

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 V.A.S. PARTNERS, LLC 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 Partners 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 V.A.S. Partners, LLC. ("*VAS*"). In support of this relief, the Liquidating Trustee states the following:

I. Factual Background

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

1. The Liquidating Trust is the successor to Palm Beach Finance Partners, L.P. ("*PBF I*").

2. PBF I 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 I 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 I'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 I 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 VAS*

7. VAS was a limited partner in PBF I.

8. Based on a cash in, cash out analysis, VAS received a profit in the amount of \$224,343.30 ("*Profit Distribution*") with respect to its limited partner investment in PBF I.

II. Settlement Terms

9. The key aspects of the stipulation of settlement between the parties (“*Stipulation*”) are the following:¹

- a) Upon approval of the Stipulation, VAS will pay (or cause to be paid) \$134,605.00 to the Liquidating Trust (“*Settlement Payment*”). The Settlement Payment represents 60% of the Profit Distribution.
- b) The parties shall exchange mutual, general releases; and
- c) VAS shall not be entitled to any distribution from the PBF I bankruptcy estate.

III. Relief Requested

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

11. 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.”

12. 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).

13. 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

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.

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*

14. 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

15. The Liquidating Trustee, on behalf of the Liquidating Trust, could assert that the Profit Distribution to VAS was a fraudulent transfer under federal or state law, or alternatively, that VAS was unjustly enriched by the Profit Distribution.

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

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

Collectability

18. Collectability is not an issue in dispute between the parties.

Complexity of litigation and attendant expense, inconvenience and delay

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

20. 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 I case.

21. Moreover, assuming the Liquidating Trustee was successful in obtaining a judgment against VAS, he would then have to engage in collection efforts. Again, this would result in the estate incurring additional fees and delay.

22. The Stipulation addresses these concerns. The parties avoid litigating fact specific claims, with the attendant expense and delay of litigation being nullified.

Paramount interest of creditors

23. The Settlement Payment represents a 60% 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

24. 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**").

25. 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 August 2, 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, and Amy Galvin Grogan, Esq., Garelli Grogan Hesse & Hauert, 340 W. Butterfield, 2A, Elmhurst, IL 60126.

s/ Jonathan S. Feldman
Jonathan S. Feldman, Esquire
Florida Bar No. 12682
jfeldman@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*

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("*Stipulation*") is entered into on _____, 2012 by and between (a) Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") of the Palm Beach Finance Partners Liquidating Trust ("*Liquidating Trust*") and (b) V.A.S. Partners, LLC ("*VP*") (the Liquidating Trustee and VP 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 Partners, L.P. ("*PBF F*") 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, filed an adversary proceeding against VP, Adv. Case No. 11-2802-PGH that seeks to recover certain transfers made by PBF I to or for the benefit of VP ("*Litigation*");

D. VP expressly denies the claims that asserted in the Litigation;

E. The Liquidating Trustee and VP have engaged in discussions in an attempt to resolve any and all issues, including the claims asserted in the Litigation;

F. To avoid the continued expense and risk of adverse outcome arising from the Litigation, as well as incurring costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve the 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 Litigation, VP shall pay (or cause to be paid) \$134,605 (the "**Settlement Payment**") within 20 days from the date of the entry of an 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.** VP agrees that they shall not be entitled to any monetary distribution whatsoever from the Liquidating Trust or PBF I. To the extent VP has scheduled or filed any proof of claim or proof of interest in the PBF I 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, claims, causes of actions and demands of any kind whatsoever, 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 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 I, waives, releases and holds harmless, now and forever, VP from any and all Claims that the Liquidating Trustee, the Liquidating Trust or PBF I may have against VP; 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 I, may have against any parties other than VP, 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, VP waives, releases and holds harmless, now and forever, the Liquidating Trustee, the Liquidating Trust and PBF I from any and all Claims that VP may have against the Liquidating Trustee, the Liquidating Trust or PBF I; 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' successors 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.

