

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

In re:

CHAPTER 11

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

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

Debtors.

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**LIQUIDATING TRUSTEE'S MOTION TO
APPROVE SETTLEMENT WITH PATRICK SHEA**

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 ("Liquidating Trustee") for the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance Partners II Liquidating Trust (collectively, the "*Palm Beach Liquidating Trusts*"), by and through undersigned counsel, and pursuant to *Fed. R. Bankr. P.* 9019, seeks an Order from this Court approving a settlement of that certain Final Judgment After Clerk's Default (ECF No. 32) entered against Patrick Shea in Adversary Case No. 11-02982 (the "*Final Judgment*"). In support of this relief, the Liquidating Trustee states the following:

I. Factual Background

A. Procedural Background

1. On November 25, 2011, the Liquidating Trustee filed suit against Patrick Shea, Adversary Case No. 11-02982-PGH-A (the "*Shea Action*"). The Shea Action sought to avoid

and recover certain constructively fraudulent transfers made to Mr. Shea during 2004 (the “*Transfers*”).

2. On January 4, 2012, the Liquidating Trustee served the Complaint [ECF No. 1], Alias Summons and Notice of Pretrial/Trial in an Adversary Proceeding [ECF No. 7], and Order Setting Filing and Disclosure Requirements for Pretrial and Trial [ECF No. 8] via regular, first class United States mail, postage fully pre-paid, addressed to the Defendant at: Patrick Shea, 13905 325th Ave. NW, Princeton, MN 55371-8503. [ECF No. 9].

3. The foregoing pleadings were not been returned to Liquidating Trustee as undeliverable and an answer or responsive pleading to the Complaint was due on or before February 2, 2012.

4. On November 16, 2012, having received no answer or responsible pleading on the Complaint, the Liquidating Trustee filed his Verified Motion for Clerk’s Default against Mr. Shea [ECF No. 19].

5. On November 19, 2012, the Clerk of the Bankruptcy Court entered a Clerk’s Default against Mr. Shea [ECF No. 20].

6. Thereafter, on November 26, 2012, the Liquidating Trustee filed his Motion for Final Judgment After Clerk’s Default Against Patrick Shea [ECF No. 22] (the “*Motion for Final Judgment*”). After a hearing held on January 8, 2013, this Court entered (i) an order granting the Motion for Final Judgment [ECF No. 31] and (ii) the Final Judgment, in the amount of \$954,854.00.

7. Following the entry of the Final Default Judgment, the Plaintiff commenced collection proceedings against the Transferee in Minnesota. Shortly thereafter, Transferee contacted the Plaintiff through its legal counsel and the parties engaged in settlement discussions

which ultimately led to a consensual resolution of the Final Default Judgment as set forth below. Notably, through the Liquidating Trustee's various collection efforts, the Liquidating Trustee has determined that Mr. Shea has no collectible assets with which he could satisfy the Final Judgment.

II. Settlement Terms

8. The key aspects of the settlement between the parties ("Settlement")¹ are the following:

- a) Mr. Shea will pay (or cause to be paid) \$2,000.00 (the "Settlement Payment") to the Liquidating Trustee within two (2) business days following entry of an order approving the Settlement;²
- b) Any portion of the Settlement Payment made prior to the approval of the Stipulation by this Court will be held by counsel for the Liquidating Trustee.
- c) Following receipt of the Settlement Payment and entry of a final, non-appealable order by this Court approving the Settlement, the Liquidating Trustee, on behalf of the Liquidating Trusts, shall file a satisfaction of judgment in both this Court as well as the Minnesota state courts in which the Final Judgment was filed; and
- d) Mr. Shea shall not be entitled to any distribution from the Debtors' bankruptcy estates.

9. Pursuant to the Second Amended Joint Plan of Liquidation (the "Plan"), approved by this Court's Order dated October 21, 2010 [ECF No. 444], all monetary consideration received by the Palm Beach Liquidating Trusts in conjunction with the Settlement will be allocated as follows: 18% to Palm Beach Finance Partners Liquidating Trust and 82% to Palm Beach Finance II Liquidating Trust (the "Pro Rata Allocation Formula").

¹ Based on the small settlement amount involved, and the need for Court approval thereof, no separate written settlement agreement was prepared in this case.

² As of the date hereof, Mr. Shea has already remitted the Settlement Payment to the Liquidating Trustee, which is being held in a trust account pending this Court's approval of the Settlement.

III. Relief Requested

10. The Liquidating Trustee seeks an Order from this Court approving the Settlement. Federal Rule of Bankruptcy Procedure 9019 provides in relevant part that “[o]n motion ... and after a hearing on notice to creditors; the debtor ... and to such other entities as the Court may designate, the Court may approve a compromise or settlement.”

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. *See 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 of the range of reasonableness. *See W.T. Grant Co.*, 699 F.2d at 608; *see also In re Martin*, 91 F.3d 389 (3rd Cir. 1996); *In re Louise's Inc.*, 211 B.R. 798 (D. Del. 1997) (setting forth considerations by the Court for approval of a settlement, including: (i) the probability of success in litigation, (ii) the likely difficulties in collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (iv) the paramount interest of the creditors.

A. The Settlement Ought to be Approved

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

14. The Liquidating Trustee, on behalf of the Liquidating Trusts, believes that the Final Judgment is fully-enforceable. However, through his various collection efforts, the Liquidating Trustee has determined that Mr. Shea has no significant, collectible assets from which the Final Judgment could be satisfied. As such, the Liquidating Trustee believes that the Settlement is in the best interests of the Liquidating Trusts and their stakeholders, and the Liquidating Trustee asserts that this settlement falls well above the lowest point of reasonableness.

B. *The Contingency Fee is Waived*

15. Pursuant to the Plan and this Court's Order Approving the Trustee's Motion to Approve Hybrid Form of Compensation [ECF No. 223], Meland Russin & Budwick, P.A. ("MRB") is entitled to a fee of 10% of any affirmative recovery received by the Debtors' estates from a litigation matter pursued by the firm without further order of the Court ("Contingency Fee").

16. Given the small amount involved, MRB has agreed to waive the Contingency Fee in connection with the Settlement.

[Remainder of page left intentionally blank]

WHEREFORE, the Liquidating Trustee respectfully requests that this Court enter an Order (similar in form to the Order attached as Exhibit 1) (i) approving the Stipulation; and (ii) granting such other relief this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on March 3, 2017, via the Court's Notice of Electronic Filing upon the Registered Users listed on the attached Exhibit 2, via Regular U.S. Mail upon the parties listed on the Court's Manual Notice List attached as Composite Exhibit 3, the Court's Matrices in Case No. 09-36379-BKC-PGH and Case No. 09-36396-BKC-PGH attached as Composite Exhibit 4³, and those additional addresses set forth on Composite Exhibit 5.

s/ Jessica L. Wasserstrom
 Jessica L. Wasserstrom, Esquire
 Florida Bar No. 985820
jwasserstrom@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 Barry E. Mukamal,
 Liquidating Trustee*

³ “ADDL” means these additional parties served as a courtesy. *See Composite Exhibit 5*.

“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 2 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.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
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CHAPTER 11

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

Case No. 09-36379-PGH
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(Jointly Administered)

Debtors.

/

**ORDER GRANTING LIQUIDATING TRUSTEE'S
MOTION TO APPROVE SETTLEMENT WITH PATRICK SHEA**

THIS CAUSE came before the Court upon the *Liquidating Trustee's Motion to Approve Settlement with Patrick Shea* [ECF No. ____] (the "Motion").¹ The Court, having reviewed the Motion and noting that a Certificate of No Response and Request for Entry of Order has been filed, finds that the notice of the proposed compromise and settlement is sufficient to comply

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

with Bankruptcy Rules 9019 and 2002(a)(3), Local Rule 9013-1(D) and any other applicable notice requirement, and accordingly, it is:

ORDERED as follows:

1. The Motion is **GRANTED**.
2. The Settlement is **APPROVED**.
3. Mr. Shea shall pay (or cause to be paid) \$2,000.00 (the “**Settlement Payment**”) to the Liquidating Trustee within two (2) business days following entry of this Order.
4. The Settlement Payment will be allocated and apportioned among the Liquidating Trusts as follows: 18% to the Palm Beach Finance Partners Liquidating Trust and 82% to the Palm Beach Finance II Liquidating Trust (the “**Pro Rata Allocation Formula**”).
5. To the extent that Mr. Shea 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:

Jessica L. Wasserstrom, Esquire
 Florida Bar No. 985820
jwasserstrom@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 the Liquidating Trustee

Copies Furnished To:

Jessica L. Wasserstrom, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.

