

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://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 (1) SETTLEMENT WITH  
THE COLLEGE OF SAINT BENEDICT AND (2) PAYMENT OF CONTINGENCY FEE**

**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 claims that could be asserted against the College of Saint Benedict ("*College*") and payment of counsel's contingency fee. In support of this relief, the Liquidating Trustee states the following:

## I. Factual Background

### A. Procedural Background

1. Prepetition, Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. (collectively, the “*Debtors*”) operated as hedge funds. Together, David Harrold and Bruce Prevost managed the Debtors’ fund raising and investment activities.

2. The principal investment strategy of the Debtors was to invest in purchase financing transactions supposedly sourced by Thomas Petters and his company, Petters Company, Inc. and its affiliated entities (collectively, “*PCI*”).

3. The reality, however, was that Mr. Petters and PCI were engaging in a massive *Ponzi* scheme.

4. On October 2, 2008, the United States of America filed under seal in the United States District Court for the District of Minnesota its Complaint for Permanent Injunctive Relief and Other Equitable Relief (“*DOJ Complaint*”) pursuant to 18 U.S.C. § 1345. The parties to the DOJ Complaint included a number of parties implicated in the massive *Ponzi* scheme perpetrated by Mr. Petters, including Deanna Coleman; Frank E. Vennes, Jr.; Metro Gem, Inc. (“*MGI*”; and together with Mr. Vennes, the “*Vennes Parties*”); Robert White; Nationwide International Resources, Inc.; Larry Reynolds a/k/a Larry Reservitz; Michael Catain and Enchanted Family Buying Company (collectively, the “*Receivership Defendants*”).

5. On October 3, 2008, the United States District Court for the District of Minnesota (“*Minnesota District Court*”) entered a temporary restraining order, finding, among other things, that “[t]here is probable cause to believe that Defendants have conspired to commit and/or committed federal mail, wire, and/or banking fraud offenses.”

6. On October 6, 2008, the Minnesota District Court entered an Order for Entry of Preliminary Injunction, Order Appointing Receiver, and Other Equitable Relief (including amendments thereto, the “*Petters Receivership Order*”).

7. The Petters Receivership Order appointed Douglas A. Kelley as the receiver for the Receivership Defendants (“*Petters Receiver*”). Thereafter, the Petters Receiver filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the District of Minnesota (“*Minnesota Bankruptcy Court*”) for PCI and was appointed Chapter 11 trustee for all such entities (in such capacity, the “*PCI Trustee*”; and at times together with the Liquidating Trustee, the “*Trustees*”).

8. On November 30, 2009, the Debtors filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the Southern District of Florida. By subsequent Order of this Court, the cases are jointly administered.

9. On January 29, 2010, the United States Trustee appointed the Liquidating Trustee as Chapter 11 trustee in both of the Debtors’ estates. [ECF No. 107].

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

#### **B. The Vennes Litigation**

11. The Debtors’ entry into the Petters’ fraud was made through the Vennes Parties. Namely, based on representations made by them, the Debtors invested hundreds of millions of dollars in fictitious PCI transactions.

12. On November 29, 2011, the Liquidating Trustee filed suit against the Vennes Parties, Adversary Case No. 11-03041-PGH-A (“*Vennes Action*”). The Vennes Action seeks to

avoid and recover transfers made to the Palm Beach Funds by the Vennes Parties and to hold the Vennes Parties liable in tort for material misrepresentations made by them to the Palm Beach Funds.

13. On October 6, 2010, the PCI Trustee commenced litigation against the Vennes Parties to avoid and recover transfers made by PCI to the Vennes Parties over the life of the Ponzi scheme. *See Kelley v. Metro Gem, Inc., et al.*, Adv. Case No. 10-04352 (Bankr. D. Minn.).

### C. The Transfers to the College

14. On January 3, 2003, Petters pledged \$3,000,000.00 to the College to renovate the College's performing arts center ("**Pledge**").

15. In January 2003, the Vennes Parties transferred \$500,000 to the Harvest Foundation n/k/a Fidelis Foundation ("**Fidelis**") and directed Fidelis to transfer \$500,000 to the College on behalf of Petters and the Pledge. On January 24, 2003, Fidelis transferred \$500,000 to the College ("**Vennes/Fidelis Transfer**").<sup>1</sup> According to the PCI Trustee, the Vennes/Fidelis Transfer is traceable to funds PCI transferred to the Vennes Parties and represents 25% of the \$2 million ultimately received on the Pledge.

16. During the period beginning on February 6, 2003 and ending on July 18, 2006, Petters and the Thomas J. Petters Family Foundation ("**Foundation**") collectively paid \$1,500,000 to the College as follows:

Date	Transferor	Amount
2/6/2003	Thomas Petters	\$250,000
3/3/2004	Thomas J. Petters Family Foundation	\$750,000
12/6/2004	Thomas J. Petters Family Foundation	\$250,000
7/18/2006	Thomas J. Petters Family Foundation	\$250,000

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<sup>1</sup> A copy of the transmittal letter and check for the Vennes/Fidelis Transfer is attached hereto as Exhibit 1.

(collectively, the “*Petters Transfers*”). The Petters Transfers represent 75% of the \$2 million the College ultimately received on the Pledge.

**D. The Allocation Agreement**

17. In May of 2012, the Trustees entered into an agreement whereby they have agreed to allocate between themselves any settlement proceeds relating to transfers made by the Vennes Parties (“*Allocation Agreement*”). Under the terms of the Allocation Agreement, the Trustees have agreed to share equally the first one million dollars of total aggregate recoveries relating to claims against the Vennes Parties and their transferees, and for recoveries in excess of one million dollars, the PCI Trustee receives sixty percent and the Liquidating Trustee receives forty percent. [See ECF Nos. 1282, 1350.]

