

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 (1) TO APPROVE SETTLEMENT WITH SIMS
MOSS KLINE AND DAVIS, LLP; (2) FOR ENTRY OF A BAR ORDER;
AND (3) TO APPROVE PAYMENT OF CONTINGENCY FEE**

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, files this Motion (1) to approve settlement with Sims Moss Kline and Davis, LLP ("*SMKD*"); (2) for the entry of a bar order; and (3) to approve payment of counsel's contingency fee (the "*Motion*"). In support of this Motion, the Liquidating Trustee states the following:

I. Factual 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. On November 30, 2009, the Debtors filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code. By subsequent Order of this Court, the cases are jointly administered.

3. On January 28, 2010, the Court entered the Agreed Order Directing Appointment of Chapter 11 Trustee and Denying United States Trustee's Motion to Convert Cases to Cases under Chapter 7 [ECF No. 100].

4. 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].

5. 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.

6. SMKD is a seven-lawyer law firm based in Atlanta, Georgia. Pre-petition, SMKD provided certain legal services to the Debtors and certain of their affiliates. Based on the investigation to date by the Liquidating Trustee and his professionals, the Liquidating Trustee has determined that the Palm Beach Liquidating Trusts may assert certain claims for professional negligence and disgorgement of compensation against SMKD.

7. In recent months, the Liquidating Trustee obtained a copy of SMKD's professional liability insurance policy with Professional Direct Insurance Company ("**PDIC**"). The policy limits are \$2,000,000 per claim, with a maximum of two (2) claims. Thereafter, the Liquidating Trustee and his legal counsel, as well as SMKD and its legal counsel and PDIC and its legal counsel, exchanged information and engaged in settlement negotiations.

8. These discussions culminated in a formal mediation at the offices of the Liquidating Trustee's counsel. In attendance were the Liquidating Trustee, his counsel, PDIC, its counsel, SMKD, its counsel, and the Trust Monitor and his counsel.

9. John Freud, Esq. served as mediator and the parties wish to recognize the skill and efforts of Mr. Freud.

10. Following discussions and negotiations that continued into the evening, the Liquidating Trustee and SMKD executed a Stipulation of Settlement attached as Exhibit 1 and described below ("**Settlement**"). The Liquidating Trustee believes that the terms of the Settlement are in the best interests of the estates and should be approved.

II. Settlement Terms

11. The key aspects of the Settlement are the following:

- a) **Cash consideration** - upon approval of the Settlement, SMKD shall pay or cause to be paid \$2,750,000.00 (the "**Settlement Payment**"). The executed form of the Stipulation of Settlement contains a scrivener's error and incorrectly provides that the Settlement Payment shall be made by wire transfer within twenty (20) days from the later of three events identified in paragraph 5 of the Stipulation of Settlement. The Liquidating Trustee wishes to note that the parties have agreed that the Settlement Payment will be made by *check* which shall be tendered within *fifteen (15) days* from the later of such three events.
- b) **Bar order and release** – as a pre-condition for providing the above consideration, the Liquidating Trustee will obtain a Bar Order in favor of SMKD in the form attached to the Stipulation of Settlement. A copy of the Bar Order is attached to the Stipulation of Settlement. As more clearly stated therein, the Bar Order would bar the Debtors; creditors of the Debtors; limited partners of the Debtors; the general partner of the Debtors; and all entities acting on behalf of the limited and general partners of the Debtors from bringing any claims against SMKD that are related to the Debtors. As has been requested in the past by the SEC in connection with other settlements reached by the Liquidating Trustee, the Bar Order excepts any proceedings or actions brought by the SEC. In addition, the Settlement provides for an exchange of releases effective upon certain conditions, such as approval of the Settlement, entry of the Bar Order and payment of the Settlement Payment.

