

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 TO APPROVE (1) SETTLEMENT
WITH THE CARIDAD CORPORATION, THE THOMAS P. LOWE TRUST
AND THOMAS P. LOWE 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 Caridad Corporation, The Thomas P. Lowe Trust and Thomas P. Lowe (individually or collectively, the "*Transferees*") 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, “**PCF**”).

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 (the “**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. (“**MGP**”; 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 (the “**Minnesota 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 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 (the “*Petters Receiver*”). Thereafter, the Petters Receiver filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the District of Minnesota 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 (the “*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. Concurrently with commencing his action against the Vennes Parties, the Liquidating Trustee also commenced suit against the Transferees, Adv. Case No. 11-2946-PGH (Caridad Corporation) and 11-2993-PGH (The Thomas P. Lowe Trust and Thomas P. Lowe) (collectively, the “*Adversary Proceedings*”). The Adversary Proceedings seek to avoid transfers made to or for the benefit of the Transferees by the Vennes Parties from approximately June of 2003 through and including approximately September of 2005 (the “*Transfers*”).

14. After the commencement of the Adversary Proceeding, on March 2, 2012, the PCI Trustee sent a letter to the Transferees indicating that he intends to pursue the Transferees for the recovery of the Transfers under 11 U.S.C. § 550 (the “*Letter Demand*”; and together with the Adversary Proceeding, the “*Litigation*”).

15. Altogether, as set forth in the complaints filed in the Adversary Proceedings and the Letter Demand, the Trustees assert that the Transferees received in the aggregate, approximately \$160,750.00 in Transfers from the Vennes Parties that are subject to avoidance and recovery for the benefit of the victims of the Petters’ fraud.

16. The Transferees deny that they have any liability in connection with the claims asserted in the Litigation.

17. The Trustees have recently entered into an agreement whereby they have agreed to mediate jointly with the Transferees and other transferees of the Vennes Parties and allocate between themselves according to the terms of that agreement any settlement proceeds relating to the transfers (the “*Allocation Agreement*”). Under the terms of the Allocation Agreement, the parties 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 No. 1282.]

18. On September 19, 2012, the parties attended mediation with Francis L. Carter, Esq. at the offices of the undersigned. At the mediation, the parties were able to achieve a global resolution as set forth below.

II. Settlement Terms

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

- a) The Transferees will pay (or cause to be paid) \$69,500.00 (the "**Settlement Payment**") on or before December 31, 2012 into the trust account of counsel for the Transferees. Of the total Settlement Payment, \$27,800.00 will be paid to the Liquidating Trustee and \$41,700.00 will be paid to the PCI Trustee. Counsel for the Transferees shall disburse such funds to the Trustees within five (5) calendar days of entry of (a) final non-appealable Orders by each of this Court and the Minnesota Bankruptcy Court approving the Stipulation and (b) a final non-appealable Order of this Court dismissing the Adversary Proceedings with prejudice. The Settlement Payment represents roughly 43% of the Transfers.
- b) The parties shall exchange mutual, general releases;
- c) The Liquidating Trustee shall seek dismissal of the Adversary Proceeding; and
- d) The Transferees shall not be entitled to any distribution from the Debtors' or PCI bankruptcy estates.

20. Pursuant to the Second Amended Joint Plan of Liquidation (the "**Plan**"), approved by this Court's Order dated October 21, 2010 [ECF No. 444], all monetary consideration received by the Palm Beach Liquidating Trusts in conjunction with the Settlement will be

¹ A copy of the Stipulation is attached as Exhibit 1. To the extent the terms set forth in this Motion differ from those set forth in the Stipulation, the Stipulation controls.

allocated as follows: 18% to Palm Beach Finance Partners Liquidating Trust and 82% to Palm Beach Finance II Liquidating Trust (the “*Pro Rata Allocation Formula*”).

III. Relief Requested

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

22. 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.”

23. 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).

24. 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*

25. 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

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

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

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

Collectability

29. Collectability is not a significant consideration with respect to the Litigation.

Complexity of litigation and attendant expense, inconvenience and delay

30. This is a significant consideration that militates in favor of approval of the Stipulation.

31. 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.

32. Moreover, a significant focus of the litigation will be the Vennes Parties themselves. To that end, the pending criminal case against Mr. Vennes is currently scheduled for trial in the spring of 2013. The possibility exists that discovery from the Vennes Parties may be delayed until the conclusion of that proceeding.

33. The Stipulation 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

34. The Stipulation provides a meaningful payment of the claims asserted against the Transferees in the Adversary Proceedings. The Settlement Payment is a meaningful resolution in light of the complexity of the Litigation, as well as the potential delay and professional costs associated therewith. As such, the Stipulation is in the paramount interest of the Debtors' stakeholders.