**E. The Claims Asserted Against the College**

18. On April 2, 2012, the Petters Receiver commenced suit against the College in the Minnesota District Court. See *Kelley v. College of Saint Benedict*, Civil Case No. 12-0822 (RHK/LIB) (“*Receiver Action*”). The Petters Receiver alleged in the Receiver Action that the Petters Transfers are avoidable as actual fraudulent transfers and the Pledge was an avoidable obligation under Minn. Stat. §§ 513.41 – 51. The Receiver also alleged that the Petters Transfers unjustly enriched the College

19. On October 26, 2012, the Minnesota District Court dismissed the Receiver Action with prejudice. On November 21, 2012, the Petters Receiver appealed the dismissal of the Receiver Action to the Court of Appeals for the Eighth Circuit (“*Eighth Circuit*”), Civ. No. 12-3796 (8th Cir.) (“*Appeal*”). Briefing is completed and oral argument has been held, but no decision has been entered by the Eighth Circuit in the Appeal.

20. The United States asserts that the Vennes/Fidelis Transfer and the Petters Transfers are subject to forfeiture (“*Forfeiture Claims*”).

21. On February 7, 2014, the Receiver, the PCI Trustee, the United States and the College attended a non-binding mediation held at the offices of Faegre Baker Daniels LLP before the Hon. Arthur J. Boylan (Ret.) (“*Mediation*”). At the Mediation, the PCI Trustee asserted, *inter alia*, that the Vennes/Fidelis Transfer is recoverable from the College under 11 U.S.C. §550(b) as a subsequent transfer of funds transferred by PCI to the Vennes Parties. The Trustees agreed that any recovery on account of the Vennes/Fidelis Transfer was subject to the court-approved Allocation Agreement between them.

22. Although the College denies that it has any liability in connection with the Pledge, the Petters Transfers and the Vennes/Fidelis Transfer, the parties were able to achieve a global resolution at the Mediation as set forth below.

## II. Settlement Terms

23. The key aspects of the stipulation of settlement between the parties (“*Settlement Agreement*”) are the following:<sup>2</sup>

- a) The College will pay (or cause to be paid) \$600,000.00 (the “*Settlement Payment*”), of which \$450,000.00 is directed at settling the claims relating to the Petters Transfers (the “*Receiver Claim Amount*”) and of which \$150,000.00 is directed at settling the claims relating to the Vennes/Fidelis Transfers (the “*Trustee Claim Amount*”), as follows:
  - i) within thirty (30) days following approval of the Settlement Agreement by this Court, the Minnesota District Court and the Minnesota Bankruptcy Court (“*Effective Date*”), the College shall pay \$300,000.00 as follows: (a) \$225,000.00 to the Petters Receiver; (b) \$45,000.00 to the PCI Trustee; and (c) \$30,000.00 to the Liquidating Trustee; and

<sup>2</sup> A copy of the Settlement Agreement is attached as Exhibit 2. To the extent the terms set forth in this Motion differ from those set forth in the Settlement Agreement, the Settlement Agreement controls.

- ii) on or before October 15, 2014, the College shall pay \$300,000.00 as follows: (a) \$225,000.00 to the Petters Receiver; (b) \$45,000.00 to the PCI Trustee; and (c) \$30,000.00 to the Liquidating Trustee.
- b) The parties, including the United States, shall exchange mutual, general releases; and
- c) The College shall not be entitled to any distribution from the Debtors' or PCI bankruptcy estates.

24. 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 by the Palm Beach Liquidating Trusts in conjunction with the Settlement Agreement will be allocated as follows: 18% to Palm Beach Finance Partners Liquidating Trust and 82% to Palm Beach Finance II Liquidating Trust ("**Pro Rata Allocation Formula**").

### **III. Relief Requested**

25. The Liquidating Trustee seeks an Order from this Court (a) approving the Settlement Agreement and (b) directing payment of the Contingency Fee (as defined below).

26. 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."

27. 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).

28. 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 Agreement Ought to be Approved***

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

*Probability of success in litigation*

30. The Liquidating Trustee, on behalf of the Liquidating Trusts, could assert that the transfers made to the College by the Vennes Parties were fraudulent transfers under federal or state law, or alternatively, that the College was unjustly enriched by such transfers.

31. The Liquidating Trustee believes that he will likely succeed in prosecuting either of these causes of action.

32. Nonetheless, the Liquidating Trustee acknowledges that there are risks inherent in all litigation and there is the possibility that the College, or other similarly situated parties, could raise certain issues or defenses, including a defense based on the applicable statute of limitations, which potentially could impact the Liquidating Trustee's claims.



*Collectability*

33. Although the College is a non-profit institution, collectability is not a significant consideration with respect to the Trustee's claims against the College and the Settlement Agreement.

*Complexity of litigation and attendant expense, inconvenience and delay*

34. This is a significant consideration that militates in favor of approval of the Settlement Agreement.

35. In sum, although many of the claims outlined above are typical claims litigated before this Court, they still will require retention of experts and extensive fact discovery before a trial could take place. The result of these efforts will be substantial attorney's fees on both sides which would diminish the net result of any recovery.

36. Moreover, a significant focus of any litigation relating to the Vennes/Fidelis Transfer will be the Vennes Parties themselves. To that end, Mr. Vennes is currently incarcerated in North Carolina and the attendant cost and resources necessary to procure his testimony or otherwise take discovery would be significant.

37. In addition, the Minnesota legislature enacted an amendment to the State's version of the Uniform Fraudulent Transfer Act, which purports to apply retroactively and impose certain limitations on the Liquidating Trustee's rights and remedies. While the Liquidating Trustee disputes the applicability of the amended statute to any claims he would assert against the College relating to the Vennes/Fidelis Transfer, he did consider the potential risks and expenses associated with litigating this issue. Notably, the statute, if applicable, could be asserted to potentially eliminate the Liquidating Trustee's ability to recover the Vennes/Fidelis Transfer.

38. The Settlement Agreement addresses these concerns. The parties avoid litigating fact-specific claims with the attendant expense and delay of such litigation being nullified.

*Paramount interest of creditors*

39. The Settlement Agreement provides a meaningful payment of the claims asserted against the College. The Settlement Payment is a meaningful resolution in light of the complexity of the claims, as well as the potential delay and professional costs associated with the related litigation. As such, the Settlement Agreement is in the paramount interest of the Debtors' stakeholders.

40. Moreover, the Settlement Payment is fairly and reasonably allocated among the various parties on account of their various claims. The Petters Transfers are directly traceable to individuals and entities under the control of the Receiver and represent 75% of the total \$2 million the College received on the Pledge. As such, the Receiver Claim Amount (\$450,000) represents 75% of the total \$600,000 Settlement Payment.