12. Pursuant to the Second Amended Joint Plan of Liquidation ("**Plan**"), approved by this Court's Order dated October 21, 2010 [ECF No. 444], all monetary consideration received in conjunction with the Settlement 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. (“*Pro Rata Allocation Formula*”).

13. In agreeing to the above terms, the Liquidating Trustee considered the terms of the insurance policy with PDIC. In particular, PDIC contended that any claims of the Liquidating Trustee are all “related” and therefore constitute a single claim subject to a maximum recovery of \$2,000,000. The Liquidating Trustee also considered the substantive defenses asserted by SMKD, as well as other factors including the costs (fees and expenses) and risks of litigation.

III. Relief Requested

14. The Liquidating Trustee seeks (1) an Order from this Court approving the Settlement and directing payment of the Contingency Fee (as defined below); and (2) an Order from this Court entering the Bar Order.

15. 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.”

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

17. 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 Settlement Ought to be Approved

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

Probability of success in litigation

19. The Liquidating Trustee could assert the following claims against SMKD:

- a) **Fraudulent transfer pursuant to §§ 544 and 548:** The Liquidating Trustee could assert claims to disgorge the approximate \$400,000 in fees paid historically by the Debtors and their affiliates.
- b) **Professional Negligence:** The Liquidating Trustee could assert professional negligence claims against SMKD based on the advice and counsel they provided to the Debtors during the years preceding the Petition Date.

20. Although the Liquidating Trustee believes he has strong claims as to all of these theories, the probability of success cannot be gauged with certainty at this stage. Moreover, as addressed below, any judgment(s) regardless of the legal theory would undoubtedly face significant collectability issues.

21. Finally, SMKD denies any and all liability to the Liquidating Trustee.

Collectability and Amount of Available Insurance Coverage

22. The collectability of SMKD and the amount of available insurance coverage is significant given that SMKD is not a national law firm. Rather, it is a boutique firm with seven attorneys. The amount of insurance coverage described above reflects that the Liquidating Trustee has obtained the entire first layer of \$2,000,000 in coverage as well as a meaningful portion - \$750,000 - of the second layer of coverage.

23. In the event that the Liquidating Trustee were to be successful in litigation and obtain a judgment in an extraordinary amount, the firm would presumably disband or be placed into liquidation proceedings as it would not have the financial wherewithal to satisfy any meaningful portion of such a judgment.

24. The insurance policy provides for an expense portion of \$1,000,000 and thereafter, the defense costs would reduce the remaining available insurance coverage. Upon information and belief, approximately 25-30% of this expense portion has already been exhausted (work prior to the filing of suit, including that related to discovery and retention of professionals). If the Liquidating Trustee were to succeed at trial and it were determined he held only one claim, based on the anticipated defense costs to be expended, it is likely that his ultimate recovery will be less than \$2,000,000. If the Liquidating Trustee were to succeed at trial and it were determined that he held two insurable unrelated claims, with a total of \$4,000,000 in coverage, again based on the anticipated defense costs, it is anticipated that the Liquidating Trustee would only fare slightly better than under the Settlement as proposed. However, when factoring in the expense to prosecute the case, the Liquidating Trustee would likely not obtain a superior result via litigation.

25. The economic terms of the Settlement avoids these pitfalls and provides a certain result to the estates that surpasses or approximates the best case scenario at trial, particularly when factoring in the costs of prosecuting this litigation to trial.

Complexity of litigation and attendant expense, inconvenience and delay

26. This is a significant consideration that militates in favor of approval of the Settlement.

27. 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.

28. The Settlement 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

29. Although a direct result of the Settlement is that creditors and limited partners will be barred from asserting any claims against SMKD, the settlement conversely provides that the bulk of the available insurance coverage will be tendered to the Liquidating Trustee. If any creditor or limited partner has a direct claim against SMKD it is questionable whether such claim is "unrelated" to those of the Liquidating Trustee such that there would be any remaining coverage. As such, the Settlement is in the paramount interest of the Debtors' stakeholders.

