

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.

**LIQUIDATING TRUSTEE'S MOTION TO APPROVE (1) SETTLEMENT
WITH CHARLES M. WEBSTER 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 Charles M. Webster (individually or collectively, 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, “**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. (“**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 (the “*Minnesota Bankruptcy Court*”) for PCI and was appointed Chapter 11 trustee for all such entities (in such capacity, the “*PCI Trustee*”; and at times together with the Liquidating Trustee, the “*Trustees*”).

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

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

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

B. The Vennes Litigation

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

12. On November 29, 2011, the Liquidating Trustee filed suit against the Vennes Parties, Adversary Case No. 11-03041-PGH-A (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. 11-2985-PGH (the “*Adversary Proceeding*”). The Adversary Proceeding seeks to avoid transfers made to or for the benefit of the Transferee by the Vennes Parties from approximately January of 2004 through and including approximately June of 2005 (the “*Transfers*”).

14. After the commencement of the Adversary Proceeding, 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 as well as certain additional transfers made by the Vennes Parties during the period from 1998 through 2003 under 11 U.S.C. § 550 (the “*Letter Demand*”; and together with the Adversary Proceeding, the “*Litigation*”).

15. Altogether, as set forth in the complaint filed in the Adversary Proceeding and the Letter Demand, the Trustees assert that the Transferee received in the aggregate, approximately \$380,328.00 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 Transferee denies that he has any liability in connection with the claims asserted in the Litigation. The Transferee instead alleges that, following receipt of the Transfers, the Transferee subsequently re-invested all of the Transfers, plus significant additional funds, in another Petters feeder fund, Metro II, LLC, which was owned and operated by James N. Fry and his various entities (collectively, the “*Arrowhead Entities*”). As a result of these subsequent investments, the Transferee alleges that it lost approximately \$2 million.

17. The Trustees have recently entered into an agreement whereby they have agreed to mediate jointly with the Transferee 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 August 20, 2012 and again on February 27, 2013, the parties attended mediation in the offices of Justice James H. Gilbert, Esq. As a result of the mediations, 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 Transferee will pay (or cause to be paid) \$80,000.00 (the “*Settlement Payment*”) as follows:
 - i. On February 27, 2013, the Transferee paid \$10,000.00 to the PCI Trustee; and
 - ii. On or before February 27, 2014, \$32,000.00 will be paid to the Liquidating Trustee and \$38,000.00 will be paid to the PCI Trustee.

Of the total Settlement Payment, \$32,000.00 will be paid to the Liquidating Trustee and \$48,000.00 will be paid to the PCI Trustee.
- b) The Transferee shall assign to the Liquidating Trustee its claim against Metro II, LLC and the Arrowhead Entities;
- c) The parties shall exchange mutual, general releases;

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.

- d) The Liquidating Trustee shall seek dismissal of the Adversary Proceeding; and
- e) The Transferee 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 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 Transferee by the Vennes Parties were fraudulent transfers under federal or state law, or alternatively, that the Transferee was 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 Transferee, 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. 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

33. The Stipulation provides a meaningful payment of the claims asserted against the Transferee in the Adversary Proceeding. In addition, the Liquidating Trustee believes that the assignment of the Transferees' approximately \$2 million claim against Metro II, LLC and the Arrowhead Entities may yield additional value to the Liquidating Trusts. As such, 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

34. 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**").

35. The Liquidating Trustee requests that the 10% Contingency Fee – in the amount of \$3,200.00 – 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 May 13, 2013, via: (i) the Court's Notice of Electronic Filing upon Registered Users set forth on the attached list on Exhibit 3; and (ii) via U.S. Mail on Darren Farfante, Esq., Fowler White Boggs P.A., 501 E. Kennedy Blvd, Suite 1700 Tampa, Florida 33602.