Mailing Information for Case 09-36379-PGH

Electronic Mail Notice List

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

- **Melissa Alagna** mma@gordichalagna.com, mtijerino@hollywoodfl.org
- **Vincent F Alexander** vfa@kttlaw.com, lf@kttlaw.com
- **Paul A Avron** pavron@bergersingerman.com, efile@ecf.inforuptcy.com;mday@bergersingerman.com
- **Scott L. Baena** sbaena@bilzin.com, eservice@bilzin.com;lflores@bilzin.com
- **Marc P Barmat** sscott@furrcohen.com, mbarmat@furrcohen.com;atty_furrcohen@bluestylus.com
- **Rachel K Beige** rachel.beige@csklegal.com, joseph.valdivia@csklegal.com
- **Sean M. Berkowitz** sean.berkowitz@lw.com,
chefiling@lw.com;roger.schwartz@lw.com;russell.mangas@lw.com;robert.malionek@lw.com;megan.fitzpatrick@lw.com;barbara.pipchok@lw.com;alicia.davis@lw.com
- **Steven M Berman** sberman@slk-law.com, bgoodall@slk-law.com
- **Mark D. Bloom** bloomm@gtlaw.com, MiaLitDock@gtlaw.com;miaeafbky@gtlaw.com
- **Ira Bodenstein** ibodenstein@shawgussis.com
- **Noel R Boeke** noel.boeke@hklaw.com, wendysue.henry@hklaw.com
- **Michael S Budwick** mbudwick@melandrussin.com,
ltannenbaum@melandrussin.com;mrbnefs@yahoo.com;mbudwick@ecf.courtdrive.com;ltannenbaum@ecf.courtdrive.com;phornia@ecf.courtdrive.com
- **Michael S Budwick** mbudwick@melandrussin.com,
ltannenbaum@melandrussin.com;mrbnefs@yahoo.com;mbudwick@ecf.courtdrive.com;ltannenbaum@ecf.courtdrive.com;phornia@ecf.courtdrive.com
- **Dennis M. Campbell** dcampbell@campbelllawfirm.net, gschmied@campbelllawfirm.net
- **Rilyn A Carnahan** rilyn.carnahan@gmlaw.com,
efileu1092@gmlaw.com;efileu1089@gmlaw.com;melissa.bird@gmlaw.com;efileu1435@gmlaw.com;efileu1094@gmlaw.com;efileu1093@gmlaw.com;gregory.stolz@gregorystolz.com
- **Francis L. Carter** flc@flcarterpa.com
- **Francis L. Carter** flc@katzbarron.com
- **Francis L. Carter** flc@katzbarron.com
- **Lisa M. Castellano** lcastellano@bplegal.com, kmurphy@bplegal.com;kpacifco@bplegal.com
- **Helen Davis Chaitman** ,jgorkhova@beckerny.com;lblanco@beckerny.com;cdavis@beckerny.com
- **Helen Davis Chaitman** hchaitman@beckerny.com,jgorkhova@beckerny.com;lblanco@beckerny.com;cdavis@beckerny.com
- **Franck D Chantayan** franck@chantayan.com
- **Daniel DeSouza** ddesouza@desouzalaw.com
- **John R. Dodd** doddj@gtlaw.com, miaecfbky@gtlaw.com;mialitdock@gtlaw.com
- **John D Eaton** jeaton@shawde-eaton.com, sramirez@shawde-eaton.com
- **Darren D. Farfante** darren.farfante@bipc.com, Denise.Strand@bipc.com
- **Heidi A Feinman** Heidi.A.Feinman@usdoj.gov
- **Jonathan S. Feldman** jfeldman@pbyalaw.com, eservicemia@pbyalaw.com
- **G Steven Fender** efileu1113@gmlaw.com,
efileu1094@gmlaw.com;efileu1092@gmlaw.com;leslie.marder@gmlaw.com;efileu1435@gmlaw.com;efileu1093@gmlaw.com;melissa.bird@gmlaw.com;gregory.stolz@gregorystolz.com
- **David S Foster** chefiling@lw.com
- **Robert G Fracasso Jr** rfracasso@shutts.com, fsantelices@shutts.com
- **Robert C Furr** bnasralla@furrcohen.com, atty_furrcohen@bluestylus.com
- **Solomon B Genet** sgenet@melandrussin.com,
ltannenbaum@melandrussin.com;mrbnefs@yahoo.com;sgenet@ecf.courtdrive.com;ltannenbaum@ecf.courtdrive.com;phornia@ecf.courtdrive.com
- **John H Genovese** jgenovese@gbj-law.com, hburke@gbj-law.com;gjbecf@gjb-law.com
- **Daniel L. Gold** dan.gold@wilsonelser.com, alma.cuevas@wilsonelser.com;Jackie.Benitez@wilsonelser.com;Thomas.Manisero@wilsonelser.com
- **Michael I Goldberg** michael.goldberg@akerman.com, charlene.cerda@akerman.com
- **Lawrence Gordich** LAG@gordichalagna.com, mma@gordichalagna.com
- **Scott M. Grossman** grossmansm@gtlaw.com, scottla@gtlaw.com;MiaLitDock@gtlaw.com;FTLLitDock@GTLaw.com;miaeafbky@gtlaw.com
- **Matthew W Hamilton** e-notice@fulcruminv.com
- **Zachary N James** zjames@melandrussin.com,
ltannenbaum@melandrussin.com;mrbnefs@yahoo.com;zjames@ecf.courtdrive.com;ltannenbaum@ecf.courtdrive.com;phornia@ecf.courtdrive.com
- **Kenneth M Jones** kjones@moodyjones.com
- **Michael A Kaufman** michael@mkaufmanpa.com, diamondmk@aol.com;kaufmanesq@gmail.com;glebron@mkaufmanpa.com;gstolzberg@mkaufmanpa.com
- **Stephen J Kolski Jr** stevekolski@skolskilaw.com, jessica@skolskilaw.com
- **Harris J. Koroglu** hkoroglu@shutts.com, fsantelices@shutts.com
- **James A Lodoen** jlodoen@lindquist.com, ghildahl@lindquist.com
- **Corali Lopez-Castro**clc@kttlaw.com, rcp@kttlaw.com
- **David S Mandel** dmandel@mandel-law.com, susan@mandel-law.com
- **Joshua A Marcus** jmarcus@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com
- **Joshua A Marcus** jmarcus@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com
- **Aleida Martinez Molina** amartinez@wsh-law.com, jfuentes@wsh-law.com
- **Paul J McMahon** pjm@pjmlawmiami.com
- **Brian M McKell** brian.mckell@wilsonelser.com, lourdes.riestra@wilsonelser.com
- **Thomas M. Messana** tmessana@messana-law.com, emair@messana-law.com;blieberman@messana-law.com;thurley@messana-law.com;tmessana@bellsouth.net;nbarrus@messana-law.com;ekates@bakerlaw.com;tzeichman@messana-law.com;nwslawfirm@gmail.com
- **Yvonne F Mizusawa** yvonne.f.mizusawa@frb.gov
- **James C. Moon** jmoon@melandrussin.com,
ltannenbaum@melandrussin.com;mrbnefs@yahoo.com;jmoon@ecf.courtdrive.com;ltannenbaum@ecf.courtdrive.com;phornia@ecf.courtdrive.com
- **Patrick M Mosley** pmosley@hwqlaw.com, telam@hwqlaw.com
- **Barry E Mukamal** bemtrustee@kapilamukamal.com, FL64@ecfcbis.com
- **Barry E Mukamal** bankruptcy@marcumllp.com, FL64@ecfcbis.com
- **Barry E. Mukamal** bemtrustee@kapilamukamal.com
- **David J Myers** myers@fsblegal.com
- **Office of the US Trustee** USTPRegion21.MM.ECF@usdoj.gov
- **Leslie S. Osborne** office@rorlawfirm.com
- **Kristopher E Pearson** kpearson@stearnsweaver.com,
mmasvidal@stearnsweaver.com;bank@stearnsweaver.com;rross@stearnsweaver.com;dillworthdp@ecf.epiqsystems.com;larrazola@stearnsweaver.com;cgraver@stearnsweaver.com
- **Jennifer H Pinder** Jennifer.pinder@myfloridalegal.com, zivile.rimkevicius@myfloridalegal.com,angela.godbey@myfloridalegal.com