B. The Bar Order Ought to be Approved

30. This Court has the inherent power under the Bankruptcy Code, including section 105(a), to issue any order necessary or appropriate to carry out the provisions of Title 11. *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499 (Bankr. S.D.N.Y. 1991). The Eleventh

Circuit Court of Appeals in *Munford* concluded that (i) public policy favors settlements, (ii) the cost of litigation can be burdensome on a bankruptcy estate, and (iii) "bar orders play an integral role in facilitating settlements." *In re Munford*, 97 F.3d 449, 454 (11th Cir. 1996).

31. This Court has the broad power to approve settlement agreements and effectuate a release of non-debtors. *Munford*, 97 F.3d at 455; *see also In re S&I Investments*, 421 B.R. 569, 583-586 (Bankr. S.D. Fla. 2009). Indeed, the Eleventh Circuit Court of Appeals has stated that:

[c]omplex litigation ...can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive. Accordingly, the Federal Rules of Civil Procedure authorize district courts to facilitate settlements in all types of litigation [B]ar orders play an integral role in facilitating settlement. Defendants buy little peace through settlement unless they are assured that they will be protected against codefendants' efforts to shift their losses through cross claims for indemnity, contribution, and other causes related to the underlying litigation.

In re U.S. Oil & Gas Litig., 967 F.2d at 493-94.

32. The Liquidating Trustee submits that approval of the Settlement Agreement is fair, reasonable and in the best interest of the estate and its general unsecured creditors. An essential and necessary part of the Settlement Agreement is the Bar Order, and that too should be approved; without such approval, there is no Settlement.

33. Entry of the Bar Order is an essential, critical, necessary and integral element of the Settlement Agreement. The Liquidating Trustee's agreement to obtain the Bar Order was negotiated at arms-length between the parties and in good faith, as a part of the parties' formal mediation and associated discussions.

34. The Eleventh Circuit Court of Appeals has stated as follows:

When determining whether to enter a bar order against nonsettling defendants, the court must make reasonable determination that bar order is fair and equitable. In making such a determination, courts consider the interrelatedness of the claims that the bar order precludes, the likelihood of nonsettling defendants to prevail on the

barred claim, the complexity of litigation, and the likelihood of depletion of the resources of the settling defendants.

Munford, 97 F.3d 455 (internal citations omitted).

35. The Liquidating Trustee submits that upon ‘reasonable determination,’ the requested Bar Order is fair and equitable. As more clearly set forth in the Settlement and Bar Order, and above, the Bar Order (i) bars interrelated claims; (ii) no non-settling defendants have yet brought suit; (iii) the factual underpinnings to the litigation is extremely complex; and (iv) the insurance available for settlement depletes if the Liquidating Trustee is forced to continue pressing his claims.

36. Further, as stated above, the Bar Order was a necessary part of the Settlement, which results in the Settlement Payment to the Palm Beach Liquidating Trusts.

C. The Contingency Fee Ought to be Approved

37. 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**”).

38. The Liquidating Trustee requests that the 10% Contingency Fee – in the amount of \$275,000 - be approved and that he be authorized and directed to pay this amount when the Settlement Payment is made.

WHEREFORE, the Liquidating Trustee respectfully requests that this Court enter (1) an Order from this Court approving the Settlement and directing payment of the Contingency Fee

(as set forth in attached Exhibit 2); (2) an Order from this Court entering the Bar Order (as set forth in attached Exhibit 3); and (3) granting such other relief this Court deems just and proper.

s/ Michael S. Budwick
Michael S. Budwick, Esquire
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Telephone: (305) 358-6363
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Attorneys for the Liquidating Trustee

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 4 on July 29, 2011.

s/ Michael S. Budwick

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("***Stipulation***") is entered into on this 25 day of July 2011 by and among (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 "***Palm Beach Liquidating Trusts***") and (b) Sims Moss Kline and Davis, LLP ("***SMKD***," and together with the Liquidating Trustee, the "***Parties***").