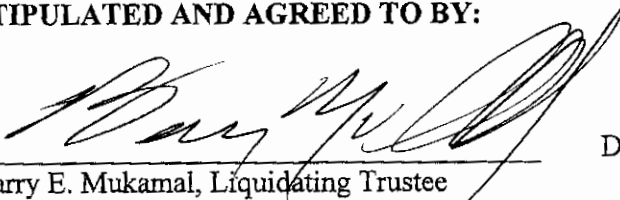
12. **Counterparts.** This Stipulation may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Stipulation. Delivery of an 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.

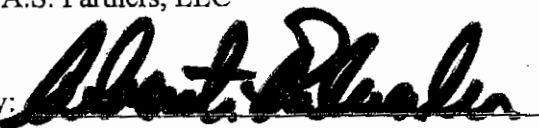
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STIPULATED AND AGREED TO BY:


Barry E. Mukamal, Liquidating Trustee

Date: 7/30/12

V.A.S. Partners, LLC

By: 

Date: 7-27-12

Title: MANAGER

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
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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 V.A.S. PARTNERS, LLC
AND PAYMENT OF CONTINGENCY FEE [ECF NO.]**

THIS CAUSE came before the Court upon the Liquidating Trustee's Motion for Approval of Settlement with V.A.S. Partners, LLC ("VAS") and Payment of Contingency Fee [ECF No.] (the "*Motion*"). 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 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. VAS shall pay (or cause to be paid) \$134,605.00 (the “*Settlement Payment*”) within 20 days from the date of the entry of this Order. 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 3200, Miami, Florida 33131.
4. The Settlement Payment will be allocated and apportioned among the Debtors as follows: 18% to Palm Beach Finance Partners, L.P. and 82% to Palm Beach Finance II, L.P. (the “*Pro Rata Allocation Formula*”).
5. To the extent that VAS has any scheduled claim or proof of interest or has filed a proof of claim or proof of interest in the PBF I bankruptcy case, 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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7. MRB's Contingency Fee in the amount of \$13,460.50 is approved and the Liquidating Trustee is authorized to pay this amount upon funding of the Settlement Payment.

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Submitted By:

s/ Jonathan S. Feldman, Esq.

Jonathan S. Feldman, Esquire

Florida Bar No. 12682

jfeldman@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:

Jonathan S. Feldman, 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, tdmckeown@mckeownpa.com,sbeiley@aspalaw.com,dlinder@aspalaw.com
- Melissa Alagna mma@segallgordich.com, jxp@segallgordich.com
- Keith T Appleby kappleby@fowlerwhite.com, deborah.lester@fowlerwhite.com
- Paul A Avron pavron@bergersingerman.com, efile@bergersingerman.com
- Marc P Barmat ndixon@furrcohen.com, mbarmat@furrcohen.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, brooke.tanner@hklaw.com
- Michael S Budwick mbudwick@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfefs@yahoo.com
- Dennis M. Campbell dcampbell@campbelllawfirm.net, gschmied@campbelllawfirm.net;Iartigas@campbelllawfirm.net
- Francis L. Carter flc@katzbarron.com, lcf@katzbarron.com
- Franck D Chantayan fchantayan@carltonfields.com, kdemar@carltonfields.com;wpbecf@cfdom.net
- Daniel DeSouza ddesouza@becker-poliakoff.com, culpiz@becker-poliakoff.com
- John R. Dodd doddj@gtlaw.com, miaecfbky@gtlaw.com;mialitdock@gtlaw.com
- Heidi A Feinman Heidi.A.Feinman@usdoj.gov
- Jonathan S. Feldman jfeldman@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfefs@yahoo.com
- G Steven Fender efileu1113@gmlaw.com, efileu1094@gmlaw.com;efileu1092@gmlaw.com
- David S Foster david.foster@lw.com, chefiling@lw.com
- Robert G Fracasso Jr rfracasso@shutts.com
- Robert C Furr bnasralla@furrcohen.com
- Solomon B Genet sgenet@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfefs@yahoo.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, postiy@gtlaw.com;postiy@gtlaw.com;MiaLitDock@gtlaw.com;FTLLitDock@GTLaw.com;miaecfbky@gtlaw.com
- Jennifer Hayes jhayes@foley.com, lcrouch@foley.com
- Mark D. Hildreth mhildreth@slk-law.com, dcooper@slk-law.com
- Kenneth M Jones kjones@moodyjones.com
- Michael A Kaufman michael@mkaufmanpa.com, diamondmk@aol.com;kaufmanesq@gmail.com;gstolzburg@mkaufmanpa.com
- Harris J. Koroglu hkroglu@shutts.com, jgoodwin@shutts.com
- Paul J McMahon pj@pjmiamiami.com
- Barry E Mukamal bankruptcy@marcumllp.com, FL64@ecfcbis.com
- David J Myers myers@fsblegal.com
- Office of the US Trustee USTPRegion21.MM.ECF@usdoj.gov
- Paul L. Orshan plorshan@orshanpa.com, maria@orshanpa.com
- 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;ross@stearnsweaver.com;mmesones-mori@stearnsweaver.com;dillworthcdp@ecf.epiqsystems.com;jmartinez@stearnsweaver.com;sanderson@stearnsweaver.com;cgraver@stearnsweaver.com
- Chad P Pugatch cpugatch.ecf@rprslaw.com
- Cristopher S Rapp csrapp@jones-foster.com
- Patricia A Redmond predmond@stearnsweaver.com, jrivera@stearnsweaver.com;ross@stearnsweaver.com;mmesones-mori@stearnsweaver.com;dillworthcdp@ecf.epiqsystems.com;sanderson@stearnsweaver.com;nlevine@akingump.com
- Jason S Rigoli jrigoli@furrcohen.com, ndixon@furrcohen.com
- Kenneth B Robinson krobinson.ecf@rprslaw.com
- Joseph Rodowicz bankruptcy@rodowiczlaw.com, rodowiczlaw@gmail.com
- Robin J. Rubens rjr@lklaw.com, cag@lklaw.com
- Bradley M Saxton bsaxton@whww.com, scolgan@whww.com;rweinman@whww.com;breece@whww.com
- Michael L Schuster mschuster@gjb-law.com, gjbecf@gjb-law.com
- Michael D. Seese mseese@hinshawlaw.com, sseward@hinshawlaw.com;lportuondo@hinshawlaw.com
- Steven E Seward sseward@hinshawlaw.com, lportuondo@hinshawlaw.com
- Bradley S Shraiberg bshraiberg@sfl-pa.com, dwoodall@sfl-pa.com;vchapkin@sfl-pa.com;lrosetto@sfl-pa.com;scusack@sfl-pa.com;blee@sfl-pa.com
- Paul Steven Singerman singerman@bergersingerman.com, mdiaz@bergersingerman.com;efile@bergersingerman.com
- Peter A Tappert ptappert@wdpalaw.com, elastra@wdpalaw.com;wbrown@wdpalaw.com;nonega@wdpalaw.com
- James S Telepman jst@fcohenlaw.com
- Charles W Throckmorton cwt@kttlaw.com, lf@kttlaw.com
- Trustee Services Inc 2 court@trusteeservices.biz, sandirose.magder@gmail.com
- Skipper J Vine jonathan.vine@csklegal.com
- Jessica L Wasserstrom jwasserstrom@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfefs@yahoo.com
- Morris D. Weiss morrisw@hts-law.com, sherris@hts-law.com;annmariej@hts-law.com
- George L. Zinkler gzinkler.ecf@rprslaw.com

Palm Beach Diversified Income, LLP
c/o David & Michelle M. Harrold
963 Evergreen Drive
Delray Beach, FL 33483

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

Albert Liguori
16590 Crownsbury Way, #201
Ft. Myers, FL 33908

Amy Davenport
PO Box 3511
Midland, TX 79702

Robert Davenport
3 Greenwich Dr
Midland, TX 79705

Robert Davenport, Jr.
104 S. Pecos Street
Midland, TX 79701

ARIS Capital Management
152 W 57 St, 19th Fl
New York, NY 10019

ARIS Multi-Strategy Fund, LP
Aris Capital Management
152 W 57 St 19 Fl
New York, NY 10019