- **Chad P Pugatch** cpugatch.ecf@rprslaw.com
- **Cristopher S Rapp** csrapp@kelleykronenberg.com, IRGeservice@kelleykronenberg.com
- **Patricia A Redmond** predmond@stearnsweaver.com, jmartinez@stearnsweaver.com;bank@stearnsweaver.com;rross@stearnsweaver.com;cgraver@stearnsweaver.com;sdaddese@akingump.com
- **Patricia A Redmond** predmond@stearnsweaver.com, jmartinez@stearnsweaver.com;bank@stearnsweaver.com;rross@stearnsweaver.com;cgraver@stearnsweaver.com;sdaddese@akingump.com
- **Jason S Rigoli** jrigo@furrcohen.com, sscott@furrcohen.com;atty_furrcohen@bluestylus.com
- **Kenneth B Robinson** krobinson.ecf@rprslaw.com
- **Joseph Rodowicz** bankruptcy@rodowiczlaw.com, rodowiczlaw@gmail.com
- **Robin J. Rubens** rjr@lkls.com, esf@lkls.com
- **Peter D. Russin** prussin@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com;prussin@ecf.courtdrive.com;ltannenbaum@ecf.courtdrive.com;phornia@ecf.courtdrive.com
- **Luis Salazar** salazar@salazarjackson.com, cloyd@salazarjackson.com;aguilar@salazarjackson.com;cabrera@salazarjackson.com;davila@salazarjackson.com;lee-sin@salazarjackson.com
- **Franklin H Sato** fsato@wickersmith.com, alazaro@wickersmith.com
- **Bradley M Saxton** bsaxton@whww.com, scolgan@whww.com;rweinman@whww.com;arox@whww.com;arox@ecf.courtdrive.com
- **Michael L Schuster** mmschuster@gjb-law.com, gibeef@gjb-law.com;mchang@gjb-law.com;chopkins@gjb-law.com;ekelly@gjb-law.com
- **Patrick S. Scott** patrick.scott@gray-robinson.com
- **Michael D. Seese** mseeese@seeselaw.com, sseward@seeselaw.com
- **Steven E Seward** steven.seward@gmail.com
- **Bradley S Shraiberg** bshraiberg@sfl-pa.com, dwoodall@sfl-pa.com;lrosettoparr@sfl-pa.com;scusack@sfl-pa.com;blee@sfl-pa.com;bshraibergecfmail@gmail.com;ematteo@sfl-pa.com
- **Paul Steven Singerman** singerman@bergersingerman.com, mdiaz@bergersingerman.com;efile@bergersingerman.com;efile@ecf.inforuptcy.com
- **Jeffrey I. Snyder** jsnyder@bilzin.com, eservice@bilzin.com;lflores@bilzin.com
- **James S Telepman** jst@fcohenlaw.com
- **Charles W Throckmorton** cwt@kttlaw.com, lf@kttlaw.com;ycc@kttlaw.com
- **Charles W Throckmorton** cwt@kttlaw.com, lf@kttlaw.com;ycc@kttlaw.com
- **Trustee Services Inc 2** court@trusteeservices.biz, sandirose.magder@gmail.com
- **Skipper J Vine** jonathan.vine@csklegal.com, Stefanie.copelow@csklegal.com;iraida.avila@csklegal.com;denise.allwine@csklegal.com
- **Skipper J Vine** jonathan.vine@csklegal.com, Stefanie.copelow@csklegal.com;iraida.avila@csklegal.com;denise.allwine@csklegal.com
- **Joseph Wasserkrug** jwasserkrug@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com;jwasserkrug@ecf.courtdrive.com;ltannenbaum@ecf.courtdrive.com;phornia@ecf.courtdrive.com
- **Jessica L Wasserstrom** jwasserstrom@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com;jwasserstrom@ecf.courtdrive.com;ltannenbaum@ecf.courtdrive.com;phornia@ecf.courtdrive.com
- **Jessica L Wasserstrom** jwasserstrom@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com;jwasserstrom@ecf.courtdrive.com;ltannenbaum@ecf.courtdrive.com;phornia@ecf.courtdrive.com
- **Morris D. Weiss** morris.weiss@wallerlaw.com, sherri.savala@wallerlaw.com;annmarie.jezisek@wallerlaw.com
- **George L. Zinkler** gzinkler.ecf@rprslaw.com

Case 09-36379-PGH Doc 3185 Filed 03/03/17 Page 11 of 25
Manual Notice List for both cases: 09-36379 and 09-36396
The following is the list of parties who are **not** on the list to receive email notice/service for this case (who therefore require manual noticing/service). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Michael B Apfeld 780 North Water Street Milwaukee, WI 53202	James F Bender Nagel 1501 K St, NW Washington, DC 20005	John B Berringer 599 Lexington Ave 22nd Fl New York, NY 10022
Debra Bogo-Ernst 71 S Wacker Drive Chicago, IL 60606	Sean O'D. Bosack 833 East Michigan Street Suite 1800 Milwaukee, WI 53202	Carl D. Ciochon 1111 Broadway 24th Floor Oakland, CA 94607
Alicia C. Davis 330 N Wabash Ave #2800 Chicago, IL 60611	Andrew Davis 150 S Fifth St. #2300 Minneapolis, MN 55402	Gregory W Deckert 12912 63 Ave N Maple Grove, MN 55369
Mary Sue Donohue 5355 Town Center Rd #801 Boca Raton, FL 33486	Gonzalo R Dorta 334 Minorca Ave Coral Gables, FL 33134	Edward J Estrada 599 Lexington Ave 22 Flr New York, NY 10022
William Evanoff 1 S Dearborn St Chicago, IL 60603	Evan K Farber 599 Lexington Ave 22nd Fl New York, NY 10022	Michael B Fisco 90 S 7th St #2200 Minneapolis, MN 55402
Megan C. Fitzpatrick 330 N Wabash Ave #2800 Chicago, IL 60611	John Harper 100 S 5 St #1400 Minneapolis, MN 55402	Jonathan R. Ingrisano 780 N Water St. Milwaukee, WI 53202
Matthew B Kaplan 1100 New York Ave, NW #500 Washington, DC 20005	John B Kent POB 447 Jacksonville, FL 32201	Paula S Kim 161 N Clark St #4200 Chicago, IL 60601
John L. Kirtley 833 East Michigan Street Suite 1800 Milwaukee, WI 53202	Bryan Krakauer 1 S Dearborn St Chicago, IL 60603	Robert T. Kugler 150 S Fifth St. #2300 Minneapolis, MN 55402
Joshua D. Yount 71 S Wacker Drive Chicago, IL 60606	Steven Thomas 14 27th Ave Venice, CA 90291	Lucia Nale 71 S Wacker Drive Chicago, IL 60606
Jerry L Switzer 161 N Clark St #4200 Chicago, IL 60601	Roger G. Schwartz Latham & Watkins LLP 885 Third Ave New York, NY 10022-4834	Miles N. Ruthberg ADDL 885 Third Avenue New York, NY 10022
Thomas Manisero ADDL 1133 Westchester Avenue White Plains, NY 10604	Julie P Vianale BAD 2499 Glades Rd #112 Boca Raton, FL 33431	Richard G. Wilson DUP 90 South Seventh St. Minneapolis, MN 55402
Robert J. Malionek ADDL 885 Third Avenue New York, NY 10022		

Label Matrix for local noticing

113C-9

Case 09-36379-PGH

Southern District of Florida

West Palm Beach

Wed Feb 22 15:08:40 EST 2017

Blackpool Absolute Return Fund, LLC

c/o Douglas Ralston

3633 Driftwood Drive

Long Grove, IL 60047-5235

NNR

Ashton Revocable Living Trust

c/o Helen Chaitman

45 Broadway

New York, NY 10006-3007

NEF

BMO Harris Bank, N.A.

c/o Charles W. Throckmorton

NEF

2525 Ponce de Leon

9th Floor

Coral Gables, FL 33134-6039

Crown Financial Ministries, Inc.

c/o Timothy M. Obitts, Esq.

Gammon & Grange, P.C.

8280 Greensboro Dr., 7th Floor

McLean, VA 22102-3885

Douglas A. Kelly, Chapter 11 Trustee

c/o Bradley M. Saxton

PO Box 1391

Orlando, FL 32802-1391

NEF

Father's Heart-A Ranch for Children Inc

Shumaker, Loop, & Kendrick, LLP

101 E. Kennedy Blvd

Suite 2800

Tampa, Fl 33602-5153

First Baptist Church of Tequesta, Inc.

c/o Roberto M. Vargas, Esq.

Jones Foster Johnston & Stubbs, P.A.