The terms of this Stipulation are as follows:

RECITALS

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

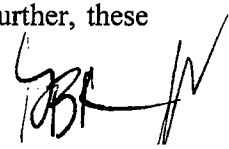
B. On or about October 21, 2010, the Bankruptcy Court entered its Order Confirming Second Amended Plan of Liquidation [ECF No. 444], creating the Palm Beach Liquidating Trusts and appointing the Liquidating Trustee as liquidating trustee.

C. The Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, asserts certain claims against SMKD (the "***PBF Claims***"); SMKD expressly denies those claims;

D. The PBF Claims include those arising from acts and omissions occurring prior to the Petition Date, generally concerning certain pre-petition professional services provided by SMKD to the Debtors;

E. The Liquidating Trustee (and his legal counsel) and SMKD and its legal counsel, and other representatives and interested parties, have shared information and engaged in settlement negotiations and discussions in-person, by telephone and in writing. Further, these

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persons and entities have engaged in a formal mediation. During the course of these steps, the Parties have analyzed the PBF Claims and potential defenses thereto.

F. To avoid the continued expense and risk of adverse outcome arising from the PBF Claims, as well as incurring costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve the PBF Claims subject to the terms and conditions of this Stipulation and Bankruptcy Court approval.

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

1. 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. 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. In full and final settlement of the PBF Claims, SMKD shall pay (or cause to be paid) \$2,750,000.00 by no later than the Settlement Payment Date (as that term is defined below) (the "**Settlement Payment**"), via wire transfer pursuant to written instructions to be provided by the Liquidating Trustee to SMKD.

4. The Liquidating Trustee, with the cooperation of SMKD, shall obtain the entry of a final, non-appealable order (the "**Bar Order**") by the Bankruptcy Court substantially in the form of Exhibit 1, which bars and permanently enjoins the prosecution of any and all direct, indirect or derivative Claims (as defined below) against SMKD and the SMKD Parties (as defined below), whether known or unknown, by any and all of the following entities: (1) the

Debtors; (2) all creditors of either of the Debtors; (3) all limited partners of either of the Debtors; (4) all general partner(s) of either of the Debtors; and (5) all entities acting on behalf of the limited and general partners of the Debtors (collectively, the “*Enjoined Parties*”). It is the express intention of the Parties that the Bar Order shall and will be interpreted as broadly as possible so as to effectuate the purposes stated therein. This Stipulation is contingent upon the entry of the Bar Order and if for any reason the Bar Order is not entered, this Stipulation shall be null and void in its entirety.

5. The Settlement Payment Date shall be the 20th calendar day from the later of the following three events: (1) the date of the entry by the Bankruptcy Court of a final order approving this Stipulation; (2) the date of the entry by the Bankruptcy Court of the Bar Order; and (3) the date of final resolution of all appeals and the expiration of time for any further appeals from or related to the Bankruptcy Court’s orders approving this Stipulation and the Bar Order, unless such appeals have been determined by the Bankruptcy Court to have been rendered moot.

6. 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 the professional services provided by SMKD to the Debtors.

7. For purposes of this Stipulation, the term “*SMKD Parties*” shall mean SMKD and its present and former officers, directors, members, partners, representatives, managers, agents,

employees, attorneys, successors, predecessors, subsidiaries and affiliates, and indemnitors and insurers, including but not limited to Professionals Direct Insurance Company ("**PDIC**").