Armadillo Fund
40 Random Farms Cir
Chappaqua, NY 10514

BTA Oil Producers
104 S Pecos St
Midland, TX 79701

Lynda Beal
104 S Pecos St
Midland, TX 79701

Nancy Beal
104 S Pecos St
Midland, TX 79701

Spencer Beal
104 S Pecos St
Midland, TX 79701

Barry Beal
104 S Pecos St
Midland, TX 79701

Keleen Beal
104 S Pecos St
Midland, TX 79701

Kelly Beal
104 S Pecos St
Midland, TX 79701

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

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

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

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

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

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

Blackpool Partners, LP
701 Harger Rd, #190
Oak Brook, IL 60523

Blackpool Absolute Return Fund, LLC
c/o John E. Page, Esquire
Shraiberg Ferrara & Landau, PA
2385 NW Executive Ctr Dr #300
Boca Raton, FL 33431

Centermark Asset Management
21320 Baltic Dr
Cornelius, NC 28031

Claude Lestage
4893 N Kay
Palm Beach Gardens, FL 33418

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

MIO Partners Inc
c/o Robin E. Keller, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022

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

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

Deer Island, LP
4 Nason Hill Lane
Sherborn, MA 01770

Dennis Dobrinich
3860 Dogwood Ave
Palm Beach Gardens, FL 33410

Douglas A. Kelley, Chapter 11 Trustee
Attn: James A. Rubenstein, Esq.
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

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

Father's Heart Family Foundation Inc.
8292 Nashua Dr
Palm Beach Garden, FL 33418

Frank Carruth
5407 S Flagler Dr
West Palm Beach, FL 33405

Freestone Entities
c/o Mr. Justin Young
1918 Eighth Avenue, Suite 3400
Seattle, WA 98101

Fulbright & Jaworski
2100 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2112

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

Edward J. Estrada, Esquire
Christopher A. Lynch, Esquire
Reed Smith LLP
599 Lexington Avenue
New York, NY 10022

George & Nancy Slain
59-1089 Maluhi Pl
Kamuela, HI 96743

H. Thomas Halen, III, President
Golden Gate Financial Group LLC
1750 Montgomery Street, 1st Floor
San Francisco, CA 94111

Golden Gate VP Absolute Return Fund, LP
c/o Michael J. Cordone, Esq.
Stradley Ronon Stevens & Young, LLP
2600 One Commerce Square
Philadelphia, PA 19103

Golden Sun Multi-Manager Fund, LP
c/o Jeffrey S. Posta, Esq.
Stark & Stark
PO Box 5315
Princeton, NJ 08543-5315

Guy M. Hohmann, Esq. and
Messrs. Taube, Weiss and Taylor
Hohmann, Taube & Summers, L.L.P.
100 Congress Ave, 18th Floor
Austin, TX 78701

Harvest Investments LP
Red Bird Farm
4 Nason Hill Rd
Sherborn, MA 01770

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

Integrity Partners
c/o Scott Walchek
1499 Danville Blvd, #202
Alamo, CA 94507

James Corydon
6650 N Tower Circle Dr
Lincolnwood, IL 60712

Janette Bancroft
9052 SW 103 Ave
Ocala, FL 34481

Janet Bonebrake
7169 150th Ct N
Palm Beach Gardens, FL 33418

John Daniel
225 Wellington Ln
Cape Girardeau, MO 63701

Judith Goldsmith
3 Water Ln
Manhasset, NY 11030

K&K Capital Management, Inc.
3545 Lake St, #201
Wilmette, IL 60091

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

Kenneth A. Ralston
c/o John E. Page, Esquire
Shraiberg Ferrara & Landau, PA
2385 NW Executive Ctr Dr #300
Boca Raton, FL 33431

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

Laulima Partners, LP
c/o Smithfield Trust Co.
Attn: Robert Kopf Jr.
20 Stanwix St, #650
Pittsburgh, PA 15222