505 S. Flagler Drive

Suite 1100

West Palm Beach, FL 33401-5950

Geoff Varga, as Liquidating Trust Monitor fo

Levine Kellogg, et al. c/o RobinJRubens

201 S. Biscayne Blvd., 34th Floor

Miami, FL 33131-4332

Fulcrum Credit Partners LLC

c/o Matthew W Hamilton

111 Congress Ave #2550

Austin, TX 78701-4044

NEF

General Electric Credit Corporation

c/o Patricia A. Redmond

Stearns Weaver Miller

NEF

150 W. Flagler St., #2200

Miami, FL 33130-1545

Golden Sun Capital Management, LLC

c/o Michael L. Schuster, Esq.

100 SE 2nd Street

Suite 4400

Miami 33131-2118

NEF

c/o Franck D. Chantayan

Carlton Fields, P.A.

525 Okeechobee Blvd., Suite 1200

West Palm Beach, FL 33401-6350

NEF

JDFF Master Fund, LP

c/o Patrick M. Mosley

Hill Ward Henderson PA

101 E. Kennedy Blvd., Suite 3700

Tampa, FL 33602-5195

KBC Financial Products (Cayman Islands) Ltd.

INC

Kaufman Rossin, P.A.

c/o Daniel L. Gold

100 Southeast Second St #3800

Miami, FL 33131-2126

NEF

Kaufman, Rossin & Co.

c/o Rice Pugatch Robinson & Schiller

101 NE 3rd Avenue

NEF

Suite1800

Fort Lauderdale, FL 33301-1162

Kinetic Partners (Cayman) Ltd

c/o Robin Rubens, Esq. at LKLSG

201 S. Biscayne Blvd., 22 FL

Miami, FL 33131-4338

NEF

Levine Kellogg Lehman Schneider & Grossman L

LKLSG c/o Robin Rubens

201 S. Biscayne Blvd., 34th Fl

Miami, FL 33131-4332

NEF

M&I Marshall & Ilsley Bank

c/o Charles W. Throckmorton

2525 Ponce de Leon

9th Floor

Coral Gables, FL 33134-6039

MIO Partners Inc

c/o Robin E Keller Esq

590 Madison Ave

New York, NY 10022-2524

PBFP

Minnesota Teen Challenge, Inc.

c/o

Paul Joseph McMahon, P.A.

Miami, FL 33129 US

NEF

Mosaic Fund, L.P.

c/o Kristopher E. Pearson

Stearns Weaver Miller

150 W. Flagler St.

Ste. 2200

Miami, FL 33130-1545

NEF

Palm Beach Finance II, L.P.

3601 PGA Blvd

Suite 301

Palm Beach Gardens, FL 33410-2712

NNR

Palm Beach Finance Partners, L.P.

3601 PGA Blvd

Suite 301

Palm Beach Gardens, FL 33410-2712

NNR

Prison Fellowship Ministries, Inc.

c/o Timothy M. Obitts, Esq.

Gammon & Grange, P.C.

8280 Greensboro Dr., 7th Floor

McLean, VA 22102-3885

Raymond G. Feldman Family Ventures, L.P.
c/o of Richard Feldman
4644 Balboa Ave.
Encino, CA 91316-4105

Reed Smith LLP
599 Lexington Ave 22 Flr
New York, NY 10022-7650

SCALL, LLC
c/o Edward Toptani, Esq.
127 East 59th Street
New York, NY 10022-1225

Sims Moss Kline & Davis, LLP
Davis Gillett Mottern & Sims LLC
c/o Jerry L Sims
Promenade #2445
1230 Peachtree St NE
Atlanta, GA 30309-3574

Sky Bell Select, LP
c/o Thomas M. Messana NEF
401 East Las Olas Blvd #1400
Ft. Lauderdale, FL 33301-2218

Sumnicht Money Masters Fund I Liquidating Tr
Custodian & Trustee, National Advisors
8717 W. 110th St #700
Suite 300
Overland Park, KS 66210-2103

Sumnicht Money Masters Fund LP
Sumnicht Hedge Fund Advisors, LLC
c/o Vern Sumnicht
W6240 Communication Court
Appleton, WI 54914-8549

The Christensen Group, Inc.
Wicker Smith O'Hara McCoy & Ford, P
515 North Flagler Drive
Suite 1600
West Palm Beach, FL 33401-4346

Thomas J. Ginley Life Ins. Trust Dated 1-22-
6650 N. Tower Circle Drive
Lincolnwood, IL 60712-3218

Toledo Fund, LLC
c/o Edward Toptani, Esq.
127 East 59th Street
New York, NY 10022-1225

Trustee Services Inc 2
Ken Welt NEF
3790 N 28 Tr
Hollywood, FL 33020-1112

West Capital Management
c/o Simon B. Paris
1 Liberty Pl 52 FL
1650 Market St
Philadelphia, PA 19103-7301

ZCALL, LLC
c/o Edward Toptani, Esq.
127 East 59th Street
New York, NY 10022-1225

Agile Safety Fund (International)
730 17th Street
Suite 550
Denver, CO 80202-3539

Agile Safety Fund (Master Fund)
730 17th Street
Suite 550
Denver, CO 80202-3539

Agile Safety Variable Fund, L.P.
730 17th Street
Suite 550
Denver, CO 80202-3539

Albert Liguori
16590 Crownbury Way, #201
Ft. Myers, FL 33908-5695

Alton Opitz
144 Newhaven Ln
Butler, PA 16001-7910

Amy Davenport
3 Greenwich Dr
Midland, TX 79705-6418

Amy Davenport
POB 3511
Midland, TX 79702-3511

Armadillo Fund
40 Random Farms Cir
Chappaqua, NY 10514-1000

BTA Oil Producers
104 S Pecos St
Midland, TX 79701-5099

Barry Beal
104 S Pecos St
Midland, TX 79701-5021

BayRoc Associates
c/o JamiScott
15 W 53rd St. #24-B
New York, NY 10019-5401

Beacon Partners, Ltd
3030 McKinney Ave, #305
Dallas, TX 75204-7472

Beal Family Trust FBO Kelly S Beal
104 S Pecos St
Midland, TX 79701-5021

Beal GST Exemption Trust
104 S Pecos St
Midland, TX 79701-5021

Blackpool Absolute Return Fund, LLC
c/o John E. Page, Esquire N-WD
Shraiberg, Ferrara & Landau, P.A.
2385 N.W. Executive Center Drive, Suite
Boca Raton, Florida 33431-8579

Bruce Prevost #15810-041
9595 W Quincy Ave
Littleton, CO 80123-1159

Calhoun Multi-Series Fund, L.P.
c/o Transcontinental Fund Administrator
33 N. LaSalle Street #2210
Chicago, IL 60602-3848 N-WD

Cannonball Funds/Globefin Asset Management
PO Box 218
Wickatunk, NJ 07765-0218

Carlton Beal Family Trust FBO Barry Beal
104 S Pecos St
Midland, TX 79701-5021

Christopher J Topolewski, West Capital Management
c/o Simon B. Paris
1 Liberty Pl 52 FL
1650 Market St
Philadelphia, PA 19103-7301

Claude Lestage
4893 N Kay
Palm Beach Gardens, FL 33418-6167

Cohen Milstein Sellers & Toll, PLLC
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, D.C. 20005-3964
Attn: Andrew N. Friedman, Esq.

Compass Special Situations Fund LP
c/o Robin E. Keller, Esq.
Hogan Lovells US LLP
875 Third Ave
New York, NY 10022-7222

David W Harrold
RRM Miami
Residential ReEntry Office
401 N Miami Avenue
Miami, FL 33128-1830

Deer Island, LP
By Agent, Kenneth L. Grinnell, Esq.
1 Post Office Sq.
Boston, MA 02109-2106

Dennis Dobrinich
3860 Dogwood Ave
Palm Beach Gardens, FL 33410-4755

Douglas A. Kelley, Chapter 11 Trustee
Attn: James A. Rubenstein, Esq.
Moss and Barnett PBFP
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402-4129

Douglas A. Kelley, Chapter 11 Trustee
Attn: Terrence J. Fleming, Esq.
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2100

Father's Heart Family Foundation Inc. (501c3)
5155 W Quincy Ave E 102
Denver, CO 80236-3255

Frank Vennes #05123-059
FCI Coleman Low
Federal Correctional Institution
POB 1031
Coleman, FL 33521-1031

Freestone Capital Management, Inc
701 Fifth Ave 74th Floor
Seattle, WA 98104-7016

Fulbright & Jaworski
Norton Rose Fulbright US LLP
RBC Plaza
60 South Sixth St #3100
Minneapolis, MN 55402-1114