8. Upon approval of this Stipulation by final orders of the Bankruptcy Court in the Bankruptcy Cases, payment of the Settlement Payment and entry of a Bar Order, the Liquidating Trustee on behalf of the Palm Beach Liquidating Trusts and the Debtors and their estates, waives, releases and holds harmless, now and forever, the SMKD Parties from any and all Claims that the Liquidating Trustee, the Palm Beach Liquidating Trusts, the Debtors or the Debtors' estates may have against the SMKD Parties; provided that nothing herein shall be deemed to release, waive or otherwise limit any rights or obligations arising out of this Stipulation. Moreover, the scope of this release shall not impact, impair or alter in any manner any Claims whatsoever that the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, the Debtors or their estates, may have against any parties other than the SMKD Parties, including but not limited to Claims against any alleged concurrent or consecutive tortfeasors, if any. Notwithstanding anything set forth in this Stipulation, the scope of the release by the Liquidating Trustee in favor of the SMKD Parties - - other than SMKD - - shall be expressly limited to claims based upon or directly related to the professional services provided by SMKD to the Debtors or their affiliates.

9. Upon approval of this Stipulation by final orders of the Bankruptcy Court in the Bankruptcy Cases, payment of the Settlement Payment and entry of the Bar Order, the SMKD Parties (other than PDIC) waive, release and hold harmless, now and forever, the Liquidating Trustee, the Palm Beach Liquidating Trusts, the Debtors and their estates from any and all Claims that the SMKD Parties may have against the Liquidating Trustee, the Palm Beach Liquidating Trusts, the Debtors and their estates; provided that this provision does not release, waive or otherwise limit any rights or obligations arising out of this Stipulation. The execution

of this Stipulation below by a duly authorized representative of SMKD shall reflect a warranty and representation that SMKD's representative is authorized to bind not only SMKD but each and every one of the SMKD Parties.

10. The SMKD Parties (other than PDIC) agree to cooperate with the Liquidating Trustee in any investigation undertaken by the Liquidating Trustee arising from or relating in any way to the business affairs or operations of the Debtors, including, but not limited to: (a) being available by telephone to answer questions from the Liquidating Trustee or his counsel and/or meeting with them on reasonable notice in Atlanta, Georgia; (b) promptly turning over to the Liquidating Trustee or his counsel any documents or other materials possessed by the SMKD Parties (other than PDIC) that may relate to the operation of the Debtors or any affiliate of the Debtors, or any litigation claims to be pursued or investigated by the Liquidating Trustee, including but not limited to all client files of the (i) Debtors; (ii) affiliates of the Debtors; (iii) persons with control over the Debtors; or (c) appearing for depositions, hearings or trials. The SMKD Parties' cooperation with the Liquidating Trustee pursuant to this paragraph shall not constitute nor be deemed a waiver or breach of any applicable privileges or confidentiality obligation on the part of the SMKD Parties, and shall in no way prevent SMKD from complying with applicable law.

11. SMKD represents that the financial disclosures for SMKD that it provided to the Liquidating Trustee at the mediation are true and correct.

12. 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.

13. The Liquidating Trustee shall file and serve the necessary motion(s) in the Bankruptcy Cases seeking the entry of the Bar Order and an order approving this Stipulation.

The Liquidating Trustee shall serve by U.S. Mail notice of motion(s) upon all persons and entities whose rights would or could be affected by the Bar Order, including, without limitation, (1) all creditors of the Debtors; (2) all limited partners of the Debtors; (3) all general partner(s) of the Debtors; (4) all shareholders of the Debtors; and (6) all entities that acted or are acting for or on behalf of the limited and general partners of the Debtors.

14. Each Party shall bear its own attorneys' fees and costs in connection with the PBF Claims, the negotiation and drafting of this Stipulation and the submission of such Stipulation, motions and orders as may be necessary to obtain the approval of the Bankruptcy Court; provided however, 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.

15. 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.

16. This Stipulation shall be effective upon execution by all of the Parties hereto, subject only to approval of this Stipulation by final orders of the Bankruptcy Court, payment of the Settlement Payment and entry of the Bar Order. Upon it becoming effective, this Stipulation shall be binding on all of the Parties' successors or assigns.

