

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

In re:

CHAPTER 11

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

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

Debtors.

**LIQUIDATING TRUSTEE'S MOTION FOR APPROVAL
OF SETTLEMENT WITH PBL MULTI-STRATEGY
FUND, L.P. AND 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 II Liquidating Trust ("*Liquidating Trust*"), 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 PBL Multi-Strategy Fund, L.P. ("*PBMS*"). In support of this relief, the Liquidating Trustee states the following:

I. Factual Background

A. *The Pre-Petition Activities of PBF II*

1. The Liquidating Trust is the successor to Palm Beach Finance II, L.P. ("*PBF II*").
2. PBF II was formed to lend monies in purchase financing transactions supposedly brokered by Thomas Petters and his company, Petters Company, Inc. ("*PCI*") in the consumer

goods business. The idea was that PBF II and other lenders would supply bridge financing to PCI and then later, once goods were received by a particular big box retailer, the retailer would remit the payment to the lender or PCI.

3. In reality, PBF II's investments in PCI were worthless - PCI's purchase and financing transactions were fictitious and part of an elaborate, multi-billion dollar *ponzi* scheme perpetrated by Mr. Petters, Deanna Munson a/k/a Deanna Coleman, Robert White and others. No retailer ever made any payment on the purchase and sale of goods because the deals never existed.

4. On September 24, 2008, federal agents raided Mr. Petters' offices. Thereafter, Mr. Petters' companies were placed into federal receivership. Ultimately, Mr. Petters was convicted of his crimes and sentenced to 50 years in prison. Other persons complicit in the fraud were sentenced to prison sentences as well.

5. On November 30, 2009 ("*Petition Date*"), PBF II commenced a Chapter 11 bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida ("*Bankruptcy Court*").

6. On October 21, 2010, the Bankruptcy Court entered its Order Confirming Second Amended Plan of Liquidation [ECF No. 444], creating the Liquidating Trust and appointing the Liquidating Trustee as liquidating trustee.

B. Transfers Made to PBMS

7. PBMS was a hedge fund that was affiliated with PBF II.

8. PBMS's investment strategy was generally to make loans in the asset backed market. To support this strategy, PBMS raised monies from the sale of limited partnership

interests and by employing significant amounts of leverage through an offshore lender. PBMS's lender held a first position priority lien with respect to all of PBMS's assets.

9. Because PBMS's investment strategy was employed on a deal by deal basis, at various times, PBMS held significant cash positions.

10. To generate a return on these idle cash positions, PBMS became a limited partner in PBF II. As a limited partner, PBMS would typically contribute large sums of monies in PBF II, and once a deal arose, removed those funds to invest in the deal.

11. Based on a cash in, cash out analysis, PBMS's profit was \$3,306,724 ("**Profit Distribution**") with respect to its limited partner investment in PBF II.

II. Settlement Terms

12. The key aspects of the stipulation of settlement between the parties ("**Stipulation**") are the following:¹

- a) Upon approval of the Stipulation, PBMS will pay (or cause to be paid) \$1,000,000.00 to the Liquidating Trust ("**Settlement Payment**"). The Settlement Payment represents 30.24% of the Profit Distribution.
- b) The parties shall exchange mutual releases as described in the Stipulation; and
- c) PBMS shall not be entitled to any distribution from the PBF II bankruptcy estate.

13. These settlement terms deviate from the typical terms upon which the Liquidating Trustee has resolved other claims against those who received net profits. The basis for this deviation stems from the largely defunct status of PBMS and its resulting financial condition and capacity to pay.

¹ A copy of the Stipulation is attached as Exhibit 1. To the extent the terms of the agreement differ with the terms set forth in this Motion, the agreement shall control.

14. Namely, upon the financial meltdown of 2008, PBMS's investments in various asset backed loans collapsed. As a result, PBMS suffered massive losses that effectively wiped out its equity.

15. Thereafter, to avoid protracted foreclosure litigation with its offshore lender, PBMS and its partners entered into a settlement agreement that ceded nearly all of the assets of the fund to the lender in exchange for retaining a limited pool of assets that currently have an indeterminate value. To the extent any value is extracted from these remaining assets, only those limited partners which redeemed their interests prior to the suspension of redemptions by the fund, and therefore constitute creditors under applicable law, will be entitled to a *pro rata* share. In the event the Liquidating Trustee were to litigate his claims against PBMS, he would likely be required to share *pro rata* with such creditors over time as monies are received from the wind down and liquidation of the remaining assets. Alternatively, PBMS might be forced into its own insolvency proceeding.