George & Nancy Slain
1517 Conifer Ridge Lane
Prescott, AZ 86303-4946

George Novograder
875 N Michigan Ave #3612
Chicago, IL 60611-1947

Gillett Mottern and Walker, LLP
1230 Peachtree St. NE #2445
Atlanta, GA 30309
At. Bob Mottern - Sky Bell
Pete L DeMahy, Esquire 30309-7500

Golden Gate VP Absolute Return Fund, LP
c/o Michael J Cordone, Esq
2600 One Commerce Square
Philadelphia, PA 19103-7018

Golden Sun Capital Management
Attn: Solomon Halpern
885 Arapahoe Ave
Boulder, CO 80302-6011

Golden Sun Multi-Manager Fund
ATTN: Paul Flynn (Old Hill Partners)
1120 Post Rd.
Darien, CT 06820-5447

Guy M. Hohmann, Esq.
100 Congress Ave
18th Floor
Austin, TX 78701-4042

HSBC USA, Inc.
c/o Franck D. Chantayan NEF
Carlton Fields, PA
525 Okeechobee Blvd., Suite 1200
West Palm Beach, FL 33401-6350

Holland & Knight, LLP
701 Brickell Ave
Suite 3000
Attn: Mitchell Herr
Miami, FL 33131-2847

JamiScott
c/o Leonard & Lillian Schneider
15 W 53rd St #24-B
New York, NY 10019-5401

JamiScott LLC
15 W 53rd St #24-B
New York, NY 10019-5401

Janet Bonebrake
13956 San Pablo Ave., Apt. 336
San Pablo, CA 94806-5304

Janette Bancroft
c/o Kurt G. Bancroft
9052 SW 103 Ave
Ocala, FL 34481-8230

Jerry L. Sims, Davis Gillett Mottern & Sims
Promenade Ste 2445
1230 Peachtree St NE
Atlanta, GA 30309-3574

John Bergman
c/o Erika L. Morabito, Esq.
Foley & Lardner LLP
3000 K St NW, Ste 600
Washington, DC 20007-5111

John Daniel
225 Wellington Lane
Cape Girardeau, MO 63701-9540

Judith Goldsmith
3 Water Ln
Manhasset, NY 11030-1021

K&K Capital Management, Inc.
8701 N. Merrill St
Niles, IL 60714-1922

KBC Finance Products (Cayman Islands) Ltd.
111 Old Broad Street
London, England
EC2N 1FP

Kaufman Rossin & Co.
2699 S Bayshore Dr
Miami, FL 33133-5486

Keleen H. Beal Estate
104 S Pecos St
Midland, TX 79701-5021

Kelly Beal
104 S Pecos St
Midland, TX 79701-5021

LAB Investments Fund, LP
ATTN: Larry Bowman
P.O. Box 620234
Woodside, CA 94062-0234

Leslie Schneider
c/o JamiScott
15 W 53rd St., #24-B
New York, NY 10019-5401

Lewis B. Freeman & Partners, Inc.
c/o Kenneth A. Welt, Receiver NEF
1776 North Pine Island Road
Suite 101
Plantation, Florida 33322-5200

Lionheart LP
by and through David A. Kite, Agent
160 N Wacker Dr, 4th Fl
Chicago, IL 60606-1566

Lynda Beal
104 S Pecos St
Midland, TX 79701-5021

M. Lee Toothman
216 Barbados Dr
Jupiter, FL 33458-2917

MB Investments, LLC
1 N Franklin St #625
Chicago, IL 60606-3532

MIO Partners Inc
Attn: Casey S Lipscomb
Vice President-Legal and Secretary
245 Park Ave 13 Flr
New York, NY 10167-2300

Marder Investment Advisors Corp.
8033 Sunset Blvd, #830
Los Angeles, CA 90046-2401

Mark Prevost
2372 Hidden Ridge Ln
Jasper, AL 35504-7268

Martin Casdagli
554 E Coronado Rd
Santa Fe, NM 87505-0347

McKinsey Master Retirement Trust
c/o Robin E. Keller, Esq.
Hogan Lovells US LLP
875 Third Ave
New York, NY 10022-7222

Mosaic Capital Fund LLC
c/o Philadelphia Financial
Attn.: John F Reilly
One Liberty Place
1650 Market St 54th Place
Philadelphia, PA 19103-7309

Nancy Beal
104 S Pecos St
Midland, TX 79701-5021

Nancy Dobrinich
3860 Dogwood Ave
Palm Beach Gardens, FL 33410-4755

Nancy Hollingsworth
30777 Riverside Ln
Trappe, MD 21673-1798

NetWide Capital LLC
P.O. Box 957
Boulder, CO 80306-0957

Office of the US Trustee
51 S.W. 1st Ave. NEF
Suite 1204
Miami, FL 33130-1614

Palm Beach Finance Holdings, Inc.
c/o Lindquist & Vennum, PLLP
80 South Eighth Street, Ste 4200
Minneapolis, MN 55402-2223

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

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

Pemco Partners, LP
8 Lyman St, #204
Westborough, MA 01581-1487

Petters Company, Inc.
c/o Lindquist & Vennum, PLLP
80 South Eighth St, Ste 4200
Minneapolis, MN 55402-2223

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

Randall Linkous
 1174 SW 27 Ave
 Boynton Beach, FL 33426-7824

Robert Davenport
 POB 3511
 Midland, TX 79702-3511

Robert Davenport, Jr
 104 S Pecos St
 Midland, TX 79701-5021

Ron Priestley
 5565 N Espina Rd
 Tuscon, AZ 85718-5101

Ronald R. Peterson
 Jenner & Block LLP
 353 North Clark St.
 Chicago, IL 60654-5474

Ronald R. Peterson
 c/ Wilkie Farr & Gallagher, LLP
 Attn: Michael S. Schachter, Esq.
 787 Seventh Ave
 New York, NY 10019-6099 PBFP

Ronald R. Peterson
 c/o McDermott Will & Emery, LLP
 Attn: Lazar P. Raynal, Esq.
 227 West Monroe Street
 Chicago, IL 60606-5096

SALI Fund Services, LLC
 6836 Austin Center St #320
 Austin, TX 78731-3193

SBL-DIF
 c/o Robin E. Keller, Esq.
 Hogan Lovells US LLP
 875 Third Ave
 New York, NY 10022-7222

SSR Capital Partners, LP
 c/o R. James George, Jr., Esq.
 114 W 7th St #1100 N-WD
 Austin, TX 78701-3015

SSR Capital Partners, LP
 c/o R. James George, Jr., Esq.
 114 W. Seventh Street N-WD
 Suite 1100
 Austin, TX 78701-3015

Sage Capital Resources
 3006 Julia St W, Unit A
 Tampa, FL 33629-8809

Sandra Linkous
 1174 SW 27 Ave
 Boynton Beach, FL 33426-7824

Sarah Stroebel, Srnr Corp Counsel
 U.S. Bank National Association
 800 Nicollet Mall
 Minneapolis, MN 55402-2511

Scott Schneider
 c/o JamiScott
 15 W 53rd St, #24-B
 New York, NY 10019-5401

Special Situations Investment Fund, LP
 c/o Robin Keller, Esq.
 Hogan Lovells US LLP
 875 Third Avenue
 New York, NY 10022-7222

Spencer Beal
 104 S Pecos St
 Midland, TX 79701-5021

Spencer Evans Beal Family Trust
 104 S Pecos St
 Midland, TX 79701-5021

Spring Investor Services Inc.
 4 Nason Hill Lane
 Sherborn, MA 01770-1281

Spring Investor Services Inc.
 By Agent, Philip J. Davis, CPA
 50 Congress St, Ste 330
 Boston, MA 02109-4062

Sterling Management Inc.
 c/o Dave Engstrom
 14 Basswood Dr
 Santa Rosa Beach, FL 32459-4366

Steven Feder
 730 17th Street
 Suite 550
 Denver, CO 80202-3539

Strategic Stable Return Fund (ID), LP
 c/o CVP SPV LLC
 Attn: General Counsel
 49 W Putnam Ave
 Greenwich, CT 06830-5328

Strategic Stable Return Fund II, LP
 c/o CVP SPV LLC
 Attn: General Counsel
 49 W Putnam Ave
 Greenwich, CT 06830-5328

Sunnicht Money Masters Fund I
 Liquidating Trust I
 Cust/Ttee Nat'l Advisors Trust Co
 800 E 101st Ter Ste 300
 Kansas City, MO 64131-5309

Sunnicht Money Masters Fund I
 Liquidating Trust I N-WD
 c/o John E. Page
 2385 NW Executive Center Dr. #300
 Boca Raton, FL 33431-8530