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

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("*Stipulation*") is entered into on May 13, 2013 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) Charles M. Webster (the "*Transferee*") (the Liquidating Trustee, PCI Trustee, and the Transferee are at times individually referred to herein 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. 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. ("*PCF*"), 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 25, 2011, the Liquidating Trustee, on behalf of the Liquidating Trusts, commenced an Adversary Proceeding asserting several claims against the Transferee, including claims for the avoidance and recovery of fraudulent transfers and unjust enrichment (the “*Adversary*”), relating to funds the Transferee received from Frank Vennes or Metro Gem (the “*Transfers*”);

H. 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*”). The Adversary and the Letter Demand are collectively referred to herein as the “*Trustees’ Claims*”;

I. The Transferee expressly denies any liability arising from the Trustees’ Claims;

J. Prior to and following commencement of the Adversary 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 and participated in Mediation on February 27, 2013 (the “*Mediation*”) during which a Mediated Settlement Agreement was executed by the Parties.;

K. To avoid the continued expense of litigating the Trustees’ Claims and the related risk of an 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 Trustees’ Claims pursuant to the terms and conditions of this 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 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 Trustees' Claims, the Transferee will pay (or cause to be paid) \$80,000.00 (the "*Settlement Payment*") as follows:

- A. The PCI Trustee already received a payment of \$10,000 from the Transferee at the Mediation of the Adversary; and
- B. On or before February 27, 2014, \$32,000.00 will be paid to the Liquidating Trustee and \$38,000.00 will be paid to the PCI Trustee.

Of the total Settlement Payment, \$32,000.00 will be paid to the Liquidating Trustee 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. Of the total Settlement Payment, \$38,000.00 will be paid to the PCI Trustee on behalf of the PCI bankruptcy estate via (i) wire transfer pursuant to written instructions to be provided by the PCI Trustee or his counsel or (ii) 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 Liquidating Trustee and the PCI Trustee will hold their respective portions of the Settlement Payment pending approval of this Stipulation by the Florida Bankruptcy Court and the Minnesota Bankruptcy Court.

4. **Assignment of Arrowhead Claims.** Transferee assigns to the Liquidating Trustee the Subordinated and Non-negotiable Promissory Note dated June 15, 2005 (the “*Note*”) and all claims of any kind or nature whatsoever of Transferee and of Transferee’s affiliated entities against either Metro II, LLC or Arrowhead Capital, or both, arising out of, or related in any way to, either the Note, the Petters *ponzi* scheme, or both. Transferee agrees to execute and deliver to the Liquidating Trustee, simultaneously herewith, the assignment agreement attached hereto as Exhibit A and any other or further documentation relevant to the assignment as the Liquidating Trustee, in his discretion, may reasonably require of Transferee. This assignment and all language in this paragraph shall be construed as broadly as possible for the benefit of the Liquidating Trustee. Transferee shall provide reasonable cooperation to the Liquidating Trustee in the Liquidating Trustee’s prosecution of the claims assigned, as the Liquidating Trustee may in his discretion reasonably require of Transferee. For purposes of this provision, the term “Arrowhead Capital” shall mean any and all entities associated with James Fry that have any relationship to the Note, the Petters *ponzi* scheme, or both.

5. **No entitlement to distribution.** The 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 Transferee was 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 Transferee agrees such claims or interests are deemed withdrawn in their entirety and will be stricken or otherwise disallowed.

6. **General releases between the Parties.**

A. For purposes of this 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 Stipulation by orders of the Florida Bankruptcy Court and Minnesota Bankruptcy Court 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, the 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 Transferee; provided that nothing herein will 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 Florida Bankruptcy Court and Minnesota Bankruptcy Court and payment of the Settlement Payment, the 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 Stipulation.

6. **Dismissal of Adversary.** On March 14, 2013, the Liquidating Trustee, on behalf of the Liquidating Trusts, dismissed the Adversary in accordance with the Mediated Settlement Agreement.

7. **Representations of the Transferee.** The individuals executing this Stipulation on behalf of the Transferee represent and warrant that he or she has the authority to execute this Stipulation on behalf of the applicable Party and bind them to its terms. Such individuals further represent and warrant on behalf of the Transferee that the Transferee received an aggregate amount of \$676,232.00 in total net profits 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 he has the authority to execute this Stipulation on behalf of the Liquidating Trusts and the PCI/PGW Bankruptcy Estates, respectively, and bind them to its terms.

9. **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 knowingly and voluntarily waived such opportunity, and enters into those terms voluntarily and without duress.