B. The Contingency Fee Ought to be Approved

35. 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**").

36. The Liquidating Trustee requests that the 10% Contingency Fee – in the amount of \$2,780.00– 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 2) (i) approving the Stipulation; (ii) approving payment of the Contingency Fee; and (iii) granting such other relief this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Court's Notice of Electronic Filing upon Registered Users set forth on the attached list on Exhibit 3 on November 20, 2012 and by U.S. Mail on those parties set forth on the attached list on Exhibit 4.

s/ Jessica L. Wasserstrom
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*Attorneys for Barry E. Mukamal,
Liquidating Trustee*

GLOBAL STIPULATION OF SETTLEMENT

This Global Stipulation of Settlement ("*Global Stipulation*") is entered into on November 7, 2012 by and between (a) Barry E. Mukamal, in his capacity as liquidating trustee (the "*Liquidating Trustee*") of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, the "*Liquidating Trusts*"), (b) Douglas A. Kelley, in his capacity as Chapter 11 trustee of the administratively-consolidated debtors under *In re Petters Company Inc., et al.* (the "*PCI Trustee*"), and (c) The Caridad Corporation ("*Caridad*"), The Thomas P. Lowe Trust (the "*Lowe Trust*"), and Thomas P. Lowe ("*Mr. Lowe*") (individually a "*Transferee*," and collectively the "*Transferees*") (the Liquidating Trustee, PCI Trustee, and the Transferees are at times individually referred to herein as a "*Party*," or collectively as the "*Parties*"). The terms of this Global Stipulation are as follows:

RECITALS

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

B. 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 Liquidating Trusts and appointing the Liquidating Trustee as liquidating trustee;

C. In an action commenced by the United States of America, by an Order entered on October 6, 2008 and as subsequently amended, the Honorable Ann D. Montgomery, United States District Judge for the District of Minnesota, appointed Douglas A. Kelley as Receiver (the

“Receiver”) for, among others, Thomas J. Petters (“**Petters**”), Petters Company, Inc. (“**PCI**”), Petters Group Worldwide, LLC (“**PGW**”) and any affiliates, subsidiaries, divisions, successors, or assigns owned 100% or controlled by the foregoing. *United States v. Petters, et al.*, Case No. 0:08-cv-05348, ECF Nos. 12 and 127 (the “**Receivership Case**”);

D. 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 (“**Minnesota Bankruptcy Court**”) commencing the Chapter 11 cases of PCI and PGW on October 11, 2008. Petitions commencing the voluntary 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 on October 15, 2008. The petition commencing the Chapter 11 bankruptcy case of PAC Funding, LLC was filed on October 17, 2008. The petition commencing the Chapter 11 bankruptcy case of Palm Beach Finance Holdings, Inc. was filed 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 (the “**Minnesota Bankruptcy Cases**” or “**PCI/PGW Bankruptcy Estates**”);

E. On February 26, 2009, the Minnesota Bankruptcy Court approved the Office of the United States Trustee for the District of Minnesota’s appointment of Douglas A. Kelley, as the PCI Trustee;

F. On November 29, 2011, the Liquidating Trustee commenced litigation against Frank E. Vennes, Jr. (“**Vennes**”) and Metro Gem, Inc. (“**Metro Gem**”) on behalf of the Liquidating Trusts. *Mukamal v. Metro Gem, Inc. et al.*, Adv. No. 11-03041 (Bankr. S.D. Fla.). The Liquidating Trustee asserts claims arising in tort based on certain representations Vennes made to the Palm Beach Funds regarding their advances to Palm Beach Finance Holdings, Inc.

and also for fraudulent transfers to recover certain investment transfers Vennes and Metro Gem received from the Palm Beach Funds as investors in the Palm Beach Funds;

G. On or about November 23 and 27, 2011, the Liquidating Trustee, on behalf of the Liquidating Trusts, commenced Adversary Proceedings against Caridad (the “*Caridad Adversary*”) and the Lowe Trust and Mr. Lowe (the “*Lowe Adversary*”; and together with the Caridad Adversary, the “*Adversaries*”), respectively, asserting several claims against the Transferees, including claims for the avoidance and recovery of fraudulent transfers and unjust enrichment, relating to funds the Transferees are alleged to have received from Frank Vennes or Metro Gem (the “*Transfers*”);

H. On March 2, 2012, the PCI Trustee sent a letter to the Transferees indicating that he intends to pursue the Transferees for the recovery of the Transfers under 11 U.S.C. § 550 (the “*Letter Demand*”). The Adversaries and the Letter Demand are collectively referred to herein as the “*Trustees’ Claims*”;

I. The Transferees expressly deny any liability arising from the Trustees’ Claims;

J. Prior to and following commencement of the Adversaries and the communication of the Letter Demand, the Parties have engaged in discussions in an attempt to resolve any and all issues, including the Trustees’ Claims;

K. To avoid the continued expense of litigating the Trustees’ Claims and the related risk of an adverse outcome arising from the Adversaries, as well as incurring costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve the Trustees’ Claims pursuant to the terms and conditions of this Global Stipulation.