41. The Vennes/Fidelis Transfer is traceable to funds PCI initially transferred to the Vennes Parties that the Vennes Parties subsequently transferred to Fidelis for disposition to the College on the Pledge. The Vennes/Fidelis Transfer represents 25% of the total \$2 million the College received on the Pledge. As such, the Trustee Claim Amount (\$150,000) represents 25% of the total \$600,000 Settlement Payment, and is allocated between the Trustees in accordance with the Allocation Agreement.

***B. The Contingency Fee Ought to be Approved***

42. 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*”).

43. The Liquidating Trustee requests that the 10% Contingency Fee – in the amount of \$6,000.00 – be approved and that he be authorized and directed to pay this amount when the Liquidating Trustee receives his allocation of the Settlement Payment.

**WHEREFORE**, the Liquidating Trustee respectfully requests that this Court enter an Order (similar in form to the Order attached as Exhibit 3) (i) approving the Settlement Agreement; (ii) approving payment of the Contingency Fee; and (iii) granting such other relief this Court deems just and proper.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was served on May 29, 2014, via the Court's Notice of Electronic Filing upon the Registered Users listed on the attached Exhibit 4 and via U.S. Mail to those parties listed on the attached Composite Exhibit 5<sup>3</sup> as well as (i) the Petters Receiver/PCI Trustee, by and through his attorneys, James A. Lodoen, Linqvist & Vennum P.L.L.P., 4200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402; and (ii) the College, by and through its attorneys, Jerome A. Miranowski, Faegre Baker Daniels, LLP, 2200 Wells Fargo Center, 90 S. Seventh Street, Minneapolis, MN 55402.

s/ Jessica L. Wasserstrom  
Jessica L. Wasserstrom, Esquire  
Florida Bar No. 985820  
[jwasserstrom@melandrussin.com](mailto: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*

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<sup>3</sup> "NEF" means that service was made by Notice of Electronic Filing as set forth on Exhibit 4 and is not being additionally served by mail.

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

"INC" means that the Matrix contains an incomplete addresses; hence, no service by mail.

"NNR" means no notice is required. Examples are professionals retained.

"ADDL" means these additional parties served as a courtesy. *See* Exhibit 6.

FROM : FINGERHUT

952-936-5068

2003.02-03

10:45

#758 P.02/02

2/4/03

HARVEST FOUNDATION

3189 Fernbrook Lane North  
Plymouth, MN 55447  
(763) 201-1268

*"Serving others in Jesus' name"*

January 24, 2003

Dr. Mary Lyons, President  
College of St. Benedict  
37 S. College Avenue  
St. Joseph, MN 56374

Dear Dr. Lyons:

Enclosed is a check in the amount of five hundred thousand dollars (\$500,000.00). This gift is being given in the name of Tom Petters in honor of his parents Fred and Rosemary Petters.

Sincerely,

  
Joseph D. Smith  
President, Harvest Foundation

0925-023270 \*

HARVEST FOUNDATION  
3189 FERNBROOK LANE N  
PLYMOUTH, MN 55447

702

1/24/03

17-2/910 146

DATE

PAY TO THE  
ORDER OF

College of St. Benedict's

\$500,000.00

Five Hundred Thousand and No/100

DOLLARS



usbank.com

FOR

Peterson Gift St. Ben's/Venue

MP

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14814811 2001

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement (the "Agreement") is made and entered effective as of the date indicated below, by and between Douglas A. Kelley, in his capacities as Petters Trustee and Petters Receiver (each as defined below), Barry E. Mukamal, in his capacity as Liquidating Trustee (as defined below), the United States of America (the "United States"), and the College of Saint Benedict (the "College"). Each of the Petters Trustee, Petters Receiver, Liquidating Trustee, the United States, and the College is a "Party" and collectively are the "Parties."

## RECITALS

WHEREAS, pursuant to an Order entered on October 6, 2008, as amended on December 8, 2008, the Honorable Ann Montgomery, United States District Judge for the District of Minnesota (the "District Court") appointed Douglas A. Kelley as receiver (the "Petters Receiver") for, among others, Thomas J. Petters ("Petters"), Deanna Coleman, Larry Reynolds, Nationwide International Resources, Inc., the Thomas J. Petters Family Foundation (the "Family Foundation"), Petters Company, Inc. ("PCI"), Petters Group Worldwide, LLC ("PGW") and any affiliates, subsidiaries, divisions, successors, or assigns owned 100% or controlled by the foregoing (collectively, the "Receivership Entities"). *United States v. Petters, et al.*, Case No. 0:08-cv-05348 (D. Minn.), Doc ## 12, 127 (the "Receivership Order"). Petters and the Family Foundation are collectively referred to herein as the "Petters Receivership Transferors."

WHEREAS, pursuant to the authority granted to him under the Receivership Order, the Receiver filed petitions in the United States Bankruptcy Court for the District of Minnesota (the "Bankruptcy Court") commencing the Chapter 11 cases of PCI and PGW on October 11, 2008. Petitions commencing the Chapter 11 bankruptcy cases of PC Funding, LLC, Thousand Lakes, LLC, SPF Funding, LLC, PL Ltd., Inc., Edge One, LLC and MGC Finance, Inc. were filed in the Bankruptcy Court on October 15, 2008. The petition commencing the Chapter 11 bankruptcy case of PAC Funding, LLC was filed in the Bankruptcy Court on October 17, 2008. The petition commencing the Chapter 11 bankruptcy case of Palm Beach Finance Holdings, Inc., f.k.a. Petters Capital, Inc., was filed in the Bankruptcy Court on October 19, 2008. The above-referenced bankruptcy cases are being jointly administered under *In re Petters Company, Inc., et al.*, Bky. Case No. 08-45257 (Bankr. D. Minn.) (the "Bankruptcy Cases"). The debtors in the Bankruptcy Cases, the Bankruptcy Cases and the bankruptcy estates in the Bankruptcy Cases will be referred to in this Agreement individually as a "Debtor," a "Bankruptcy Case" or a "Bankruptcy Estate," or collectively as the "Debtors," the "Bankruptcy Cases" or the "Bankruptcy Estates."