16. PBMS has provided significant financial disclosures (in the form of tax filings and historical and *pro forma* financial statements) to the Liquidating Trustee and his professionals. Additionally, the Liquidating Trustee has engaged in multiple settlement conferences with PBMS and its counsel, including meeting with the principals of PBMS in Dallas, Texas, in early November 2011. While PBMS has not admitted liability, these discussions largely focused on the remaining assets of PBMS, the amount of creditor claims and the settlement reached with PBMS's offshore lender. Finally, PBMS has provided copies of the relevant settlement documents with its offshore lender.

17. Based on these meetings and detailed disclosures, the Liquidating Trustee has determined in his business judgment that it is highly unlikely that he would recover more than

the Settlement Payment (particularly net of additional fees and costs) if he successfully prosecuted litigation to recover the Profit Distribution or principal payments to PBMS.

III. Relief Requested

18. The Liquidating Trustee seeks an Order from this Court (a) approving the Stipulation and (b) approving the Contingency Fee (as defined below).

19. 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.”

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

21. 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 Stipulation Ought to be Approved*

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

Probability of success in litigation

23. The Liquidating Trustee, on behalf of the Liquidating Trust, could assert that the Profit Distribution to PBMS was a fraudulent transfer under federal or state law, or alternatively, that PBMS was unjustly enriched by the Profit Distribution. Additionally, the Liquidating Trustee would likely bring claims to recover principal repayments made to PBMS.

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

25. Nonetheless, the Liquidating Trustee acknowledges that there are risks inherent in all litigation and there is the possibility that PBMS, or other similarly situated parties, could raise certain issues or defenses that potentially could impact the Liquidating Trustee's claims.

Collectability

26. Collectability is a significant issue in this matter and drives this settlement.

27. Based on PBMS's disclosures, PBMS does not have the financial wherewithal to pay any meaningful amount of the Profit Distribution. Moreover, if the Liquidating Trustee successfully prosecuted any litigation, it is possible that PBMS would be placed into bankruptcy, further casting doubt over the collectability of any judgment and the timing of such collections. To that end, the settlement amount provided under the Stipulation is being funded by PBMS's offshore lender (and not PBMS) largely to avoid a bankruptcy filing.

Complexity of litigation and attendant expense, inconvenience and delay

28. This is a meaningful consideration that militates in favor of approval of the Stipulation.

29. In sum, although many of the claims outlined above are typical claims litigated before this Court, they still potentially require retention of experts and extensive fact discovery before a trial could take place. The result of these efforts will be substantial fees of professionals that could diminish the net result of any recovery to creditors in the PBF II case.

30. Moreover, assuming the Liquidating Trustee was successful in obtaining a judgment against PBMS, he would then have to engage in collection efforts. These efforts may become more complicated if PBMS were to file for bankruptcy.

31. The Stipulation addresses these concerns. The parties avoid litigating fact specific claims and issues relating to collection, with the attendant expense and delay of such litigation being nullified.

Paramount interest of creditors

32. The Settlement Payment represents a 30.24% recovery of the Profit Distribution and a waiver of any potential or corresponding claim. This result gives certainty to the estate and avoids the risk, expense and delay attendant with litigation. As such, the Stipulation is in the paramount interest of PBF I's creditors and should be approved.

B. The Contingency Fee Ought to be Approved

33. 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 contingency fee of 10% for any affirmative recovery it obtains on behalf of the Liquidating Trust without further order of the Court ("*Contingency Fee*").

34. As such, MRB requests that the Contingency Fee be paid from the Settlement Payment without further Order from this Court.

WHEREFORE, the Liquidating Trustee requests that this Court enter an Order (similar in form to the Order attached as Exhibit 2) (1) approving the Stipulation; (2) approving payment of the Contingency Fee and (3) granting such other relief this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on February 8, 2012, a true and correct copy of the foregoing was served via the Court's Notice of Electronic Filing on those parties listed on the attached Exhibit 3, and via U.S. Mail to the parties listed on the matrix attached as Exhibit 4.

s/ Jonathan S. Feldman
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*Attorneys for Barry E. Mukamal,
Liquidating Trustee*

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("*Stipulation*") is entered into on _____, 2011 by and between (a) Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") of the Palm Beach Finance II Liquidating Trust ("*Liquidating Trust*") and (b) PBL Multi-Strategy Fund, L.P. ("*PBMS*") (the Liquidating Trustee and PBMS are at times individually referred to as a "*Party*" or collectively, the "*Parties*"). The terms of this Stipulation are as follows:

RECITALS

A. On November 30, 2009 ("*Petition Date*"), Palm Beach Finance II, L.P. ("*PBF IF*") commenced a Chapter 11 bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida ("*Bankruptcy Court*");

B. On October 21, 2010, the Bankruptcy Court entered its Order Confirming Second Amended Plan of Liquidation [ECF No. 444] creating the Liquidating Trust and appointing the Liquidating Trustee as liquidating trustee.