17. If the Bankruptcy Court does not approve this Stipulation, then the Stipulation shall be of no further force or effect, and the Parties shall be restored to their rights as they existed prior to the execution of this Stipulation. Notwithstanding the foregoing, if the Bankruptcy Court does not approve this Stipulation because any of the Parties have failed to provide the Bankruptcy Court with adequate information to rule on the merits of the Stipulation,

the Parties will use their best efforts to seek reconsideration of any order declining to approve the Stipulation, or to file an amended motion to approve the Stipulation.

18. 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.

19. 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.

20. 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.

21. The Bankruptcy Court shall retain jurisdiction to enforce the terms of this Stipulation.

22. The individuals signing below represent and warrant that they have the authority to execute this Stipulation on behalf of their respective clients and as set forth herein.

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A handwritten signature in black ink, appearing to be 'M. J. B. K.', located in the bottom right corner of the page.

STIPULATED AND AGREED TO BY:



Barry E. Mukamal, as Liquidating Trustee

Date: July 25, 2011



Sims Moss Kline & Davis, LLP, by Gerald B. Kline,
as authorized agent

Date: July 25, 2011



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

In re:
PALM BEACH FINANCE PARTNERS,
L.P., a Delaware limited partnership, et al.,

Chapter 11

Debtors,
_____ /

CASE NO. 09-36379-BKC-PGH
(Jointly Administered)

**ORDER GRANTING MOTION FOR ENTRY OF
BAR ORDER IN FAVOR OF THE SMKD PARTIES**

THIS MATTER came before the Court on [DATE] at [TIME], upon the *Liquidating Trustee's Motion to Approve Settlement with Sims Moss Kline & Davis, LLP* (the "**Motion**") [ECF No. ____].¹ The Court has reviewed the Motion, considered the arguments of counsel and is otherwise duly advised in the premises.

In its Motion, the Liquidating Trustee, on behalf of the Debtors, seeks entry of an order barring certain claims against the SMKD Parties as described in detail below (the "**Bar Order**").

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

The Court has noted that notice of the Motion and the request for a Bar Order was given to those potentially interested parties identified on the service list referenced in the Motion. The Court has reviewed and considered the Motion, any other submissions to this Court and provided an opportunity to be heard to all persons requesting to be heard. Accordingly, it is:

ORDERED as follows:

1. The Motion is **GRANTED**.
2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and authority to enter this Order pursuant to 11 U.S.C. § 105(a).
3. The form and means of the notice of the Bar Order and the Motion are determined to have been the best notice practicable under the circumstances and to be good and sufficient notice to all persons whose interests would or could be affected by this Order.
4. The Court has been apprised of the negotiations that preceded the Stipulation and finds that the Motion and request for Bar Order is a result of arms'-length bargaining among the parties. There is no evidence that the settlement reached by the Trustee with SMKD is the result of collusion among the parties or that there has been any intent to prejudice any interested parties.
5. The Court finds that entry of this Order is appropriate in order to achieve the finality and repose that is contemplated as a term of the proposed settlement and that good cause therefore exists for the entry of this Order, and is fair and equitable. *See In re U.S. Oil & Gas Litigation*, 967 F.2d 489, 495-96 (11th Cir. 1992); *Munford, Inc. v. Munford, Inc.*, 97 F.3d 449, 454-55 (11th Cir. 1996); *In re Jiffy Lube Securities Litigation*, 927 F.2d 155 (4th Cir. 1991); *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995).

The following additional definitions apply to the provisions of this Order barring certain claims as set forth in paragraph 6 below:

"Releasors" shall mean (1) the Debtors; (2) all creditors of either of the Debtors, including but not limited to Geoffrey Varga, as Joint Official Liquidator of Palm Beach Offshore Ltd. and Palm Beach Offshore II Ltd.; (3) all limited partners of either of the Debtors; (4) all general partner(s) of either of the Debtors; and (5) all entities acting on behalf of the limited and general partners of the Debtors.