WHEREAS, on February 26, 2009, the Bankruptcy Court approved the appointment of Douglas A. Kelley, Esq. (the "Petters Trustee") as the Chapter 11 trustee for all of the Debtors in the Bankruptcy Cases.

WHEREAS, on November 30, 2009, Palm Beach Finance Partners, L.P. ("PBFP") and Palm Beach Finance II, L.P. ("PBFII," and together with PBFP, the "Palm Beach Funds") filed voluntary petitions under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida (the "Florida Bankruptcy Court") as bankruptcy case numbers 09-36379 and 09-36396 (Bankr. S.D. Fla.), respectively (collectively, the "Florida

Bankruptcy Cases”). On October 21, 2010, the Florida Bankruptcy Court entered its Order Confirming Second Amended Plan of Liquidation [Bky.. No. 09-36379, ECF No. 444], creating the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance Partners II Liquidating Trust (collectively, the “Palm Beach Liquidating Trusts”) and appointing Barry E. Mukamal (the “Liquidating Trustee”) as liquidating trustee for the Palm Beach Liquidating Trusts..

WHEREAS, on October 6, 2010, the Petters Trustee commenced litigation against, among others, Frank E. Vennes (“Vennes”) and Metro Gem, Inc. (“Metro Gem”). *Kelley v. Metro Gem, Inc. et al.*, Adv. No. 10-04352 (Bankr. D. Minn.). The Petters Trustee asserts that Vennes and Metro Gem received approximately \$2.2 billion in funds from PCI during the course of the Petters Ponzi scheme including approximately \$90 million in false profits and \$113 million in commission payments and seeks avoidance of those transfers under state and federal fraudulent transfer and other applicable laws.

WHEREAS, on November 29, 2011 the Liquidating Trustee commenced litigation against Vennes and Metro Gem on behalf of the Palm Beach Liquidating Trusts and their beneficiaries: *Mukamal v. Metro Gem, Inc. et al.*, Adv. No. 11-03041 (Bankr. S.D. Fla). The Liquidating Trustee asserts various tort and fraudulent transfer claims against Vennes and Metro Gem, as set forth in greater detail in the Complaint filed in Adversary Case No. 11-03041-PGH-A (Bankr. S.D. Fla.).

WHEREAS, on January 3, 2003, Petters pledged \$3,000,000 (the “Pledge”) to the College to renovate the College’s performing arts center.

WHEREAS, during the period beginning on or about February 6, 2003 and ending on or about July 18, 2006, the Petters Receivership Transferors made transfers totaling \$1,500,000 to the College (the “Petters Receiver Transfers”).

WHEREAS, on or about January 24, 2003, the Harvest Foundation, now known as the Fidelis Foundation, made a transfer on behalf of Petters to the College in the amount of \$500,000 (the “Harvest Foundation Transfer”).

WHEREAS, the Petters Trustee and the Liquidating Trustee allege that Vennes or Metro Gem were the sources of the Harvest Foundation Transfer.

WHEREAS, both the Petters Trustee and the Liquidating Trustee assert claims to the Harvest Foundation Transfer under either federal or state law on behalf of the victims of Petters’ Ponzi scheme.

WHEREAS, the Petters Trustee and the Liquidating Trustee have entered into an agreement whereby they have agreed to allocate between themselves according to the terms of that agreement any settlement proceeds relating to certain transfers, including the Harvest Foundation Transfer. Under the terms of that agreement the Petters Trustee and the Liquidating Trustee agreed to share equally the first one million dollars of total aggregate recoveries relating to claims against Metro Gem, Vennes and their transferees, and for recoveries in excess of one million dollars, the Petters Trustee receives sixty percent and the Liquidating Trustee receives forty percent (the “Allocation Agreement”). The Petters Trustee and the Liquidating Trustee



represent to the College that the Allocation Agreement is a legally binding agreement between them and further instruct the College to make payment to them according to the terms of this Agreement.<sup>1</sup>

WHEREAS, on March 30, 2012, the Petters Receiver commenced litigation against the College captioned *Douglas A. Kelley, in his capacity as the court-appointed Receiver of Thomas Joseph Petters et al. v. College of Saint Benedict*, Case No. 12-cv-00822 (RHK/LIB) in the United States District Court for the District of Minnesota (the "Litigation") to recover the Petters Receiver Transfers.

WHEREAS, on October 26, 2012 the District Court dismissed the Litigation with prejudice.

WHEREAS, on November 21, 2012 the Petters Receiver appealed the dismissal of the Litigation by the District Court to the Court of Appeals for the Eighth Circuit (the "Eighth Circuit"), Civ. No. 12-3796 (8th Cir.) (the "Appeal"). Briefing is completed and oral argument has been held, but no decision has been entered by the Eighth Circuit in the Appeal.

WHEREAS, the United States asserts that the Harvest Foundation Transfer and the Petters Receiver Transfers are subject to forfeiture (the "Forfeiture Claims").

WHEREAS, the College denies that it has any liability to any of the Claimants (as defined below) for any of the Claims (as defined below).

WHEREAS, on February 7, 2014, the Parties (except for the Liquidating Trustee) attended a non-binding mediation held at the offices of Faegre Baker Daniels LLP before the Hon. Arthur J. Boylan (Ret.).

WHEREAS, the College, without admitting liability, wishes to settle all claims arising from the Pledge, the Petters Receiver Transfers, the Harvest Foundation Transfers, the Forfeiture Claims and any other pledges, donations or transfers made by the Receivership Entities to the College (collectively, the "Claims") with the Petters Receiver, the Petters Trustee, the Liquidating Trustee, and the United States (collectively, the "Claimants"), and the Claimants wish to settle the Claims, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, of the mutual covenants, promises and undertakings set forth herein, and for good and valuable consideration, the mutual receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

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<sup>1</sup> Pursuant to Fed. R. Bankr. P. 9019, the Florida Bankruptcy Court entered an Order approving the Allocation Agreement on August 2, 2013. Case No. 09-36379, Docket No.1350 (Bankr. S.D. Fla.). Pursuant to Fed. R. Bankr. P. 9019, the Minnesota Bankruptcy Court entered an Order approving the Allocation Agreement on June 20, 2012. Case No. 08-45257, Docket No. 1720 (Bankr. D. Minn.).

