

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 JOHN BERGMAN 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 were asserted against John Bergman (the "*Transferee*") and payment of counsel's contingency fee. In support of this relief, the Liquidating Trustee states the following:

I. Factual Background

A. Procedural Background

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

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

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

4. On October 2, 2008, the United States of America filed under seal in the United States District Court for the District of Minnesota its Complaint for Permanent Injunctive Relief and Other Equitable Relief (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. (“*MGF*”; 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 Transferee, Adv. Case No. 11-3000 –PGH (the “*Adversary Proceeding*”). The Adversary Proceeding seeks to avoid transfers made to or for the benefit of the Transferees by the Vennes Parties during the period from approximately January of 2004 through and including approximately May of 2004 (the “*Transfers*”).

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

15. The Liquidating Trustee asserts that the Transferee received in the aggregate, approximately \$674,080.24 in Transfers from the Vennes Parties.

16. The Transferee denies that he has any liability in connection with the claims asserted in the Adversary Proceedings and the Letter Demand. In addition, the Transferee alleges that, following the liquidation of his investment in MGI, he subsequently invested in the Palm Beach Funds and lost an aggregate of approximately \$590,000.00 as a result of that investment.

17. The Trustees entered into an agreement whereby they have agreed to mediate jointly with transferees of the Vennes Parties and allocate between themselves according to the terms of that agreement any settlement proceeds relating to the transfers. The Transferee, however, has insisted on resolving the Trustees’ claims separately and, as such, the settlement reached between the Transferees and the Liquidating Trustee, as described herein, does not include any claims that might be asserted against the Transferees by the PCI Trustee pursuant to

the Letter Demand or any subsequent litigation that may be brought by the PCI Trustee relating to the Transfers. The Transferee refutes any and all assertions of possible future alleged claims by the PCI Trustee and reserve all rights related thereto.

II. Settlement Terms

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

- a) Within thirty (30) days following this Court’s approval of the Stipulation, the Transferee will pay (or cause to be paid) \$100,000.00 (the “*Settlement Payment*”) to the Liquidating Trustee;
- b) The Liquidating Trustee and the Transferee shall exchange mutual, general releases;
- c) The Transferee shall be given an allowed general unsecured claim against Palm Beach Finance Partners, L.P. in the total amount of \$100,000.00; and
- d) The Liquidating Trustee shall seek dismissal of the Adversary Proceeding.

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

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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.

III. Relief Requested

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

21. 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.”

22. 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).

23. 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*

24. 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

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

26. The Liquidating Trustee believes that he will likely succeed in prosecuting either of these causes of action. The Transferee does not agree.

27. Nonetheless, the Liquidating Trustee acknowledges that there are risks inherent in all litigation and there is the possibility that the Transferee, or other similarly situated parties, could raise certain issues or defenses that potentially could impact the Liquidating Trustee's claims. The Liquidating Trustee does believe there are certain defenses unique to the Transferee that would potentially be applicable in the event the Adversary Proceedings were litigated. In addition, the Liquidating Trustee has also considered the fact that the Transferee re-invested the fictitious MGI profits with the Debtors.

Collectability

28. Collectability is not a significant consideration with respect to the Adversary Proceeding.

Complexity of litigation and attendant expense, inconvenience and delay

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

30. 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.

31. 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

32. The settlement provides a meaningful payment of the claims asserted against the Transferee in the Adversary Proceeding and fully resolves all claims litigation regarding the claims and equity interests held by the Transferee. The Settlement Payment is a meaningful resolution in light of the complexity of the Adversary Proceeding, 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

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 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**").