Sunnicht Money Masters Fund, LP
 c/o John E. Page, Esquire
 Shraiberg Ferrara & Landau PA
 2385 NW Executive Center Dr. #300
 Boca Raton, FL 33431-8530

Table Mountain Capital, LLC
 1035 Pearl St. #400
 Boulder, CO 80302-5127

Ted Goldsmith
 3 Water Ln
 Manhasset, NY 11030-1021

The Beal Trust U/A 4/17/68
 104 S Pecos St
 Midland, TX 79701-5021

Tradex Global Advisors
 35 Mason St, 4th Fl
 Greenwich, CT 06830-5433

U.S. Bank National Association
 c/o Richard G. Wilson, Esq.
 Maslon Edelman Borman & Brand LLP
 90 S 7th Street, Suite 3300
 Minneapolis, MN 55402-4104

VAS Partners, LLC
 Attn: Vincent P Allegra
 4401 W Roosevelt Rd
 Hillside, IL 60162-2031

Vincent Allegra
 449 S Evergreen St
 Bensenville, IL 60106-2505

West Capital Management
 1818 Market St, #3323
 Philadelphia, PA 19103-3655

Wilbur Hobgood
 2189 Radnor Ct
 North Palm Beach, FL 33408-2157

Barry Mukamal CPA
 1 SW 3 Ave, Ste 2150
 Miami, FL 33131

NEF

Barry E Mukamal
 1 SE 3 Avenue Ste 2150
 Box 158
 Miami, FL 33131-1716

NEF

Barry E. Mukamal
 1 SE 3 Ave. Ste 2150
 Miami, FL 33131-1716

Barry E. Mukamal
 1 SE 3rd Ave 10th FL #2150
 Miami, FL 33131-1716

NEF

Boris Onefater
 305 Madison Ave #2036
 New York, NY 10165-0027

NNR

Brett A Stillman
 PC Doctor
 3300 N Palmaire Dr #407
 Pompano Beach, FL 33069-4235

Brian Cummins
 Champion Legal Graphics and Video
 306 Alcazar Ave #201
 Coral Gables, FL 33134-4318

Bruce Prevost
 c/o Rappaport Osborne & Rappaport PL
 1300 N Federal Hwy #203
 Boca Raton, FL 33432-2848

NEF

Carolyn Robbins Manley
 Carolyn Robbins Jury Simulations, Inc
 1933 S Oak Haven Cir
 North Miami Beach, FL 33179-2834

Catherine A Ghiglieri
 Ghiglieri & Company
 2300 Cypress Point West
 Austin, TX 78746-7117

NNR

Chad P. Pugatch
 RPRS, PA
 101 NE 3rd Ave., #1800
 Ft. Laud., FL 33301-1252

NEF

Christopher Flynn
 c/o Charles W. Throckmorton
 2525 Ponce de Leon
 9th Floor
 Coral Gables, FL 33134-6039

Christopher Laursen
 National Economic Research Associates,
 1255 23rd St NW
 Washington, DC 20037-1169

Daniel N. Rosen
 300 Avenue North #200
 Minneapolis, MN 55425-5527

NNR

David Harrold
 c/o Rappaport Osborne & Rappaport, PL
 1300 N Federal Hwy #203
 Boca Raton, FL 33432-2848

David S Mandel
 Mandel & Mandel LLP
 1200 Alfred I. duPont Bldg
 169 East Flagler St
 Miami, FL 33131-1205

Elliot B Kula
 Kula & Samson, LLP
 17501 Biscayne Blvd
 Aventura, FL 33160-4804

NNR

Eric Rubin
 6861 SW 196 Ave #201
 Ft. Lauderdale, FL 33332-1658

Gerard A McHale, Jr
 1601 Jackson St #200
 Ft Myers, FL 33901-2968

NNR

Hubert Thomas Wilkins III
 Robert Hughes Associates, Inc
 508 Twilight Trail #200
 Richardson, TX 75080-8100

NNR

Ira H Holt Jr
 Analytic Focus, LLC
 11467 Huebner Rd, #4200
 San Antonio, TX 78230-1075

James S. Feltman
 600 Brickell Ave #2525
 Miami, FL 33131-3082

NNR

Jay P Tarshis
 Arnstein & Lehr LLP
 120 S. Riverside Plaza #1200
 Chicago, IL 60606-3941

NNR

Jeffrey H Sloman 1 SE Third Ave #1820 Miami, FL 33131-1704	NNR	John Daniel c/o Patrick M. Mosley Hill Ward Henderson PA 101 E Kennedy Blvd, Suite 3700 Tampa, FL 33602-5195	John D. Eaton Rasco Klock Reininger 283 Catalonia Avenue, 2nd Floor Coral Gables, FL 33134-6712	NNR
John H Genovese 100 SE 2 St Ste 4400 Miami, FL 33131-2118	NEF	Jonathan Guy Manning Campbell's Law Firm Willow House Cricket Sq POB 884 Grand Cayman KY1-1103 Cayman Islands George Town	Kenneth A Ralston c/o Douglas Ralston 3633 Driftwood Drive Long Grove, IL 60047-5235	
Kenneth A Welt Trustee Services, Inc. 8255 West Sunrise Boulevard Suite #177 Plantation, FL 33322-5403	NEF	Kevin O'Halloran Newbridge Management, LLC 1720 Peachtree St #425N Atlanta, GA 30309-2449	Leslie Roy Grossman 9132 Vander Cove Boynton Beach, FL 33473-4994	NNR
Luke Dalchow c/o Fabian Hoffner 310 4th Ave South Suite 5010 Minneapolis, MN 55415-1053		Lynn E Turner Hemming Morse, LLP 725 S Figueroa St #2950 Los Angeles, CA 90017-5474	Marc Hurwitz Crossroads Investigations, Inc. 1835 NE Miami Gardens Dr #547 North Miami Beach, FL 33179-5035	
Marie Ashton c/o Helen Chaitman 45 Broadway New York, NY 10006-3007	NEF	Michael Lesser 68 Mountainview Rd Millburn, NJ 07041-1532	Michael R Slade Callaway & Price Inc 1639 Forum Pl #5 West Palm Beach, FL 33401-2330	NNR
Michael S Budwick Esq 200 S Biscayne Blvd # 3200 Miami, FL 33131-5323	NEF	Michelle Harrold c/o Furr and Cohen, P.A. 2255 Glades Road Suite 337W Boca Raton, FL 33431-7379	Nancy B Rapoport 530 Farrington Court Las Vegas, NV 89123-0622	NNR
Patrick M. Mosley Hill Ward Henderson 101 E. Kennedy Blvd., Suite 3700 Tampa, FL 33602-5195		Paul A Avron Esq. One Town Center Road, Ste. 301 Boca Raton, FL 33486-1014	Paul Steven Singerman Esq 1450 Brickell Ave #1900 Miami, FL 33131-3453	NEF
Peter Hagan Berkeley Research Group 2200 Powell St., Ste. 1200 Emeryville, CA 94608-1833	NNR	Richard Painter 7128 Mark Terrace Dr Edina, MN 55439-1628	Soneet R Kapila Kapila & Company 1000 S Federal Hwy #200 Ft. Lauderdale, FL 33316-1237	NEF
Stephen Williams 59 Damonte Ranch Pkwy #3360 Reno, NV 89521-1907		Steven Bakaysa 2251 Wigwam Pkwy #1026 Henderson, NV 89074-6235	Steven I Fried 4400 Bayou Blvd #6 Pensacola, FL 32503-1905	NNR