**AGREEMENT**

1. Recitals Incorporated. The Parties acknowledge and agree that the Recitals set forth above are true and accurate and such Recitals are hereby incorporated into and made a part of this Agreement.
2. The Settlement Payment. The College shall pay six-hundred thousand dollars and 00/100 (\$600,000.00) (the "Settlement Payment") in full and final settlement of the Claims. Upon receipt of the full Settlement Payment, the releases contained in paragraphs 4 and 5 shall become effective without further action by any of the Parties. The Settlement Payment is comprised of two components: (1) \$450,000.00 of the Settlement Payment is directed at settling the Forfeiture Claims and all claims the Petters Receiver has against the College (the "Receiver Claim Amount") arising from the Petters Receiver Transfers; and (2) \$150,000.00 is directed at settling the Forfeiture Claims and all claims the Petters Trustee and the Liquidating Trustee have against the College resulting from the Harvest Foundation Transfer (the "Trustee Claim Amount").
3. Allocation and Payment of Settlement Proceeds. The College must deliver the Settlement Payment to the Claimants in the following manner which the Petters Trustee and the Liquidating Trustee have each represented to the College is the proper application of the Allocation Agreement to this Agreement:
  - 3.1. The Receiver Claim Amount. The Receiver Claim Amount is allocated solely to the Petters Receiver. The Petters Receiver will receive 100% or \$450,000.00 of the Receiver Claim Amount.
  - 3.2. The Trustee Claim Amount. The Petters Trustee and the Liquidating Trustee agree that the Trustee Claim Amount will be allocated under the Allocation Agreement as follows: The Petters Trustee, on behalf of PCI, receives 60% or \$90,000.00 of the Trustee Claim Amount and the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, receives the remaining 40% or \$60,000.00 of the Trustee Claim Amount on account of the settlement of their claims against the College as to the Harvest Foundation Transfer.
  - 3.3. Payment of the Settlement Payment. Pursuant to this Agreement and the Allocation Agreement, and notwithstanding the fact that the College is not a party to the Allocation Agreement, the College shall pay the Settlement Payment as allocated in paragraph 3 of this Agreement as follows:
    - 3.3.1. First Installment of the Settlement Payment: The College shall pay, by wire transfer or other certified funds, \$300,000 within thirty calendar days after the Effective Date (as defined below) to: (i) the Petters Trustee on behalf of PCI in the amount of \$45,000; (ii) the Petters Receiver in the amount of \$225,000.00; and (iii) the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, in the amount of \$30,000.00.

3.3.2. Second Installment of the Settlement Payment: The College shall pay, by wire transfer or other certified funds, \$300,000 on or before the later of October 15, 2014 or thirty calendar days after the Effective Date, to: (i) the Petters Trustee on behalf of PCI in the amount of \$45,000; (ii) the Petters Receiver in the amount of \$225,000.00; and (iii) the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, in the amount of \$30,000.00.

4. Release by the Claimants. Subject to the satisfaction of the conditions set forth in this Agreement and the indefeasible receipt of the Settlement Payment, the Claimants will be deemed to have released, remised and forever discharged the College and all of its past and present officers, employees, trustees, agents and attorneys (all of the foregoing collectively, the "Defendant Released Parties"), from any and all past, present or future claims or causes of action (including any suit, petition, demand, or other claim in law, equity or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, liens, rights of and to indemnification, rights of and to contribution, rights of and to restitution, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys' fees, interest, costs or disbursements), known or unknown, that are, have been, could have been or might in the future be asserted by or on behalf of the Claimants against the Defendant Released Parties based on, related to or arising out of the Claims; provided, however, that nothing contained herein shall constitute, or be deemed to constitute, a release, discharge, or impairment of the right to enforce this Agreement, which is expressly reserved.
  
5. Release by the College. In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the College hereby releases, remises and forever discharges the Claimants, the Debtors, the Bankruptcy Estates, the Palm Beach Funds, the Palm Beach Liquidating Trusts, as well as their respective predecessors and successors in interest and past and present attorneys (all of the foregoing collectively, the "Claimant Released Parties"), from any and all past, present or future claims or causes of action (including any suit, petition, demand, or other claim in law, equity or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, liens, rights of and to indemnification, rights of and to contribution, rights of and to restitution, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys' fees, interest, costs or disbursements), known or unknown, that are, have been, could have been or might in the future be asserted by or on behalf of the College against the Claimant Released Parties based on, related to or arising out of the Claims; provided, however, that nothing contained herein shall constitute, or be deemed to constitute, a

release, discharge, or impairment of the right to enforce this Agreement, which is expressly reserved.

6. Waiver of Claims. To the extent that any claim or proof of claim has been or is filed by or on behalf of the College against the Claimant Released Parties, the Claimants shall have the right to have such claim disallowed and expunged from the record and are each hereby authorized to take such actions as may be necessary or desirable in furtherance of the foregoing. Without limiting the generality of the foregoing, the College hereby absolutely and unconditionally waives the right, if any, to (i) participate in or receive any distribution of assets or payment of funds in connection with the Bankruptcy Cases (whether pursuant to a plan of reorganization, liquidation, distribution or otherwise) or the Palm Beach Liquidating Trusts and further waives any right to assert a claim against any of the Bankruptcy Estates or the Palm Beach Liquidating Trusts under 11 U.S.C. § 502(h) or otherwise; and (ii) contest the civil or criminal forfeiture of the Settlement Payment, or any portion thereof, or to assert any claim, directly or indirectly, with the Receivership Estates or with the United States Department of Justice for the remission of assets authorized by federal law, including Title 28, Code of Federal Regulations, Part 9, relating to Petters' Ponzi scheme.
7. Covenants. Consistent with the releases and waivers contained in this Agreement, the Parties covenant and agree not to bring any action, litigation or other proceeding or file or assert any claim against the other Parties, directly or indirectly, seeking to recover on account of any claims waived or released by this Agreement, and the Parties further agree that this Agreement is a bar to any such action, litigation, other proceeding or claim.
8. Court Approval; Binding; Effective Date; Termination; Dismissal of Appeal. This Agreement is subject to approval by the District Court, the Minnesota Bankruptcy Court, and the Florida Bankruptcy Court (the "Approving Courts"). This Agreement shall be binding on the Parties on their entry into this Agreement subject only to the entry of final and nonappealable orders by the Approving Courts approving this Agreement (such orders being deemed final and nonappealable in the absence of an objection to the motions seeking approval of this Agreement or, if an appeal is taken therefrom, the entry of an order affirming the applicable order). The date such orders are deemed final and nonappealable shall be the "Effective Date". The Petters Receiver, the Petters Trustee and the Liquidating Trustee shall use their best efforts to obtain approval of this Agreement as promptly as practicable after the Parties' execution of this Agreement.
9. Termination. If one of more of the Approving Courts do not approve this Agreement and the Effective Date does not occur, (a) the Agreement (other than this Paragraph 9) shall terminate and be null and void for all purposes, (b) all of the statements, admissions, consents and agreements contained in the Agreement (other than this Paragraph 9) shall be null and void, (c) the Parties may not use or rely on any such statement, admission, consent or agreement in any public statement or litigation involving the Litigation, the Appeal, the Bankruptcy Cases, any case or proceeding relating to the Bankruptcy Cases or any case or proceeding relating to the Bankruptcy Estates, including any case arising out of the Receivership Order, (d) the Parties shall be returned to the positions they held