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

WHEREFORE, the Liquidating Trustee respectfully requests that this Court enter an Order (similar in form to the Order attached as Exhibit 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 on April 3, 2013, via: (i) the Court's Notice of Electronic Filing upon Registered Users set forth on the attached list on Exhibit 3; (ii) U.S. Mail to those parties on the service list attached as Exhibit 4 and to Erika L. Morabito, Esq., Foley & Lardner, LLP, 3000 K Street, N.W., Suite 600, Washington, D.C. 20007.

s/ Jessica L. Wasserstrom
Jessica L. Wasserstrom, Esquire
Florida Bar No. 985820
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MELAND RUSSIN & BUDWICK, P.A.
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Miami, Florida 33131
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Telecopy: (305) 358-1221

*Attorneys for Barry E. Mukamal,
Liquidating Trustee*

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("***Stipulation***") is entered into on March ____, 2013 by and between (a) Barry E. Mukamal, in his capacity as liquidating trustee ("***Liquidating Trustee***") of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust (collectively, the "***Liquidating Trusts***") and (b) John Bergman ("***Defendant***") (the Liquidating Trustee and the Defendant 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 I***") 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 ("***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 Trusts and appointing the Liquidating Trustee as liquidating trustee;

C. In an action commenced by the United States of America in October of 2008 and by Orders entered by the Honorable Ann D. Montgomery, United States District Judge for the District of Minnesota, Douglas A. Kelley was appointed as Receiver for Thomas J. Petters ("***Petters***") and Petters-related entities (the "***Petters Receiver***"). Thereafter, Mr. Kelley in his capacity as the Petters Receiver, commenced Chapter 11 bankruptcy cases for Petters Capital, Inc. and various other Petters-related entities. Mr. Kelley subsequently was appointed Chapter 11 trustee of the administratively-consolidated debtors under *In re Petters Company Inc., et al.*, Case No. 08-45257 (in such capacity, Mr. Kelley is referred to as the "***Petters Trustee***").

D. 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;

E. In November of 2011, the Liquidating Trustee, on behalf of the Liquidating Trusts, commenced an Adversary Proceeding against the Defendant for the recovery of fraudulent transfers and unjust enrichment [Adv. Case Nos. 11-3000] (“*Adversary*”) relating to funds received by the Defendant from Frank Vennes or one of his related entities (“*Transfers*”);

F. The Defendant expressly denies the claims that the Liquidating Trustee asserts in the Adversary;

G. Following commencement of the Adversary, the Liquidating Trustee and the Defendant have engaged in discussions in an attempt to resolve any and all issues, including the claims that the Liquidating Trustee asserts in the Adversary;

H. To avoid the continued expense and risk of adverse outcome arising from the Adversary, as well as incurring costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve the Adversary 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. **No effect on the Petters Trustee.** Notwithstanding the fact that the Petters Trustee has not initiated any lawsuit against the Defendant, and vice versa, the terms of this Stipulation do not affect any obligations, claims, causes of action, demands of any type that the Defendant 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, against the Petters Trustee or any of the Petters-related entities, or vice versa. Further, by executing this Stipulation, the Defendant expressly makes no request that the Petters Trustee provide any type of release to the Defendant.

4. **Settlement Payment.** In full and final settlement of the Adversary, the Defendant shall pay (or cause to be paid) \$100,000.00 (the “**Settlement Payment**”) within 30 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 3200, Miami, Florida 33131.

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 the Liquidating Trustee asserts in the Adversary.

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 Trusts and the Palm Beach Funds, waives, releases and holds harmless, now and forever, the Defendant from any and all Claims that the Liquidating Trustee, the Liquidating Trusts or the Palm Beach Funds may have against the Defendant; provided that nothing herein shall be deemed to release, waive or otherwise limit any rights or obligations arising out of this Stipulation.

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

6. Entitlement to distribution. Defendant shall have an allowed unsecured claim in the PBF I bankruptcy estate in the amount of \$100,000.00.

7. **Dismissal of Adversary:** Upon entry of an order by the Bankruptcy Court approving this Stipulation, the Liquidating Trustee, on behalf of the Liquidating Trusts, agrees to seek dismissal of the Adversary within 10 business days from the date of payment of the Settlement Payment. Until such time as the Bankruptcy Court enters an Order approving this Stipulation, the Defendant will have no obligation to file any responsive pleading to the Adversary nor file any other pleadings with the Court to protect his interests.

8. **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.