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

1. **No admission of liability.** The Parties acknowledge that this Global 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 Global Stipulation constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and there are no other Global 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 Global Stipulation.

3. **Settlement Payment.** In full and final settlement of the Trustees' Claims, the Transferees will pay (or cause to be paid) \$69,500.00 (the "**Settlement Payment**") on or before December 31, 2012 into the trust account of counsel for the Transferees (the "**Transferees' Counsel**"). Of the total Settlement Payment, \$27,800.00 will be paid to the Liquidating Trustee via 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. Of the total Settlement Payment, \$41,700.00 will be paid to the PCI Trustee on behalf of the PCI bankruptcy estate via check made payable to "Douglas A. Kelley, Trustee" and delivered to Josiah Lamb, Esq., Kelley, Wolter & Scott, P.A., 431 South Seventh Street, Suite 2530, Minneapolis, MN 55415. The Transferees' counsel will hold the Settlement Payment pending approval of this Stipulation by the Florida Bankruptcy Court and the Minnesota Bankruptcy Court (the "**Bankruptcy Courts**"), and shall promptly disburse such funds to the Trustees within five (5) calendar days of entry of (a) final non-appealable Orders of the Florida Bankruptcy Court dismissing the Adversaries with prejudice (the "**Dismissal Orders**"), and (b) an Order by each of the Minnesota Bankruptcy Court and the Florida Bankruptcy Court

approving this Stipulation that is final and unappealable; provided, however, that if any stay is granted or an appeal is taken of any Order approving this Global Stipulation or the Dismissal Orders, then the Settlement Payment shall be made upon entry of Orders that: (i) affirm the Orders of the Bankruptcy Courts approving this Global Stipulation and the Dismissal Orders, and (ii) are final and not subject to further stay or appeal (the "Final Non-Appealable Orders"). The Adversaries will be held in abeyance, and no action against any Transferee will be commenced by the Petters Trustee, pending the outcome of the Trustees' motions to obtain the Final Non-Appealable Orders.

4. **No entitlement to distribution.** Each Transferee agrees that he, she, or it will not be entitled to any monetary distribution whatsoever, directly or indirectly, from the Liquidating Trusts, the Palm Beach Funds, or the PCI/PGW Bankruptcy Estates. To the extent that the Transferees were scheduled (i) by the Palm Beach Funds in the Florida Bankruptcy Cases, or (ii) by PCI, PGW or any of the related administratively-consolidated debtors in the Minnesota Bankruptcy Cases, as having a claim or has filed any proof of claim or proof of interest in the Palm Beach Funds bankruptcy cases or the Minnesota Bankruptcy Cases, the Transferees agree such claims or interests are deemed withdrawn in their entirety and will be stricken or otherwise disallowed.

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

A. For purposes of this Global Stipulation, the term "**Claims**" means any obligations, claims (including those arising under section 502(h) of the Bankruptcy Code), causes of action, or 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, the Trustees' Claims.

B. Upon approval of this Global Stipulation by the Final Non-Appealable Orders and payment of the Settlement Payment, the Liquidating Trustee, on behalf of the Liquidating Trusts and the Palm Beach Funds, and the PCI Trustee, on behalf of the PCI/PGW Bankruptcy Estates, each waives and releases, now and forever, each Transferee from any and all Claims that the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, or the PCI/PGW Bankruptcy Estates may have against the Transferees or any of them; provided that nothing herein will be deemed to release, waive, or otherwise limit any rights or obligations arising out of this Global Stipulation.

C. Upon approval of this Global Stipulation by the Final Non-Appealable Orders and payment of the Settlement Payment, each Transferee waives and releases, now and forever, the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, and the PCI/PGW Bankruptcy Estates from any and all Claims that the Transferee may have against the Liquidating Trustee, the Liquidating Trusts, the Palm Beach Funds, the PCI Trustee, and the PCI/PGW Bankruptcy Estates; provided that this provision does not release, waive, or otherwise limit any rights or obligations arising out of this Global Stipulation.

6. **Dismissal of Adversaries.** Upon entry of the Final Non-Appealable Orders approving this Global Stipulation, the Liquidating Trustee, on behalf of the Liquidating Trusts, agrees to use his best reasonable efforts to obtain promptly an Order dismissing each of the Adversaries with prejudice.

7. **Representations of the Transferees.** The individuals executing this Global Stipulation on behalf of the Transferees represent and warrant that he or she has the authority to execute this Global Stipulation on behalf of the applicable Party and bind them to its terms. The Transferees represent and warrant that they did not receive collectively more than \$160,750 in interest payments from Vennes or one of his related entities, including Metro Gem.