10. **Amendments, Waiver.** This 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 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 Stipulation without the prior written consent of each of the other Parties hereto.

12. **Successors Bound.** This 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 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 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 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 Adversary; 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 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 Stipulation shall be effective upon execution by all of the Parties hereto, subject only to approval of this Stipulation by final, non-appealable orders of the Minnesota Bankruptcy Court and the Florida 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.

16. **No effect.** If either of the Florida Bankruptcy Court or the Minnesota Bankruptcy Court do not approve this Stipulation, then the Stipulation shall be of no further force or effect, the Parties shall be restored to their rights as they existed prior to the execution of this Stipulation, and the Settlement Payment shall be returned to the Transferee by the Liquidating Trustee and the PCI Trustee in the amounts stated in Paragraph 3, respectively. Notwithstanding the foregoing, if either of the Florida Bankruptcy Court or the Minnesota Bankruptcy Court do not approve this Stipulation because any of the Parties has failed to provide the Florida Bankruptcy Court or Minnesota 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.

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

18. **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.

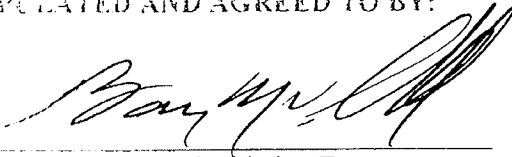
19. **Construction.** This Stipulation shall be deemed to have been jointly drafted by the Parties, and in construing and interpreting this Stipulation, no provision shall be construed

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.

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

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STIPULATED AND AGREED TO BY:

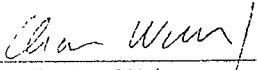


Barry E. Mukamal, Liquidating Trustee

Date: 5/13/13

Douglas A. Kelley, PCI/PGW Trustee

Date: _____



Charles M. Webster

Date: 5/13/13

ASSIGNMENT OF CLAIMS

In exchange for adequate consideration and value received as more fully set forth in the Settlement Agreement executed simultaneously herewith on this 13th day of May, 2013, and subject to the terms and conditions as more particularly set forth below, Charles M. Webster, as assignor (the “*Assignor*”), assigns to 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*”), as assignee (the “*Assignee*”), (i) the Subordinated and Non-negotiable Promissory Note dated June 15, 2005 (the “*Note*”) in favor of Metro II, LLC, a copy of which is attached hereto, and any and all sums of money now due or owing, all notes, claims, demands, and cause or causes of action of whatsoever kind and nature, including any claim for or right to receive remission in connection with the Note and/or the *ponzi* scheme perpetrated by Thomas J. Petters, that the Assignor has had, now has, or may have against James N. Fry, Metro II, LLC, Arrowhead Capital Management LLC (“*ACM*”), or the Arrowhead Capital Partners II LP Fund (together with all of their affiliates, successors, assigns or designees, the “*Arrowhead Entities*”) or (ii) any other or further investments in, or loans made to, the Arrowhead Entities by the Assignor (collectively, the “*Claim*”).

Assignor grants Assignee with power to demand and receive satisfaction of the Claim and rights assigned, and, in the name of Assignor, but at Assignee’s sole cost and expense, to take whatever legal action may be necessary to enforce the Claim. It is specifically understood that Assignor is assigning its choses in action against the Arrowhead Entities and any other rights to Assignee.

In the event the Court or any other entity finds that this Assignment as written in unenforceable, Assignor agrees to execute any reasonable and necessary modifications or amended documents so as to effectuate the intent of this Assignment of Claim, which modifications or amended documents shall be drafted at Assignee's sole expense.

If any party brings litigation arising from this agreement or its enforcement, the prevailing party shall be entitled to its attorneys' fees and costs. All parties to this Assignment have been represented by counsel.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

SIGNATURE PAGE TO ASSIGNMENT OF CLAIMS

Witnesses:

Darlene Braufman
(Signature)

CHARLES M. WEBSTER

By: Chuck Webster

Darlene Braufman
(Printed Name)

Paula Bata
(Signature)

Paula Bata
(Printed Name)

STATE OF MINNESOTA)

COUNTY OF Stearns

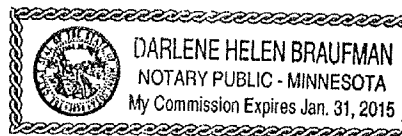
ss.