Leon Meyers Management
680 Fifth Ave, 9th Fl
New York, NY 10019

M. Lee Toothman
216 Barbados Dr
Jupiter, FL 33458

MB Investments, LLC
180 N Wacker Drive, Lower 1
Chicago, IL 60606

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

Mark Prevost
2372 Hidden Ridge Ln
Jasper, AL 35504

Martin Casdagli
554 E Coronado Rd
Santa Fe, NM 87505

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

Nancy Dobrinich
3860 Dogwood Ave
Palm Beach Gardens, FL 33410

Nancy Hollingsworth
7107 Arrowood Rd
Bethesda, MD 20187

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

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

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

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

Quantum Family Office Group, LLC
1500 San Remo Avenue, Suite 210
Coral Gables, FL 33146

Raymond Feldman
4644 Balboa Ave
Encino, CA 91316

Raymond G. Feldman Family Ventures, LP
c/o John E. Page, Esquire
Shraiberg Ferrara & Landau, PA
2385 NW Executive Ctr Dr #300
Boca Raton, FL 33431

Randall Linkous
1174 SW 27 Ave
Boynton Beach, FL 33426

Ron Priestley
5565 N Espina Rd
Tuscon, AZ 85718

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

Ronald R. Peterson
c/o Lazar P. Raynal, Esquire
McDermott Will & Emery
227 West Monroe Street
Chicago, Illinois 60606-5096

SALI Fund Services, LLC
6836 Austin Center Street, Suite 320
Austin, TX 78731

SSR Capital Partners, LP
4514 Cole Ave, #1000
Dallas, TX 75205

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

Sandra Linkous
1174 SW 27 Ave
Boynton Beach, FL 33426

Second City Alternatives
801 Park Ave
Wilmette, IL 60091

Select Access Management
15 Valley Dr
Greenwich, CT 06831

Sims Moss Kline & Davis, LLP
Three Ravinia Drive
Suite 1700
Atlanta, GA 30346

Spring Investor Services Inc.
Red Bird Farm
4 Nason Hill Lane
Sherborn, MA 01770

Sterling Management Inc.
160 White Oaks Ln
Vadnais Heights, MN 55127

Steve Bakaysa
36 Frantzen Ter
Cheektowaga, NY 14227

Strategic Stable Return Fund (ID), LP
4514 Cole Ave, #1000
Dallas, TX 75205

Strategic Stable Return Fund II, LP
4514 Cole Ave, #1000
Dallas, TX 75205

Table Mountain Capital, LLC
850 Quince Ave
Boulder, CO 80304

Ted Goldsmith
3 Water Ln
Manhasset, NY 11030

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

Tradex Global Master Fund
c/o Andrew N. Friedman, Esquire
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, DC 20005

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

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

Valur Egilsson
11966 Tuliptree Ln
Huntley, IL 60142

Vincent Allegra
449 S Evergreen St
Bensenville, IL 60106

Wilbur Hobgood
2189 Radnor Ct
North Palm Beach, FL 33408

Gonzalo R Dorta
334 Minorca Ave
Miami, FL 33134

Steven W Thomas
14 27 Ave
Venice, CA 90291

Joel Barnett
Barnett Capital Ltd.
450 Skokie Blvd., # 604
Northbrook, IL 60062

Guardian Capital, LLC
3225 Aviation Avenue
601
Miami, FL 33133

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

Santa Barbara Investment Capital
2220 Santiago Rd
Santa Barbara, CA 93103

DMS House
P.O. Box 31910
Grand Cayman KY1-1208
CAYMAN ISLANDS
Attention: Wade Kenny c/o Sky Bell

Pete L DeMahy, Esquire
DeMahy Labrador et al.
150 Alhambra Circle
Coral Gables, FL 33134

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

Bruce Prevost
8292 Nashua Dr
Palm Beach Gardens, FL 33418

David Harrold
963 Evergreen Dr
Delray Beach, FL 33483

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

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

U.S. Bank National Association
c/o Richard G. Wilson, Esquire
Maslon Edeman Borman & Brand, LLP
90 S. 7th Street, Suite 3300
Minneapolis, MN 55402-4140

Sarah Stroebel, Snr Corp Counsel
U.S. Bank National Association
800 Nicollet Mall
Minneapolis, MN 55402-4140

