assistant Secretary

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

In re:

CHAPTER 11

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

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

Debtors.

**ORDER GRANTING TRUSTEE'S MOTION TO APPROVE SETTLEMENT WITH
(I) BACAP MULTI-STRATEGY HEDGE FUND, LLC – SERIES III;
(II) BA MULTI-STRATEGY FUND, LLC – SERIES 1;
(III) BACAP ALTERNATIVE MONTAGE FUND, LLC – SERIES D;
AND (IV) BACAP MULTI-STRATEGY HEDGE FUND, LLC – SERIES 1**

THIS CAUSE came before the Court on _____, 2021 at ____:____.m. upon the
*Trustee's Motion to Approve Settlement with (I) BACAP Multi-Strategy Hedge Fund, LLC - Series
III; (II) BA Multi-Strategy Fund, LLC; (III) BACAP Alternative Montage Fund, LLC - Series D;*

and (IV) BACAP Multi-Strategy Hedge Fund, LLC - Series I [ECF No. _____] (“**Motion**”).¹ The Court, having reviewed the Motion and is otherwise duly advised in the premises. Accordingly, it is:

ORDERED as follows:

1. The Motion is **GRANTED**.
2. The Settlement is **APPROVED**.
3. BACAP Funds shall pay \$115,000.00 (the “**Settlement Payment**”) within 30 business days from the date of the entry of this Order. The Settlement Payment will be paid by ACH to Liquidating Trustee.
4. MB’s Contingency Fee in the amount of \$11,500.00 is approved. The Liquidating Trustee is authorized and directed make payment of the Contingency Fee without the need of further Court Order, in accordance with the Pro Rata Allocation Formula, promptly upon receipt of the Settlement Payment.

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

5. To the extent that BACAP Funds has any scheduled claim or proof of interest or has filed a proof of claim or proof of interest in the Debtors' chapter 11 cases, such claim or interest is deemed disallowed in its entirety.

6. The Court retains jurisdiction to enforce the terms of the Settlement.

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Submitted By:

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Telecopy: (305) 358-1221
Attorneys for the Liquidating Trustee

Copies Furnished To:

James C. Moon, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.

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

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

- **Melissa Alagna** mma@gordichalagna.com, lag@gordichalagna.com
- **Vincent F Alexander** vfa@kttl.com, claudia.pena@lewisbrisbois.com;filemaildesig@lewisbrisbois.com
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