"SMKD Parties" shall mean SMKD and its present and former officers, directors, members, partners, representatives, managers, agents, employees, attorneys, predecessors, successors, subsidiaries and affiliates, and indemnitors and insurers, including but not limited to Professionals Direct Insurance Company.

"Barred Claims" shall mean any and all direct, indirect and/or derivative Claims, whether known or unknown, by any and all Releasors against the SMKD Parties that relate in any manner whatsoever to the Debtors.

6. Except as expressly provided below, Releasors are permanently barred and enjoined from commencing, prosecuting, or asserting either directly or in any other capacity, against the SMKD Parties, any and all liabilities, judgments, rights, claims, cross-claims, counterclaims, third party claims, demands, suits, matters, obligations, damages, debts, losses, costs, actions and causes of action, of every kind and description, arising under common law, rule, regulation or statute, whether arising under state or federal law, whether presently known or unknown that any Releasor now has, ever had or may claim to have in the future that is a Barred Claim; provided that nothing in this Order shall (i) enjoin, impair or delay the Securities and Exchange Commission ("**SEC**") from commencing or continuing any claims, causes of action, proceedings or investigations against any person or entity, including the SMKD Parties, or (ii) release or discharge any person or entity, including the SMKD Parties, from any claims, rights, powers or interests held or assertable by the SEC.

7. The Court retains jurisdiction to enforce or interpret this Order.

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Submitted By:

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Copies to:

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(Attorney Budwick is directed to mail a conformed copy of this Order upon all interested parties and to file a certificate of service.)

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

In re:

PALM BEACH FINANCE PARTNERS,
L.P., a Delaware limited partnership, et al.,

Chapter 11

Debtors,

CASE NO. 09-36379-BKC-PGH
(Jointly Administered)

**ORDER GRANTING THE LIQUIDATING TRUSTEE'S MOTION TO APPROVE
SETTLEMENT WITH SIMS MOSS KLINE AND DAVIS, LLP**

THIS MATTER came before the Court on _____, 2011, upon the *Liquidating Trustee's Motion to Approve Settlement with Sims Moss Kline and Davis, LLP ("SMKD")* (the "**Motion**") [ECF No. ____].¹ The Court reviewed the Motion, considered the arguments of counsel and is otherwise duly advised in the premises. Accordingly, the Court finds as follows:

The Court has reviewed and considered the Motion, any other submissions to this Court and provided an opportunity to be heard to all persons requesting to be heard. Accordingly, it is

ORDERED as follows:

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

1. The Motion is **GRANTED**.
2. The Settlement is approved, with the sole modification being that the executed form of the Stipulation of Settlement contains a scrivener's error and incorrectly provides that the Settlement Payment shall be made by wire transfer within twenty (20) days from the later of three events identified in paragraph 5 of the Stipulation of Settlement. The parties have agreed, and the Settlement is modified through this Order, so that the Settlement Payment will be made by check which shall be tendered within fifteen (15) days from the later of such three events.
3. 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 checks referenced in paragraph 2 as the mechanism for the Settlement Payment shall be made in the amounts in accordance with this allocation.
4. The Contingency Fee is approved. The Liquidating Trustee is authorized and directed make payment of the Contingency Fee without the need of further Court Order, in accordance with the Pro Rata Allocation Formula, promptly upon receipt of the Settlement Payment.
5. The Court retains jurisdiction to enforce or interpret this Order.

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

In re:

PALM BEACH FINANCE PARTNERS,
L.P., a Delaware limited partnership, et al.,

Chapter 11

Debtors,

CASE NO. 09-36379-BKC-PGH
(Jointly Administered)

**ORDER GRANTING MOTION FOR ENTRY OF
BAR ORDER IN FAVOR OF THE SMKD PARTIES**

THIS MATTER came before the Court on [DATE] at [TIME], upon the *Liquidating Trustee's Motion to Approve Settlement with Sims Moss Kline & Davis, LLP* (the "**Motion**") [ECF No. ____].¹ The Court has reviewed the Motion, considered the arguments of counsel and is otherwise duly advised in the premises.