8. **Representations of the Liquidating Trustee and the PCI Trustee.** The Liquidating Trustee and the PCI Trustee signing below each represents and warrants that (i) he has the authority to execute this Stipulation on behalf of the Liquidating Trusts and Palm Beach Funds and the PCI/PGW Bankruptcy Estates, respectively, and bind them to its terms, and (ii) such Trustees are the sole owners of the Trustees' Claims being settled herein and are not aware of any other or further claims (including any claims of any Petters related entities in receivership) to the monies which are the subject of the Trustees' Claims.

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

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

11. **Assignability.** No Party hereto may assign its rights under this Global Stipulation without the prior written consent of each of the other Parties hereto.

12. **Successors Bound.** This Global Stipulation shall be binding upon and inure to the benefit of each of the Parties and their successors and permitted assigns, including any subsequently-appointed Chapter 7 trustee in the Minnesota Bankruptcy Cases or trustee of the Liquidating Trusts.

13. **No Third-Party Beneficiary.** The Parties do not intend to confer any benefit by or under this Global Stipulation upon any person or entity other than the Parties hereto and their respective successors and permitted assigns.

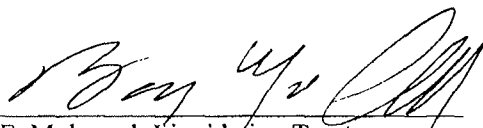
14. **Attorneys' fees and costs.** Each Party shall bear his or its own attorneys' fees and costs in connection with the negotiation of this Global Stipulation and motions and orders as may be necessary to obtain the approval of this Global Stipulation by the Florida Bankruptcy Court or Minnesota Bankruptcy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

15. **Effective date.** This Global Stipulation shall be effective upon execution by all of the Parties hereto, subject only to approval of this Global Stipulation by the Final Non-Appealable Orders and payment of the Settlement Payment. Upon it becoming effective, this Global Stipulation shall be binding on all of the Parties' successors or permitted assigns.

16. **No effect.** If this Global Stipulation is not approved by the Final Non-Appealable Orders, then this Global 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 Global Stipulation.

20. **Jurisdiction.** Jurisdiction to enforce the terms of this Global Stipulation shall rest exclusively with the Florida Bankruptcy Court and the Parties agree to bring any controversy arising under this Global Stipulation only in the Florida Bankruptcy Court.


STIPULATED AND AGREED TO BY:


Barry E. Mukamal, Liquidating Trustee

Date: 11/14/12

Douglas A. Kelley, PCI/PGW Trustee

Date: _____


The Caridad Corporation

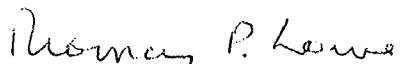
Date: 11-7-2012

By its: President


The Thomas P. Lowe Trust

Date: 11-7-2012

By its: Trustee


Thomas P. Lowe

Date: 11-7-2012

STIPULATED AND AGREED TO BY:

Barry E. Mukamal, Liquidating Trustee

Date: _____

Douglas A. Kelley
Douglas A. Kelley, PCI/PGW Trustee

Date: 11/15/12

Thomas P. Lowe
The Caridad Corporation

Date: 11-7-2012

By its: President

Thomas P. Lowe
The Thomas P. Lowe Trust

Date: 11-7-2012

By its: Trustee

Thomas P. Lowe
Thomas P. Lowe

Date: 11-7-2012

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
TO APPROVE (1) SETTLEMENT WITH THE CARIDAD CORPORATION,
THE THOMAS P. LOWE TRUST AND THOMAS P. LOWE
AND (2) PAYMENT OF CONTINGENCY FEE [ECF _____]**

THIS CAUSE came before the Court upon the Liquidating Trustee's Motion to Approve (1) Settlement with The Caridad Corporation, The Thomas P. Lowe Trust and Thomas P. Lowe and (2) 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

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

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 Stipulation is **APPROVED**.
3. Transferees shall pay (or cause to be paid)) \$69,500.00 (the “**Settlement Payment**”) on or before December 31, 2012 in accordance with Paragraph 3 of the Stipulation. Of the total Settlement Payment, \$27,800.00 will be paid to the Liquidating Trustee and \$41,700.00 will be paid to the PCI Trustee.
4. The Liquidating Trustee’s portion of the Settlement Payment (\$27,800.00) 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 4 above as the mechanism for the Settlement Payment shall be made in the amounts in accordance with this allocation.
5. MRB’s Contingency Fee in the amount of \$2,780.00 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.
6. To the extent that the Transferee 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.

7. The Court retains jurisdiction to enforce the terms of the Stipulation.

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Submitted By:

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

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