C. The Liquidating Trustee, on behalf of the Liquidating Trust, asserts certain claims against PBMS (the "*Potential Litigation*");

D. PBMS expressly denies the claims that could be asserted in the Potential Litigation;

E. The Liquidating Trustee and PBMS have engaged in discussions in an attempt to resolve any and all issues, including the claims that could be raised in the Potential Litigation;

F. To avoid the continued expense and risk of adverse outcome arising from the Potential Litigation, as well as incurring costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve the Potential Litigation pursuant to the terms and conditions of this Stipulation.

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

1. **No admission of liability.** The Parties acknowledge that this Stipulation is a compromise and settlement of a controversy. No Party admits, and each expressly denies, any liability on its part.

2. **Entire agreement.** This Stipulation constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and there are no other stipulations, agreements, representations, or warranties other than those specifically set forth herein. All prior agreements and understandings between the Parties concerning the subject matter hereof are superseded by the terms of this Stipulation.

3. **Settlement Payment.** In full and final settlement of the Potential Litigation, PBMS shall pay (or cause to be paid) \$1,000,000.00 (the "**Settlement Payment**") within 20 days from the date of the entry of a final Order by the Bankruptcy Court approving this Stipulation. The Settlement Payment 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 Jonathan S. Feldman, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3000, Miami, Florida 33131.

4. **No entitlement to distribution.** PBMS agrees that it shall not be entitled to any monetary distribution whatsoever from the Liquidating Trust or PBF II. To the extent PBMS has scheduled or filed any proof of claim or proof of interest in the PBF II bankruptcy case, such claim or interest shall be deemed disallowed in its entirety and be stricken.

5. **General releases between the Parties.**

A. For purposes of this Stipulation, the term "**Claims**" shall mean any obligations, claims, causes of action, demands of any type that a party may presently have, may have

or have had in the past, upon or by reason of any matter, cause or thing whatsoever, including without limitation any and all obligations, debts, covenants, contracts, controversies, agreements, promises, claims, causes of actions and demands of any kind whatsoever, whether known or unknown, at law or in equity, indirect, derivative, or direct, known or unknown, discovered or undiscovered, including, but not limited to, those claims that could have been asserted in the Potential Litigation.

B. Upon approval of this Stipulation by final order of the Bankruptcy Court and payment of the Settlement Payment, the Liquidating Trustee, on behalf of the Liquidating Trust and PBF II, waives, releases and holds harmless, now and forever, (i) PBMS from any and all Claims that the Liquidating Trustee, the Liquidating Trust or PBF II may have against PBMS; and (ii) PBL Capital, L.P. ("*PBL Capital*") and Palm Beach Multi-Strategy Offshore, Ltd. ("*PBMSO*") and the respective past and present officers, directors, insurers, employees, agents, attorneys, representatives, predecessors, successors, assigns, partners, shareholders, parents, subsidiaries and other affiliates of PBMS, PBL Capital and PBMSO (collectively, the "*PBMS Released Parties*") from any and all Claims that the Liquidating Trustee, the Liquidating Trust or PBF II may have against the PBMS Released Parties relating to PBMS's investment in PBF II; provided that nothing herein shall be deemed to release, waive or otherwise limit any rights or obligations arising out of this Stipulation. The scope of this release shall not impact, impair or alter in any manner any Claims whatsoever that the Liquidating Trustee, on behalf of the Liquidating Trust or PBF II, may have against any parties other than PBMS or the PBMS Released Parties, including but not limited to Claims against any alleged concurrent or consecutive tortfeasors, if any.

C. Upon approval of this Stipulation by final order of the Bankruptcy Court and payment of the Settlement Payment, PBMS waives, releases and holds harmless, now and forever, the Liquidating Trustee, the Liquidating Trust and PBF II from any and all Claims that PBMS may have against the Liquidating Trustee, the Liquidating Trust or PBF II; provided that this provision does not release, waive or otherwise limit any rights or obligations arising out of this Stipulation.

5. **Authorization to bind.** The individuals signing below represent and warrant that they have the authority to execute this Stipulation on behalf of the applicable Party and bind them to its terms.