In its Motion, the Liquidating Trustee, on behalf of the Debtors, seeks entry of an order barring certain claims against the SMKD Parties as described in detail below (the "**Bar Order**").

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

The Court has noted that notice of the Motion and the request for a Bar Order was given to those potentially interested parties identified on the service list referenced in the Motion. The Court has reviewed and considered the Motion, any other submissions to this Court and provided an opportunity to be heard to all persons requesting to be heard. Accordingly, it is:

ORDERED as follows:

1. The Motion is **GRANTED**.
2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and authority to enter this Order pursuant to 11 U.S.C. § 105(a).
3. The form and means of the notice of the Bar Order and the Motion are determined to have been the best notice practicable under the circumstances and to be good and sufficient notice to all persons whose interests would or could be affected by this Order.
4. The Court has been apprised of the negotiations that preceded the Stipulation and finds that the Motion and request for Bar Order is a result of arms'-length bargaining among the parties. There is no evidence that the settlement reached by the Trustee with SMKD is the result of collusion among the parties or that there has been any intent to prejudice any interested parties.
5. The Court finds that entry of this Order is appropriate in order to achieve the finality and repose that is contemplated as a term of the proposed settlement and that good cause therefore exists for the entry of this Order, and is fair and equitable. *See In re U.S. Oil & Gas Litigation*, 967 F.2d 489, 495-96 (11th Cir. 1992); *Munford, Inc. v. Munford, Inc.*, 97 F.3d 449, 454-55 (11th Cir. 1996); *In re Jiffy Lube Securities Litigation*, 927 F.2d 155 (4th Cir. 1991); *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995).

The following additional definitions apply to the provisions of this Order barring certain claims as set forth in paragraph 6 below:

“Releasors” shall mean (1) the Debtors; (2) all creditors of either of the Debtors, including but not limited to Geoffrey Varga, as Joint Official Liquidator of Palm Beach Offshore Ltd. and Palm Beach Offshore II Ltd.; (3) all limited partners of either of the Debtors; (4) all general partner(s) of either of the Debtors; and (5) all entities acting on behalf of the limited and general partners of the Debtors.

“SMKD Parties” shall mean SMKD and its present and former officers, directors, members, partners, representatives, managers, agents, employees, attorneys, predecessors, successors, subsidiaries and affiliates, and indemnitors and insurers, including but not limited to Professionals Direct Insurance Company.

“Barred Claims” shall mean any and all direct, indirect and/or derivative Claims, whether known or unknown, by any and all Releasors against the SMKD Parties that relate in any manner whatsoever to the Debtors.

6. Except as expressly provided below, Releasors are permanently barred and enjoined from commencing, prosecuting, or asserting either directly or in any other capacity, against the SMKD Parties, any and all liabilities, judgments, rights, claims, cross-claims, counterclaims, third party claims, demands, suits, matters, obligations, damages, debts, losses, costs, actions and causes of action, of every kind and description, arising under common law, rule, regulation or statute, whether arising under state or federal law, whether presently known or unknown that any Releasor now has, ever had or may claim to have in the future that is a Barred Claim; provided that nothing in this Order shall (i) enjoin, impair or delay the Securities and Exchange Commission (**“SEC”**) from commencing or continuing any claims, causes of action, proceedings or investigations against any person or entity, including the SMKD Parties, or (ii) release or discharge any person or entity, including the SMKD Parties, from any claims, rights, powers or interests held or assertable by the SEC.

7. The Court retains jurisdiction to enforce or interpret this Order.

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(Attorney Budwick is directed to mail a conformed copy of this Order upon all interested parties 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 e-mail notice/service for this case.

- **Geoffrey S. Aaronson** gaaronson@aspalaw.com, tdmckeown@mckeownpa.com;sbeiley@aspalaw.com
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