prior to the execution of this Agreement, and (e) the Petters Receiver, the Petters Trustee, and the Liquidating Trustee must immediately refund any portion of the Settlement Payment made pursuant to this Agreement to the College.

10. Authority. Each of the Parties, by signing this Agreement, states that such Party intends to be legally bound and represents and warrants as of the date hereof that, subject only to approval of this Agreement by the Approving Courts, such Party has the full power, authority and legal right to execute and deliver, and to perform such Party's respective obligations under this Agreement and has taken all necessary action to authorize the execution and delivery of, and the performance of such Party's obligations under this Agreement.
11. Dismissal of Litigation. Within ten (10) business days after the receipt of \$300,000 under section 3.3.1 of this Agreement, the Receiver will prepare and file and the College shall, to the extent necessary, execute appropriate pleadings and stipulations providing for the dismissal of the Appeal with prejudice, each side to bear its own costs, expenses and fees.
12. Advice of Counsel. Each of the parties to this Agreement has obtained such counsel as each deems appropriate before entering into this Agreement, and each has independently determined to enter into this Agreement.
13. Construction. The Parties acknowledge that they jointly participated in the drafting of this Agreement. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party who caused the document to be drafted. In the event of any ambiguity regarding the breadth of the releases and waivers set forth in Paragraphs 4 and 5 hereof, the Parties agree that such ambiguity shall be resolved by construing the releases and waivers broadly, as opposed to narrowly. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The use of the singular form of any word includes the plural and vice versa.
14. Further Assurances. The Parties shall execute and deliver any document or instrument reasonably requested by any of them after the date of the Agreement that may be necessary or desirable to obtain the approvals required hereby and consummate or effectuate the intent of this Agreement.
15. Entire Agreement. This Agreement between and among the Parties constitutes the entire agreement and understanding between and among the Parties and supersedes all prior agreements, representations and understandings concerning the subject matter hereof. The Parties represent that they did not rely on any statement, oral or written, not contained in this Agreement in making their respective decisions to enter into this Agreement.
16. Amendments, Waiver. This Agreement may not be terminated, amended or modified in any way except in a writing signed by all of the Parties. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.



17. Assignability. The College may not assign, whether by operation of law or otherwise, any of its rights or benefits under this Agreement without the prior written consent of each of the other Parties hereto.
18. Successors Bound. This Agreement shall be binding upon and inure to the benefit of each of the Parties and their permitted successors and assigns (including, in the case of the Petters Trustee, a liquidating trust or Chapter 7 trustee as part of the administration of the Bankruptcy Estates).
19. No Third-Party Beneficiaries. The Parties acknowledge and agree that the Parties do not intend to confer any benefit or defense by or under this Agreement upon any other person or entity other than the Parties hereto, and the related parties identified in the releases set forth in this Agreement, and their respective permitted successors and assigns. Without limiting the generality of the foregoing, the releases provided by each of the Parties shall not encompass, affect, diminish, or impair any claims against any third party not identified in this Agreement and the Parties expressly reserve any and all rights, remedies and claims against such third parties.
20. No Admission of Liability or Wrongdoing. The Parties acknowledge that this Agreement is entered into for the sole purpose of resolving the disputes between the Parties with respect to the matters set forth in this Agreement. Neither the execution nor the performance of any of the terms of this Agreement will constitute or be construed as an admission by any Party of any liability or an admission of the validity or enforceability of any claims or defenses that are being released, waived and discharged by this Agreement.
21. Jurisdiction; Governing Law; Venue. This Agreement shall be governed, construed, interpreted and enforced according to the internal laws of the State of Minnesota without regard to the conflicts of law principles of any jurisdiction except to the extent that the laws of such State are superseded by the Bankruptcy Code, the Bankruptcy Rules or other applicable federal law. The Parties agree that, subject to the approval of the Approving Courts, the District Court shall have exclusive jurisdiction and authority over the subject matter of this Agreement, and any and all disputes relating to this Agreement and the subject matter thereof (including without limitation any action to interpret or enforce this Agreement, or any provision thereof), and the Parties hereby consent to and submit to the jurisdiction and authority of the District Court for any such action and waive any argument that venue in such forum is or shall be inconvenient; provided, however, that, in the event that the Liquidating Trustee does not timely receive its portion of the Settlement Payment in accordance with section 3 of this Agreement, the Parties agree that the Liquidating Trustee may seek collection of that amount in the Florida Bankruptcy Court.
22. Captions and Rules of Construction. The captions in this Agreement are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of this Agreement or the scope or content of any of its provisions.