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

7. **Attorneys' fees and costs.** Each Party shall bear its own attorneys' fees and costs in connection with the negotiation of this Stipulation and motions and orders as may be necessary to obtain the approval of this Stipulation by the Bankruptcy Court; provided that that in the event of any litigation between the Parties under this Stipulation or arising as a result of a default under this Stipulation, the prevailing Party shall be entitled to reasonable attorneys' fees and costs related thereto, including, but not limited to, those incurred at all trial and appellate levels.

8. **No waiver of modification.** This Stipulation and any of the specific items, covenants, and conditions contained herein, may not be waived, changed, altered or modified except by an instrument in writing signed by the Party against whom enforcement of such change is sought.

9. **Effective date.** This Stipulation shall be effective upon execution by all of the Parties hereto, subject only to approval of this Stipulation by final order of the Bankruptcy Court and payment of the Settlement Payment. Upon it becoming effective, this Stipulation shall be binding on all of the Parties' personal representatives, successors, heirs or assigns.

10. **No effect.** If the Bankruptcy Court does not approve this Stipulation, then the Stipulation shall be of no further force or effect, and the Parties shall be restored to their rights as they existed prior to the execution of this Stipulation. Notwithstanding the foregoing, if the Bankruptcy Court does not approve this Stipulation because any of the Parties have failed to provide the Bankruptcy Court with adequate information to rule on the merits of the Stipulation, the Parties will use their best efforts to seek reconsideration of any order declining to approve the Stipulation, or to file an amended motion to approve the Stipulation.

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

12. **Counterparts.** This Stipulation may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Stipulation. Delivery of an executed counterpart of a signature page to this Stipulation by facsimile shall be effective as delivery of a manually executed counterpart of this Stipulation.

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

14. **Jurisdiction.** The Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Stipulation.

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STIPULATED AND AGREED TO BY:

Barry E. Mukamal, Liquidating Trustee

Date: _____

PBL Multi-Strategy Fund, L.P.

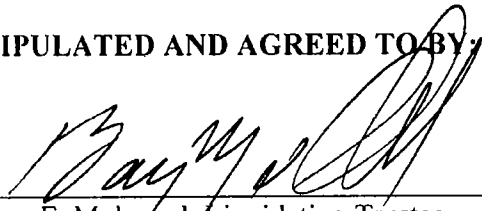
By: PBL Capital, L.P., its general partner

By: PBL Holdings, LLC, its general partner

By: 
Name: Scott Olson
Title: Managing Director

Date: February 1, 2012

STIPULATED AND AGREED TO BY:



Barry E. Mukamal, Liquidating Trustee

Date: 11/30/11

PBL Multi-Strategy Fund, L.P.

By: PBL Capital, L.P., its general partner

By: PBL Holdings, LLC, its general partner

By: _____

Name: _____

Title: _____

Date: _____

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.

**ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION
FOR APPROVAL OF SETTLEMENT WITH PBL MULTI-STRATEGY
FUND, L.P. AND PAYMENT OF CONTINGENCY FEE [ECF NO. ____]**

THIS CAUSE came before the Court upon the Liquidating Trustee's Motion for Approval of Settlement with PBL Multi-Strategy Fund, L.P. ("**PBMS**") and Payment of Contingency Fee [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

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

compromise and settlement is sufficient to comply 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. PBMS shall pay (or cause to be paid) \$1,000,000.00 (the "***Settlement Payment***") within 20 days from the date of the entry of an Order by the Bankruptcy Court approving the Stipulation.
4. MRB's Contingency Fee in the amount of \$100,000.00 is approved. The Liquidating Trustee is authorized and directed make payment of the Contingency Fee without the need of further Court Order, in accordance with the Pro Rata Allocation Formula, promptly upon receipt of the Settlement Payment.
5. To the extent that RM 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.

###

Mailing Information for Case 09-36379-PGH

Electronic Mail Notice List

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

- Geoffrey S. Aaronson gaaronson@aspalaw.com, tdmckeown@mckeownpa.com;sbeiley@aspalaw.com;dlinder@aspalaw.com
- Melissa Alagna mma@segallgordich.com, jxp@segallgordich.com
- Paul A Avron pavron@bergersingerman.com, efile@bergersingerman.com
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Palm Beach Diversified Income, LP
by and through Incorporating Services, Ltd., its
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Barry Beal
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Scott Schneider
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New York, NY 10019

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c/o JamiScott, LLC
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New York, NY 10019

Leonard & Lillian Schneider
c/o JamiScott LLC
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Blackpool Partners, LP
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