Label Matrix for local noticing 113C-9 Case 09-36396-PGH Southern District of Florida West Palm Beach Wed Feb 22 15:09:14 EST 2017	NNR	Geoff Varga, as Liquidator c/o Robin J. Rubens 201 S Biscayne Blvd 34 Fl Miami, FL 33131-4332	NEF	Palm Beach Finance II, L.P. 3601 PGA Blvd Suite 301 Palm Beach Gardens, FL 33410-2712	NNR
US Trust, Co-Trustee of the Maxine B Adler T 5200 Town Center Road #500 Boca Raton, FL 33486-1018		ARIS Capital Management 333 SE 2nd Ave #2012 Miami, FL 33131-2177		ARIS Multi-Strategy Fund, LP Aris Capital Management 333 SE 2nd Ave #2012 Miami, FL 33131-2177	
Agile Safety Fund (Master Fund) 730 17th Street Suite 550 Denver, CO 80202-3539	PBFP	Agile Safety Variable Fund, L.P. 730 17th Street Suite 550 Denver, CO 80202-3539	PBFP	Alton Opitz 144 Newhaven Ln Butler, PA 16001-7910	PBFP
Barnett Capital Ltd. 450 Skokie Blvd, #604 Northbrook, IL 60062-7914		Barry Beal 104 S Pecos St Midland, TX 79701-5021	PBFP	BayRoc Associates LLC c/o JamiScott LLC 15 West 53rd St #24-B New York NY 10019-5401	PBFP
Blackpool Absolute Return Fund, LLC c/o John E. Page, Esquire Shraiberg, Ferrara & Landau, P.A. 2385 N.W. Executive Center Drive, # Boca Raton, Florida 33431-8579	N-WD	Blackpool Partners, LLC c/o John E. Page, Esquire Shraiberg, Ferrara & Landau, P.A. 2385 N.W. Executive Center Drive, # Boca Raton, Florida 33431-8579	N-WD	Bruce Prevost #15810-041 9595 West Quincy Avenue Littleton, CO 80123-1159	PBFP
Centermark Asset Management 21320 Baltic Dr Cornelius, NC 28031-6425		Clarridge Associates LLC c/o JamiScott LLC 15 West 53rd St #24-B New York NY 10019-5401		Cohen Milstein Sellers & Toll, PLLC 1100 New York Avenue, N.W. Suite 500, West Tower Washington, D.C 20005-3964 Attn: Andrew N. Friedman, Esq.	PBFP
Compass Offshore Special Situations, PCC c/o Compass ITV LLC 245 Park Ave FL 13 New York, NY 10167-2300		David Harrold RRM Miami Residential ReEntry Office 401 N Miami Avenue Miami, FL 33128-1830	PBFP	Douglas A. Kelley, Chapter 11 Trustee Attn: James A. Rubenstein, Esq. 4800 Wells Fargo Center 90 South Seventh Street Minneapolis, MN 55402-3903	PBFP
Douglas A. Kelley, Chapter 11 Trustee Attn: Terrence J. Fleming, Esq. 4200 IDS Center 80 South Eighth Street Minneapolis, MN 55402-2100	PBFP	Frank Vennes #05123-059 FCI Coleman Low Federal Correction Institution POB 1031 Coleman, FL 33521-1031	PBFP	Fulbright & Jaworski Norton Rose Fulbright US LLP RBC Plaza 80 South Sixth Stt Minneapolis, MN 55402	PBFP
Genesis Capital Attention: Mike Dubinsky 7191 Wagner Way NW, Suite 302 Gig Harbor, WA 98335-6909		Geoffrey Varga and Neil Morris Joint Liquidators of Palm Beach Offshore c/o Mark W. Eckard, Esq. 1201 N. Market Street, Suite 1500 Wilmington, DE 19801-1163		Gillett Mottern and Walker LLP 1230 Peachtree Street NE #2445 Atlanta, GA 30309 Attn: Bob Mottern - Sky Bell Pete L. DeMahy, Esquire 30309-7500	PBFP
Golden Sun Capital Management ATTN: Keith Wellner (Old Hill Partners) 1120 Post Rd. Darien, CT 06820-5447	PBFP	Golden Sun Multi-Manager Fund, LP ATTN: Paul Flynn (Old Hill Partners) 1120 Post Rd. Darien, CT 06820-5447		Guardian Capital, LLC 3018 Devon Road Durham, NC 27707-4544	

Guy M. Hohmann, Esq.
100 Congress Ave
18th Floor
Austin, TX 78701-4042

PBFP

HSBC USA, INC.
c/o Franck D. Chantayan
Carlton Fields, P.A.
525 Okeechobee Blvd., Suite 1200
West Palm Beach, FL 33401-6350

NEF

HSBC USA, Inc.
HSBC Alternative Fund Services
330 Madison Ave, 5th Floor
New York, NY 10017-5042

Hillcrest Properties, c/o Stephen Willia
59 Damonte Ranch Pkwy, #B-360
Reno, NV 89521-1907

Holland & Knight, LLP
701 Brickell Ave
Suite 3000
Attn: Mitchell Herr
Miami, FL 33131-2847

PBFP

James Corydon
6650 N Tower Circle Dr
Lincolnwood, IL 60712-3218

Jamiscott, LLC
15 W 53 St, #24-B
New York, NY 10019-5401

PBFP

Jamiscott, LLC, c/o Leonard & Lillian Sc
1089 S Ocean Blvd
Palm Beach, FL 33480-4932

John Daniel
225 Wellington Ln
Cape Girardeau, MO 63701-9540

Judith Goldsmith
3 Water Ln
Manhasset, NY 11030-1021

PBFP

Kaufman Rossin & Co.
2699 S Bayshore Dr
Miami, FL 33133-5486

PBFP

Kenneth A. Ralston N-WD
c/o John E. Page, Esquire
Shraiberg, Ferrara & Landau, P.A.
2385 N.W. Executive Center Drive, #
Boca Raton, Florida 33431-8579

Kenneth Ralston
1008 Mackenzie Pl
Wheaton, IL 60187-3333

Kenneth Ralston N-WD
c/o John E. Page, Esquire
Shraiberg, Ferrara & Landau, P.A.
2385 N.W. Executive Center Drive, #
Boca Raton, Florida 33431-8579

LAB Investments Fund, LP
1875 S Grant St, #600
San Mateo, CA 94402-7013

Laulima Partners, LP
C/O Smithfield Trust Co.
Attn: Robert Kopf Jr.
20 Stanwix St, #650
Pittsburgh, PA 15222-1330

Leslie Schneider
c/o JamiScott LLC
15 West 53rd St #24-B
New York NY 10019-5401

Lewis B. Freeman & Partners, Inc.
c/o Kenneth A. Welt, Receiver
1776 North Pine Island Road
Suite 102
Plantation, Florida 33322-5200

Lynn E Maynard Gollin
Godron & Reese LLP
200 S Biscayne Blvd #4300
Miami FL 33131-2362

Marder Investment Advisors Corp. PBFP
8033 Sunset Blvd, #830
Los Angeles, CA 90046-2401

Maxine Adler
109 Los Patios
Los Gatos, CA 95032-1127

PBFP

Maxine Adler PBFP
c/o US Trust/Bank of America and Patricia
150 E. Palmetto Park Road, Suite 200
Boca Raton, FL 33432-4831

McKinsey Master Retirement Trust
c/o Robin Keller, Esq. PBFP
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022-7222

Mosaic Capital Fund LLC
c/o Philadelphia Financial
attn: John F. Reilly
One Liberty Place
1650 Market St 54th Fl
Philadelphia, PA 19103-7309

PBFP

Ocean Gate Capital Management, LP
5 Sewall Street
Marblehead, MA 01945-3396

Office of the US Trustee
51 S.W. 1st Ave.
NEF
Suite 1204
Miami, FL 33130-1614

Palm Beach Finance Holdings, Inc.
c/o Lindquist & Vennum, PLLP
80 South Eighth Street, Ste 4200
Minneapolis, MN 55402-2223

PBFP

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

PBFP

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

Pemco Partners, LP
8 Lyman St, #204
Westborough, MA 01581-1487

PBFP

Pete L Demahy
150 Alhambra Cir PH
Coral Gables, FL 33134-4505

Petters Company, Inc. PBFP
c/o Lindquist & Vennum, PLLP
80 South Eighth Street, Ste 4200
Minneapolis, MN 55402-2223

Quantum Family Office Group, LLC
6619 S Dixie Hwy #251
Miami, FL 33143-7919

Raymond Feldman
4644 Balboa Ave
Encino, CA 91316-4105

Raymond G. Feldman Family Ventures, L.P.
c/o John E. Page, Esquire
Shraiberg, Ferrara & Landau, P.A. N-WD
2385 N.W. Executive Center Drive, #
Boca Raton, Florida 33431-8579

Ronald R. Peterson PBFP
Jenner & Block LLP
353 North Clark St.
Chicago, IL 60654-5474

Ronald R. Peterson
c/o Wilkie Farr & Gallagher, LLP
Attn: Michael S. Schachter, Esq.
787 Seventh Ave PBFP
New York, NY 10019-6099

Ronald R. Peterson
c/o McDermott Will & Emery, LLP PBFP
Attn: Lazar P. Raynal, Esq.
227 West Monroe Street
Chicago, IL 60606-5096

SSR Capital Management LLC
CVP SPY LLC
ATTN: General Counsel
49 West Putnam Avenue
Greenwich, CT 06830-5328

SSR Capital Partners, LP PBFP
c/o R. James George, Jr., Esq.
114 W. Seventh Street
Suite 1100
Austin, TX 78701-3015