9. **Representations of the Transferee.** The individual executing this Stipulation on behalf of the Defendant represents and warrants that he has the authority to execute this Stipulation on behalf of the applicable Party and bind them to its terms.

10. **Representations of the Liquidating Trustee.** The Liquidating Trustee represents and warrants that he has the authority to execute this Stipulation on behalf of the Liquidating Trusts and bind them to its terms.

11. **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.

12. **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 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. In addition, the Parties shall share equally the cancellation charge due to the mediator in accordance with the Bankruptcy Court's Order Granting Amended Motion Establishing Uniform Mediation Procedures for Adversary Proceedings [Case No. 09-36379, ECF No. 1210].

13. **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.

14. **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, payment of the Settlement Payment, and dismissal of the Adversary. Upon it becoming effective, this Stipulation shall be binding on all of the Parties' successors and/or assigns.

15. **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 has 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.

16. **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.

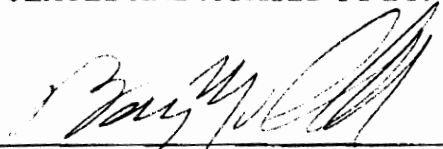
17. **Counterparts.** This Stipulation may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Stipulation. Delivery of an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

18. **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.

19. **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: 4/1/13



John Bergman

Date: 3-21-13

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 TO
APPROVE (1) SETTLEMENT JOHN BERGMAN
AND (2) PAYMENT OF CONTINGENCY FEE [ECF No. ____]**

THIS CAUSE came before the Court upon the Liquidating Trustee's Motion for Approval of Settlement with John Bergman ("**Bergman**") 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 compromise and settlement is sufficient to comply with Bankruptcy Rules 9019

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

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

ORDERED as follows:

1. The Motion is **GRANTED**.
2. The Stipulation is **APPROVED**.
3. The Transferee shall pay (or cause to be paid)) \$100,000.00 (the “*Settlement Payment*”) within 30 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 Jessica L. Wasserstrom, 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*”), and the wire transfers and/or checks referenced in paragraph 3 above as the mechanism for the Settlement Payment shall be made in the amounts in accordance with this allocation.
5. MRB’s Contingency Fee in the amount of \$10,000.00 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.
6. Transferee shall be deemed to have an allowed general unsecured claim against Palm Beach Finance Partners, L.P. in the total amount of \$100,000.00. All other or further

claims or interests of the Transferee against the Debtors or the Liquidating Trusts are deemed disallowed in their entirety.

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

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Submitted By:

s/ Jessica L. Wasserstrom
Jessica L. Wasserstrom, Esquire
Florida Bar No. 985820
jwasserstrom@melandrussin.com
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Miami, Florida 33131
Telephone: (305) 358-6363
Telecopy: (305) 358-1221
Attorneys for the Liquidating Trustee

Copies Furnished To:

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

Mailing Information for Case 09-36379-PGH

Electronic Mail Notice List

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

- Geoffrey S. Aaronson gaaronson@aspalaw.com, tdmckeown@mckeownpa.com;sbeiley@aspalaw.com
- Melissa Alagna mma@segallgordich.com, jxp@segallgordich.com;skm@segallgordich.com
- Keith T Appleby kappleby@hwhlaw.com, lbecker@hwhlaw.com
- Paul A Avron pavron@bergersingerman.com, efile@bergersingerman.com
- Scott L. Baena sbaena@bilzin.com, eservice@bilzin.com;lflores@bilzin.com
- Marc P Barnat ndixon@furrcohen.com, mbarnat@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
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- Helen Davis Chaitman hchaitman@beckerny.com, jgorchkova@beckerny.com;lblando@beckerny.com
- Helen Davis Chaitman hchaitman@beckerny.com, jgorchkova@beckerny.com;lblando@beckerny.com;cdavis@beckerny.com
- Franck D Chantayan fchantayan@carltonfields.com, kdemar@carltonfields.com;wpbecf@cfdom.net
- Daniel DeSouza ddesouza@becker-poliakoff.com, culpiz@becker-poliakoff.com
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