Before me the undersigned authority appeared Chuck Webster as authorized signatory CHUCK M. WEBSTER, ~~who is~~ is not known to me, who (did/did not) take an oath and who after being duly affirms, depose and state that the above is true and correct to the best of his/her knowledge and belief.

AFFIRMS TO AND SUBSCRIBED BEFORE ME, this 13 day May 2013.

Darlene Helen Braufman

Minnesota
NOTARY PUBLIC, State of Florida
My Commission Expires



Witnesses

[Signature]
(Signature)

JORN MARTINEZ
(Printed Name)

[Signature]
(Signature)

YEVGENY Sulsky
(Printed Name)

Barry E. Mukamal, Liquidating Trustee

[Signature]

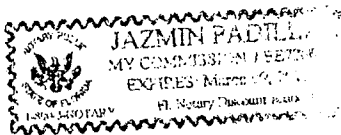
STATE OF FLORIDA)
) ss.
COUNTY OF MIAMI-DADE)

Before me the undersigned authority appeared Barry E. Mukamal, in his capacity as Liquidating Trustee of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust, who ~~is~~ ^{is not} known to me, who (did ~~not~~) take an oath and who after being duly affirms, depose and state that the above is true and correct to the best of his/her knowledge and belief.

AFFIRMS TO AND SUBSCRIBED BEFORE ME, this 13 day ^{May} ~~April~~, 2013.

[Signature]

NOTARY PUBLIC, State of Florida
My Commission Expires:



COPY ORIGINAL

0605-1405

METRO II LLC
SUBORDINATED AND NON-NEGOTIABLE PROMISSORY NOTE

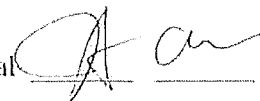
\$2,000,000.00

Dated: June 15, 2005

FOR VALUE RECEIVED, Metro II LLC, a Delaware limited liability company, having its address at 601 Carlson Parkway, Suite 1250, Minnetonka, MN 55305 (the "Payor"), hereby unconditionally PROMISES TO PAY to the order of Charles M. Webster, having its address at 365 Bergamot Drive, Medina, MN 55340, (the "Payee"), in lawful money of the United States of America and immediately available funds, 90 days after receipt by Payor of written demand for payment from Payee, the principal amount of Two Million DOLLARS (\$2,000,000.00) (the "Principal"). Interest shall accrue on the unpaid portion of the Principal at a rate of Fifteen percent (15%) per annum from and including the date hereof to but excluding the date of payment (the "Interest") and shall be payable on each 90 day interval from the inception date of this Note while any portion of the Principal is outstanding. Accrued and unpaid Interest on any portion of Principal that is repaid shall be paid simultaneously with repayment of such Principal. Other terms of this Note are as follows:

1. If Payor defaults in the payment of Principal or Interest when the same becomes due or payable, at maturity, acceleration or otherwise, Payee may declare all Principal and Interest hereunder to be immediately due and payable and shall without notice be entitled to the same together with all costs and expenses, including attorney fees, thereafter incurred or suffered by the Payee as a result of the Payor's default in payment.
2. Payor hereby waives presentment and demand for payment, notice or dishonor, protest and notice of protest of this Note and agrees to pay all costs of collection incurred after Payor's default, including reasonable attorney's fees, which costs may be added to the amount due under this Note and be receivable therewith, and to perform and comply with each of the terms, covenants and provisions contained in this Note on the part of the Payor to be observed or performed.
3. If any payment on this Note becomes due and payable on a day other than a business day, the maturity thereof shall be extended to the next succeeding business day.
4. The Principal may be prepaid at any time, in whole or in part, at the option of Payor without premium or penalty.
5. No delay or omission on the part of Payee in exercising any right hereunder shall operate as a waiver of such right or of any other remedy under this Note. A waiver on any one occasion shall not be construed as a waiver of any such right or remedy on a future occasion.
6. Payor hereby represents and warrants to Payee that the Note has been duly and validly executed and delivered by Payor and constitutes a legal, valid and binding obligation of Payor enforceable in accordance with its terms.