Golden Sun Capital Management, LLC
885 Arapahoe Avenue
Boulder, CO 80302

Genesis Capital
Attn: Michael Dubinski
7191 Wagner Way NW
Gig Harbor, WA 98335

Robin J. Rubens, Esquire
Levine Kellogg Lehman, et al.,
201 South Biscayne Blvd.
22nd Floor, Miami Center
Miami, FL 33131

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

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

Globefin US Advisors, LLC
Attn: Andrew Hoffman
980 6th Avenue, 4th Floor
New York, NY 10018

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

John Docherty
United States Attorney's Office
316 North Robert Street, Suite 404
Saint Paul, MN 55101

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

Sean O'D. Bosack
780 N. Water Street
Milwaukee, WI 53202

John L. Kirtley
780 N Water Street
Milwaukee, WI 53202

Matia L. Kreiter
780 N Water Street
Milwaukee, WI 53202

Daniel N. Rosen, Esquire
Parker Rose, LLC
300 First Avenue North, Suite 200
Minneapolis, MN 55401

Kenneth A. Welt
8255 West Sunrise Blvd., # 177
Plantation, FL 33322

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

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

Scotia Capital
The Bank of Nova Scotia
Global Alternative Asset Group
40 King Street W, 68th Fl
Toronto Ontario M5W 2X6

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

Lane E. Roesch
White & Case, LLP
200 S. Biscayne Blvd., Suite 4900
Miami, FL 33131

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

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

Andy Hall
Soffer Charbonnet LLP
7300 France Avenue South, Suite 210
Minneapolis, MN 55435

Frank Vennes
2440 N. Courtenay Pkwy.
Merritt Island, FL 32953

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

HSBC SECURITIES (USA) INC
452 Fifth Avenue - T3
New York, NY 10018

Carlton Beal Family Trust
104 S Pecos Street
Midland, TX 79701

Beal Family trust FBO Kelly Beal
104 S Pecos Street
Midland, TX 79701

The Beal Trust U/A
104 S Pecos Street
Midland, TX 79701

Beal GST Exemption Trust
104 S Pecos Street
Midland, TX 79701

Carlton Beal Family Trust
104 S Pecos Street
Midland, TX 79701

Thomas J. Ginley Life Ins. Trust
Dated 1-22-97
6650 N Tower Circle Drive
Lincolnwood, IL 60712

Zcall, LLC
c/o Brian S. Dervishi
1 S.E. 3rd Avenue, # 1980
Miami, FL 33131

Scall, LLC
c/o Weissman, Dervishi, P.A.
Suntrust International Center
1 SE 3rd Avenue, #1700
Miami, FL 33131

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

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

Dana L. Choi, Esquire
Holland & Knight LLP
701 Brickell Avenue, Suite 3000
Miami, FL 33131

Palm Beach Links Capital, LP
12200 N Stemmos Fwy, Suite 316
Dallas, TX 75234

Scott M. Grossman
Greenberg Traurig, P.A.
401 East Las Olas Blvd., Suite 2000
Fort Lauderdale, FL 33301

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

David S. Foster, Esq.
Latham & Watkins LLP
233 South Wacker Drive
Chicago, IL 60606

John Bergman, Nancy Rodman Anguish, Rodman
Capital Holdings, Ltd. Beacon Partners, Ltd., c/o
Erika L. Morabito, Esq.
FOLEY & LARDNER LLP
3000 K Street, N.W., Suite 600
Washington, D.C. 20007

Bradley M. Saxton, Esq.
Ryan E. Davis, Esq.
Winderweedle Haines et al.
390 N. Orange Avenue, Ste. 1500
Orlando, Florida 32802

James A. Lodoen, Esq.
Lindquist & Vennum PLLP
4200 IDS Center
80 S. 8th Street
Minneapolis, MN 55402

Cathy Ta, Esq.
Best Best & Krieger
3750 University Avenue
Riverside, CA 92502-10208

Jonathan Vine, Esq.
1645 Palm Beach Lakes Blvd.
2nd Floor
West Palm Beach, FL 33401

Zimmer Lucas Capital LLC
7 West 54th Street
New York, NY 10019