Santa Barbara Investment Capital
327 Los Cerros
San Luis Obispo CA 93405-1272

Scotia Capital
The Bank of Nova Scotia
40 King St W
P.O. Box 4085, Station A
Toronto, Ontario M5W 2X6 Canada

Scott Schneider PBFP
c/o JamiScott LLC
15 West 53rd St #24-B
New York NY 10019-5401

Select Access Management
15 Valley Dr
Greenwich, CT 06831-5205

Special Olympics
Northern California, Inc
Attn: Rebecca Thompson, General Counsel
3480 Buskirk Ave #340
Pleasant Hill, CA 94523-4382

Steven Feder NEF
730 17th Street
Suite 550
Denver, CO 80202-3539

Strategic Stable Return Fund (ID), LP
c/o R. James George, Jr., Esq. PBFP
114 W. Seventh Street
Suite 1100
Austin, TX 78701-3015

Strategic Stable Return Fund II, LP
c/o J. James George, Jr., Esq. PBFP
114 W. Seventh Street
Suite 1100
Austin, TX 78701-3015

Strategic Stable Return Fund, II, LP PBFP
c/o R. James George, Jr., Esq.
114 W. Seventh Street
Suite 1100
Austin, TX 78701-3015

Table Mountain Capital, LLC PBFP
850 Quince Ave
Boulder, Co 80304-0746

Ted Goldsmith PBFP
3 Water Ln
Manhasset, NY 11030-1021

Thomas J Ginley Life Insurance Trust
c/o Julie Elizabeth Hough
2450 Hollywood Blvd #706
Hollywood, FL 33020-6628

U.S. Bank Natl Assoc PBFP
c/o Richard G Wilson, Esq.
90 S 7 St #3300
Minneapolis, MN 55402-4104

U.S. Trust and Patricia Schwab
Successor Trustees, TUA Maxine B Adler
POB 842056
Dallas, TX 75284-2056

UC Davis Foundation
ATTN: Colleen Oys
Center / 2nd Floor
One Shields Avenue
Davis, CA 95616-5270

UC Davis School of Veterinary Medicine
Office of the Dean - Development
One Shields Avenue
Davis, CA 95616-5270

Umbach Financial Group, LLC
525 South Flagler Drive, #100
West Palm Beach, FL 33401-5932

Zimmer Lucas Capital
PO Box 238
Florham Park, NJ 07932-0238

Barry E Mukamal NEF
1 SE 3 Avenue Ste 2150
Box 158
Miami, FL 33131-1716

Patricia Schwab, Co-Trustee of the Maxine B
1511 NE 57 Ct
Ft Lauderdale, FL 33334-5976

Paul A Avron Esq.
One Town Center Road, Ste. 301
Boca Raton, FL 33486-1014

NEF

Paul Steven Singerman Esq
1450 Brickell Ave #1900
Miami, FL 33131-3453

NEF

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

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

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

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

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

Bear Stearns Capital Markets, Inc.
c/o Mark W. Page, Esquire
Kelley Drye & Warren LLP
333 West Wacker Drive
26th Floor
Chicago, IL 60606

KAT TNR, Inc.
17600 Wagon Wheel Drive
Boca Raton, FL 33496
Contact: Phyllis Toon, President

Town Cats
P.O. Box 1828
Morgan Hill, CA 95038
Contact: Rosemary Mirko, Principal

Next Door Solutions to Domestic Violence
234 E. Gish Road, Suite 200
San Jose, CA 95112
Contact: Kathleen Krenek, Executive Director

Aaron M. Dorfner, Esq.
Cotton Bledso et al.
500 W. Illinois Ste. 300
Midland, TX 79701

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

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

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

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

Peggy Adams Animal Rescue League of the Palm
Beaches, Inc.
c/o Andrew Helgesen, Esq.
11380 Prosperity Farms Road, Suite 201
Palm Beach Gardens, FL 33410

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

AVDA (Aid to Victims of Domestic Violence)
P.O. Box 6161
Delray Beach, FL 33482
Contact: Pamela A. O'Brien, Executive Director

Special Olympics Florida
1915 Don Wickham Drive
Clermont, FL 34711
Contact: Larry Daniel, VP of Direct Marketing

Eden Rock Capital Management
50 Curzon Street
London W1J 7UW
United Kingdom

David C. Cimo, Esquire
Genovese Joblove & Battista, P.A.
100 Southeast Second Street, 44th Floor
Miami, Florida 33131

Harvest Investments LP
c/o Deer Island, LP
Red Bird Farm
89 Nason Hill Rd
Sherborn, MA 01770-1233

Thomas F. Miller, Esq.
Thomas F. Miller, P.A.
1000 Superior Blvd., Suite 303
Wayzata, MN 55391-1873

ABR Capital, LLC
c/o Alan B. Rosenthal
4645 Delafield Ave
Riverdale, NY 10471

Harborlight Capital Management, LLC
2502 Rocky Point Drive
Suite 560
Tampa, FL 33607

Lionheart, LP
by and through Robert A. Mandel, GP
8383 Wilshire Blvd., # 400
Beverly Hills, CA 90211

Frank Carruth
c/o Linda Carruth Strugar
240 Summa St
West Palm Beach, FL 33405-4718

Second City Alternatives
c/o Premier Advisors Fund, LLC
801 Park Ave
Wilmette, IL 60091

Blackpool Absolute Return Fund, LLC
Attn: Mr. Douglas Ralston
318 W. Half Day Road, Suite 291
Buffalo Grove, IL 60089

Miles N. Ruthberg, Esq.
Latham & Watkins, LLP
885 Third Avenue
New York, NY 10022-4834

PENSCO Trust Company
FBO George C. Slain IRA
P.O. Box 173859
Denver, CO 80217-3859

Eric N. Assouline, Esq.
Assouline & Berlowe, P.A.
213 E. Sheridan Street
Suite 3
Dania Beach, FL 33004

HSBC USA, Inc.
Phillips Lytle LLP
Attn: Angela Z. Miller, Esq.
3400 HSBC Center
Buffalo, NY 14203

The Gantcher Group
c/o Nathan Gantcher
EXOP Capital, LLC
767 Third Ave, 16 FL
New York, NY 10017

Thomas Sandlow / Tremont Group Holdings, Inc.
305 Riverside Dr, Apt 7A
New York, NY 10025-5214

Nancy Mishkin / Mondiale Partners
211 E 53rd St, Apt 12-D
New York, NY 10022-4807

Lionheart, L.P.
Craig H. Averch, Esq.
Shiva Delrahim, Esq.
White & Case LLP
555 South Flower Street, Suite 2700
Los Angeles, CA 90071-2433

Blackpool Partners, LLC
Attn: Mr. Douglas Ralston
318 W. Half Day Road, Suite 291
Buffalo Grove, IL 60089

Robert J. Malioneck, Esq.
Latham & Watkins, LLP
885 Third Avenue
New York, NY 10022-4834

Thomas R. Manisero, Esq.
Wilson Elser Moskowitz Edelman & Dicker LLP
1133 Westchester Avenue
White Plains, NY 10604

Alice Pugliese
1644 Oak Berry Circle
Wellington, FL 33414

Fleming Financial Services
514 S Main Street
Suite A
Bel Air, MD 21014

Keith Rudman
PO Box 249
Tuckasegee, NC 28783

Sonata Funds
3300 E 1st Avenue
Suite 490
Denver, CO 80206

Barbara Bluhm
189 E Lake Shore Drive
Suite 19
Chicago, IL 60611

Fortis Prime Fund Solutions (IOM) Ltd
Attn: Daniel Kermode
PO Box 58
Finch Hill House
Ducks Road
Douglas, Isle of Man, IM99 1DT, UK

Yvonne Doose, Esq.
P.O. Box 219
Princeton, Minnesota 55371

Golden Gate Financial Group
900 N Pointe St
Suite D405
San Francisco, CA 94109

Leon Meyers Management
850 3rd Avenue
New York, NY 10022

Linda Lozier
340 W 8th Street
Hinsdale, IL 60521

Lee S. Shalov, Esq.
Thomas G. Ciarlane, Esq.
Shalov Stone Bonner & Rocco
145 West 45 Street, Ste 701
New York, NY 10036

Stillwater Capital Partners, Inc.
165 Remsen Street
2nd Floor
Brooklyn, NY 11201

ADDITIONAL VIA EMAIL (ADDL-E)

GMB Capital Management by Email: kanderson@gmbcapital.com

Harvest Investments LP by Email: jonathan@springonline.net

SSR Capital Management LLC by Email: shelland@ssrcm.com

Harborlight Capital Management, LLC by Email: dean@harborlightcapital.com