Initial



COPY ORIGINAL

0605-1405

and does not need or desire the assistance of a knowledgeable representative to aid in the evaluation of such risks (or, in the alternative, Payee has used a knowledgeable representative in connection with Payee's decision to invest), (iv) Payee understands that the investment represented by this Note is highly speculative and involves a high degree of risk, (v) Payee believes the investment represented by this Note is suitable for Payee based upon Payee's investment objectives and financial needs, (vi) Payee has adequate means for providing for Payee's current financial needs and contingencies and has no need for liquidity of investment with respect to the investment represented by this Note other than as provided herein, (vii) Payee has been advised that the offer and sale of this Note have not been registered under the Securities Act of 1933, as amended (the "1933 Act"), or under applicable state securities laws (the "State Laws"), and are made pursuant to exemptions from registration under the 1933 Act and the State Laws, and (viii) Payee understands that Payor's reliance on such exemptions is predicated in part on Payee's representations to Payor contained herein.

IN WITNESS WHEREOF, Payor has duly executed this Note as of the day and year first above written.

PAYOR:

Metro II LLC

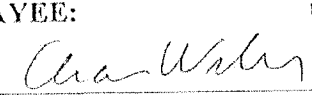
By: 

Name: James N. Fry

Title: Chief Manager

Acknowledged and agreed to this 15 day of June, 2005.

PAYEE:



By: Chuck Webster Jr.

Print Name: Chuck Webster

Title: _____

(Signature page for Metro II LLC Subordinated Note Dated June 15, 2005)

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 WITH CHARLES M. WEBSTER
AND (2) PAYMENT OF CONTINGENCY FEE [ECF NO. ____]**

THIS CAUSE came before the Court upon the Liquidating Trustee's Motion To Approve (1) Settlement with Charles M. Webster 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 Order has been filed, finds that the notice of the proposed compromise and

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

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**.
 - a) Transferee shall pay (or cause to be paid \$80,000.00 (the “Settlement Payment”) as follows:
 - i. On February 27, 2013, the Transferee paid \$10,000.00 to the PCI Trustee; and
 - ii. On or before February 27, 2014, \$32,000.00 will be paid to the Liquidating Trustee and \$38,000.00 will be paid to the PCI Trustee.

Of the total Settlement Payment, \$32,000.00 will be paid to the Liquidating Trustee 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. Of the total Settlement Payment, \$48,000.00 will be paid to the PCI Trustee on behalf of the PCI bankruptcy estate via (i) wire transfer pursuant to written instructions to be provided by the PCI Trustee or his counsel or (ii) 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.

3. The Liquidating Trustee and the PCI Trustee will hold their respective portions of the Settlement Payment pending approval of this Stipulation by the Minnesota Bankruptcy Court.

4. The Liquidating Trustee’s portion of the Settlement Payment (\$32,000.00) will be allocated and apportioned among the Liquidating Trusts as follows: 18% to the Palm Beach Finance Partners Liquidating Trust and 82% to the Palm Beach Finance II Liquidating Trust (the “*Pro Rata*

Allocation Formula”), and the wire transfers and/or checks referenced in paragraph 3 above as the mechanism for the Settlement Payment shall be made in the amounts in accordance with this allocation.

5. MRB’s Contingency Fee in the amount of \$3,200.00 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.

###

Submitted By:

s/ Jessica L. Wasserstrom
Jessica L. Wasserstrom, Esquire
Florida Bar No. 985820
jwasserstrom@melandrussin.com
MELAND RUSSIN & BUDWICK, P.A.
3200 Southeast Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 358-6363
Telecopy: (305) 358-1221
Attorneys for the Liquidating Trustee

Copies Furnished To:

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

Mailing Information for Case 09-36379-PGH

Electronic Mail Notice List

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

- Geoffrey S. Aaronson gaaronson@aspalaw.com, 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 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, wendysue.henry@hklaw.com
- Michael S Budwick mbudwick@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com
- Michael S Budwick mbudwick@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com
- Dennis M. Campbell dcampbell@campbelllawfirm.net, gschmied@campbelllawfirm.net;lartigas@campbelllawfirm.net
- Francis L. Carter flc@katzbarron.com, lcf@katzbarron.com
- Lisa M. Castellano lcastellano@becker-poliakoff.com, thenry@becker-poliakoff.com;tfritz@becker-poliakoff.com
- Helen Davis Chaitman hchaitman@beckerny.com, jgorchkova@beckerny.com;lb blanco@beckerny.com;cdavis@beckerny.com
- Helen Davis Chaitman hchaitman@beckerny.com, jgorchkova@beckerny.com;lb blanco@beckerny.com;cdavis@beckerny.com
- Franck D Chantayan franck@chantayan.com
- Daniel DeSouza ddesouza@becker-poliakoff.com, culpiz@becker-poliakoff.com
- John R. Dodd doddj@gtlaw.com, miaecfbky@gtlaw.com;mialitdock@gtlaw.com
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- Darren D. Farfante dfarfante@fowlerwhite.com, deborah.lester@fowlerwhite.com
- Heidi A Feinman Heidi.A.Feinman@usdoj.gov
- Jonathan S. Feldman jfeldman@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com
- G Steven Fender efileu1113@gmlaw.com, efileu1094@gmlaw.com;efileu1092@gmlaw.com;efileu1435@gmlaw.com
- David S Foster david.foster@lw.com, chefiling@lw.com
- Robert G Fracasso Jr rfracasso@shutts.com, jgoodwin@shutts.com
- Robert C Furr bnasralla@furrcohen.com
- Solomon B Genet sgenet@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com
- John H Genovese jgenovese@gjb-law.com, hburke@gjb-law.com;gjbecf@gjb-law.com
- Michael I Goldberg michael.goldberg@akerman.com, charlene.cerda@akerman.com
- Lawrence Gordich LAG@segallgordich.com, jxp@segallgordich.com;mma@segallgordich.com
- Scott M. Grossman grossmansm@gtlaw.com, rosr@gtlaw.com;MiaLitDock@gtlaw.com;FTLLitDock@GTLaw.com;miaecfbky@gtlaw.com
- Jennifer Hayes jhayes@foley.com, KCavanaugh@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;tpatykula@mkaufmanpa.com;gstolzberg@mkaufmanpa.com
- Stephen J Kolski Jr stevekolski@catlin-saxon.com
- Harris J. Koroglu hkoroglu@shutts.com, jgoodwin@shutts.com
- James A Lodoen jlodoen@lindquist.com
- Joshua A Marcus jmarcus@melandrussin.com, ltannenbaum@melandrussin.com;mrbnefs@yahoo.com
- Paul J McMahon pjmc@pjmllawmiami.com
- Brian M Mckell brian.mckell@wilsonelser.com, frances.weiss@wilsonelser.com
- Barry E Mukamal bankruptcy@marcumllp.com, FL64@ecfcbis.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 paul@orshanpa.com, maria@orshanpa.com;estone@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;bank@stearnsweaver.com;ross@stearnsweaver.com;mmesones-mori@stearnsweaver.com;dillworthcdp@ecf.epiqsystems.com;larrazola@stearnsweaver.com;sanderson@stearnsweaver.com;cgraver@stearnsweaver.com
- Jennifer H Pinder jpinder@foley.com, KCavanaugh@foley.com
- Chad P Pugatch cpugatch.ecf@rprslaw.com
- Christopher S Rapp csrapp@jones-foster.com
- Patricia A Redmond predmond@stearnsweaver.com, jmartinez@stearnsweaver.com;bank@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
- Franklin H Sato fsato@wickersmith.com, alazaro@wickersmith.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@seeselaw.com, sseward@seeselaw.com
- Steven E Seward sseward@seeselaw.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
- James S Telepman jst@fcohenlaw.com
- Charles W Throckmorton cwt@kttlaw.com, lf@kttlaw.com;yc@kttlaw.com

EXHIBIT 3

- 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;mrbnfs@yahoo.com
- Morris D. Weiss morrisw@hts-law.com, sherris@hts-law.com;annmariej@hts-law.com
- George L. Zinkler gzinkler.ecf@rprslaw.com