23. Notices. Any notices under this Agreement shall be in writing, shall be effective when received and may be delivered only by hand, by overnight delivery service, by fax or by electronic transmission to:

<b>If to the Petters Receiver/ Petters Trustee:</b>	<b>If to the Liquidating Trustee:</b>
Douglas A. Kelley Kelley, Wolter, and Scott, P.A. 431 S. Seventh St. Suite 2530 Minneapolis, MN 55415 F: (612) 371-0574 E: <a href="mailto:dkelley@kelleywolter.com">dkelley@kelleywolter.com</a>  -and-  James A. Lodoen Lindquist & Vennum P.L.L.P. 4200 IDS Center 80 South Eighth Street Minneapolis, MN 55402 F: (612) 371-3207 E: <a href="mailto:jlodoen@lindquist.com">jlodoen@lindquist.com</a>	Barry E. Mukamal Marcum LLP One SE Third Avenue, 10 <sup>th</sup> Floor Miami, FL 33131 F: (305) 995-9601 E: <a href="mailto:barry.mukamal@marcumllp.com">barry.mukamal@marcumllp.com</a>  -and-  Michael S. Budwick Meland Russin Budwick, P.A. 3200 Southeast Financial Center 200 South Biscayne Blvd Miami, FL 33131 F: (305) 358-1221 E: <a href="mailto:mbudwick@melandrussin.com">mbudwick@melandrussin.com</a>
<b>If to the College:</b>	
Jerome A. Miranowski Faegre Baker Daniels, LLP 2200 Wells Fargo Center 90 S. Seventh Street Minneapolis, MN 55402 F: (612) 766-1600 E: <a href="mailto:jerome.miranowski@FaegreBD.com">jerome.miranowski@FaegreBD.com</a>	

24. Counterparts; Electronic Copy of Signatures. This Agreement may be executed and delivered in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same document. The Parties may evidence their execution of this Agreement by electronic delivery to the other Parties of scanned or faxed copies of their signatures, with the same effect as the delivery of an original signature.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW]

IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written below.

Date: \_\_\_\_\_

By: Douglas A. Kelley  
Douglas A. Kelley  
Chapter 11 Trustee

Date: \_\_\_\_\_

By: Douglas A. Kelley  
Douglas A. Kelley  
Court-Appointed Receiver

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Barry E. Mukamal  
Liquidating Trustee

United States of America  
Andrew Luger, United States Attorney

Date: \_\_\_\_\_

By: \_\_\_\_\_  
James Alexander  
Assistant United States Attorney

College of St. Benedict

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_



IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written below.

Date: \_\_\_\_\_

By: \_\_\_\_\_

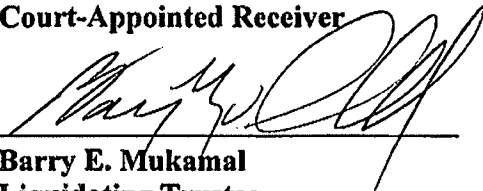
**Douglas A. Kelley**  
**Chapter 11 Trustee**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Douglas A. Kelley**  
**Court-Appointed Receiver**

Date: \_\_\_\_\_

By:  \_\_\_\_\_

**Barry E. Mukamal**  
**Liquidating Trustee**

**United States of America**  
**Andrew Luger, United States Attorney**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**James Alexander**  
**Assistant United States Attorney**

**College of St. Benedict**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written below.

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Douglas A. Kelley**  
**Chapter 11 Trustee**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Douglas A. Kelley**  
**Court-Appointed Receiver**

Date: \_\_\_\_\_

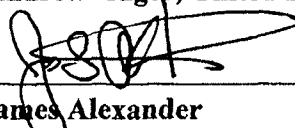
By: \_\_\_\_\_

**Barry E. Mukamal**  
**Liquidating Trustee**

**United States of America**  
**Andrew Luger, United States Attorney**

Date: May 27, 2014

By: \_\_\_\_\_

  
**James Alexander**  
**Assistant United States Attorney**

**College of St. Benedict**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written below.

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Douglas A. Kelley**  
**Chapter 11 Trustee**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Douglas A. Kelley**  
**Court-Appointed Receiver**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Barry E. Mukamal**  
**Liquidating Trustee**

**United States of America**  
**Andrew Luger, United States Attorney**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**James Alexander**  
**Assistant United States Attorney**

**College of St. Benedict**

Date: 5-27-14

By: 

Printed Name: MARYANN BAENNIG

Its: President

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://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.

**ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION  
TO APPROVE (1) SETTLEMENT WITH THE COLLEGE OF SAINT  
BENEDICT AND (2) PAYMENT OF CONTINGENCY FEE [ECF NO. \_\_\_\_]**

THIS CAUSE came before the Court upon the Liquidating Trustee's Motion to Approve (1) Settlement with the College of Saint Benedict and (2) Payment of Contingency Fee [ECF No. \_\_\_\_] (the "*Motion*").<sup>1</sup> The Court, having reviewed the Motion and noting that a Certificate of No Response and Request for Entry of Order has been filed [ECF No. \_\_\_\_], finds that the notice of the proposed compromise and settlement is sufficient to comply with Bankruptcy Rules 9019

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

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 Agreement is **APPROVED**.
3. The College shall pay (or cause to be paid) \$600,000.00 (the “*Settlement*

*Payment*”) as follows:

a) within thirty (30) days following approval of the Settlement Agreement by this Court, the Minnesota District Court and the Minnesota Bankruptcy Court (the “*Effective Date*”), the College shall pay \$300,000.00 as follows: (a) \$225,000.00 to the Petters Receiver; (b) \$45,000.00 to the PCI Trustee; and (c) \$30,000.00 to the Liquidating Trustee; and

b) on or before October 15, 2014, the College shall pay \$300,000.00 as follows: (a) \$225,000.00 to the Petters Receiver; (b) \$45,000.00 to the PCI Trustee; and (c) \$30,000.00 to the Liquidating Trustee.

4. The Liquidating Trustee’s portion of the Settlement Payment (\$60,000.00) may be made via (i) wire transfer pursuant to written instructions to be provided by the Liquidating Trustee or his counsel or (ii) check made payable to “Barry E. Mukamal, Liquidating Trustee” and delivered to Jessica L. Wasserstrom, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131.

5. The Liquidating Trustee’s portion of the Settlement Payment (\$60,000.00) 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*”), and the wire transfers and/or checks referenced in paragraph 3 above as the mechanism for the Settlement Payment shall be made in the amounts in accordance with this allocation.

6. MRB's Contingency Fee in the amount of \$6,000.00 is approved. The Liquidating Trustee is authorized and directed to 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.

7. To the extent that the College 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.

8. The Court retains jurisdiction to enforce the terms of the Settlement Agreement.

###

**Submitted By:**

Jessica L. Wasserstrom, Esquire  
Florida Bar No. 985820  
[jwasserstrom@melandrussin.com](mailto: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.

- Geoffrey S. Aaronson gaaronson@aspalaw.com, jevans@aspalaw.com
- Melissa Alagna mma@segallgordich.com, jxp@segallgordich.com
- Vincent F Alexander vfa@kttl.com, lf@kttl.com
- Keith T Appleby kappleby@hwhlaw.com, lbecker@hwhlaw.com
- Paul A Avron pavron@bergersingerman.com, efile@bergersingerman.com; efile@ecf.inforuptcy.com
- Scott L Baena sbaena@bilzin.com, eservice@bilzin.com; lflores@bilzin.com
- Marc P Barmat ndixon@furrcohen.com, mbarmat@furrcohen.com; atty\_furrcohen@bluestylus.com
- Sean M. Berkowitz sean.berkowitz@lw.com, cheffiling@lw.com; william.katt@lw.com; roger.schwartz@lw.com; robert.malione@lw.com; megan.fitzpatrick@lw.com; barbara.pipchok@lw.com
- Steven M Berman sberman@slk-law.com, bgoodall@slk-law.com
- Mark D. Bloom bloomm@gtlaw.com, MiaLitDock@gtlaw.com; miaecfbky@gtlaw.com
- Noel R Boeke noel.boeke@hklaw.com, wendysue.henry@hklaw.com
- Michael S Budwick mbudwick@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com
- Michael S Budwick mbudwick@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com
- Dennis M. Campbell dcampbell@campbelllawfirm.net, gschmied@campbelllawfirm.net; lartigas@campbelllawfirm.net
- Rilyn A Carnahan rilyn.carnahan@gmlaw.com, efileu1092@gmlaw.com; efileu1089@gmlaw.com; efileu1435@gmlaw.com; efileu1094@gmlaw.com; lauren.baio@gmlaw.com
- Francis L. Carter flc@katzbarron.com, lcf@katzbarron.com
- Francis L. Carter flc@katzbarron.com, lcf@katzbarron.com
- Lisa M. Castellano lcastellano@becker-poliakoff.com, thenry@becker-poliakoff.com; tfritz@becker-poliakoff.com
- Helen Davis Chaitman jgorchkova@beckerny.com; lbianco@beckerny.com; cdavis@beckerny.com
- Helen Davis Chaitman hchaitman@beckerny.com, jgorchkova@beckerny.com; lbianco@beckerny.com; cdavis@beckerny.com
- Franck D Chantayan franck@chantayan.com
- Daniel DeSouza ddesouza@bplegal.com, cgeilman@bplegal.com; tfritz@bplegal.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 dfarfante@fowlerwhite.com, Denise.Strand@bipc.com
- Heidi A Feinman Heidi.A.Feinman@usdoj.gov
- Jonathan S. Feldman jfeldman@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com
- G Steven Fender efileu1113@gmlaw.com, efileu1094@gmlaw.com; efileu1092@gmlaw.com; efileu1435@gmlaw.com; lauren.baio@gmlaw.com
- David S Foster cheffiling@lw.com
- Robert G Fracasso Jr rfracasso@shutts.com, jgoodwin@shutts.com
- Robert C Furr bnasralla@furrcohen.com, atty\_furrcohen@bluestylus.com
- Solomon B Genet sgenet@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com
- John H Genovese jgenovese@gjb-law.com, hburke@gjb-law.com; gibecf@gjb-law.com
- Michael I Goldberg michael.goldberg@akerman.com, charlene.cerda@akerman.com
- Lawrence Gordich LAG@segallgordich.com, jxp@segallgordich.com; mma@segallgordich.com
- Scott M. Grossman grossmansm@gtlaw.com, smithl@gtlaw.com; MiaLitDock@gtlaw.com; FTLitDock@GTLaw.com; miaecfbky@gtlaw.com
- Jennifer Hayes jhayes@foley.com, crowell@foley.com
- Zachary N James zjames@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com
- Kenneth M Jones kjones@moodyjones.com
- Michael A Kaufman michael@mkaufmanpa.com, diamondmk@aol.com; kaufmanesq@gmail.com; gstolzberg@mkaufmanpa.com; dginbel@mkaufmanpa.com; kwatson@mkaufmanpa.com; arodriguez@mkaufmanpa.com
- Stephen J Kolski Jr stevekolski@catlin-saxon.com
- Harris J. Koroglu hkoroglu@shutts.com, jgoodwin@shutts.com
- James A Lodoen jlodoen@lindquist.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 pjmc@pjmlawmiami.com
- Brian M Mckell brian.mckell@wilsonelser.com, lourdes.riestra@wilsonelser.com
- James C. Moon jmoon@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com
- Barry E Mukamal bankruptcy@marcumllp.com, FL64@ecfbis.com
- Barry E Mukamal bemtrustee@kapilamukamal.com, FL64@ecfbis.com
- David J Myers myers@fsblegal.com
- Office of the US Trustee USTPRegion21.MM.ECF@usdoj.gov
- Leslie S. Osborne rappaport@kennethrappaportlawoffice.com
- John E Page jpage@sfl-pa.com, scusack@sfl-pa.com; lrosetto@sfl-pa.com
- Chad S Paiva chad.paiva@gmlaw.com, katrina.bankert@gmlaw.com
- Kristopher E Pearson kpearson@stearnsweaver.com, mmasvidal@stearnsweaver.com; bank@stearnsweaver.com; ross@stearnsweaver.com; dilworthcdp@ecf.epiqsystems.com; larrazola@stearnsweaver.com; sanderson@stearnsweaver.com
- Jennifer H Pinder jpinder@foley.com, crowell@foley.com
- Chad P Pugatch cpugatch.ecf@rprslaw.com
- Cristopher S Rapp csrapp@jones-foster.com, eservice@tobinreyes.com
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113C-9  
Case 09-36396-PGH  
Southern District of Florida  
West Palm Beach  
Wed May 21 15:03:10 EDT 2014

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