

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

IN RE:

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 EIGHTH OMNIBUS
OBJECTION (LIMITED PARTNER SCHEDULED EQUITY
INTERESTS IN CASE NO. 09-36379-PGH (PBFP))**

IMPORTANT NOTICE TO CREDITORS/INTEREST HOLDERS:

THIS IS AN OBJECTION TO YOUR SCHEDULED EQUITY INTEREST

This objection seeks to modify the percentage of your previously scheduled equity interest. *It does not object to any proof of claim filed by you or on your behalf.* Please read this objection carefully to identify which equity interests are objected to and what disposition of your equity interest(s) are recommended.

If you disagree with the objection or the recommended treatment, you must file a written response **WITHIN 30 DAYS** from the date of service of this objection, explaining why your scheduled equity interest should be calculated using a different amount, and you must serve a copy to the undersigned attorney **OR YOUR EQUITY INTEREST MAY BE RESOLVED IN ACCORDANCE WITH THE RECOMMENDATION IN THIS OBJECTION.**

The written response must contain the case name, case number, and must be filed with the Clerk of the United States Bankruptcy Court.

Pursuant to Federal Rule of Bankruptcy Procedure 3007, Local Rule 3007-1, and this Court's Order Granting Motion to Authorize Liquidating Trustee to Use "Cash-in/Cash-out" Method to Calculate Limited Partner Claims and Interests [ECF No. 2678] ("*Cash-in/Cash-out Order*"), Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") for the Palm Beach Finance Partners Liquidating Trust and Palm Beach Finance II Liquidating Trust (collectively, the

“*Liquidating Trusts*”), by and through undersigned counsel, objects to the scheduled equity interest(s) of the limited partners in Palm Beach Finance Partners, L.P. (“*PBFP*”) set forth below,¹ on the following basis:

BASIS FOR OBJECTION

On July 30, 2015, the Court entered the Cash-in/Cash-out Order, pursuant to which the Court ordered that limited partner claims and equity interests shall be calculated using the cash-in/cash-out method. Under this method, as detailed in the Cash-in/Cash-out Order, the amount of each limited partner claim and/or interest shall be the amount of cash the limited partner transferred to a Debtor minus the amount of cash such limited partner received from that Debtor as of the Petition Date, whether such monies were received as a return of principal, profits, dividends or interest.

Each of the below-listed limited partners filed claims against PBFP in an amount that either (i) agrees with the Liquidating Trustee’s calculation using the cash-in/cash-out method, or (ii) is less than the Liquidating Trustee’s calculation using the cash-in/cash-out method. Accordingly, the Liquidating Trustee has no objection to their filed claims, and such claims will remain allowed general unsecured claims against PBFP in the filed amounts listed below (for each limited partner, the “*Allowed LP Claim Amount*”).

However, such limited partner’s scheduled equity interest (*see* ECF No. 49) was not calculated, in accordance with the Cash-in/Cash-out Order, using the cash-in/cash-out amount method. Accordingly, the Liquidating Trustee objects to such limited partner’s scheduled equity interest in Case No. 09-36379-BKC-PGH (PBFP) and requests that such limited partner’s equity interest be calculated (following the final resolution of all limited partner claims and equity interests)

¹ Pursuant to Article 3 of the confirmed plan of liquidation, allowed claims filed by the Debtors’ limited partners are classified and treated in class 1A and 1B. *See* ECF No. 246. In addition, all holders of an equity interest in the Debtors, as of the date the Debtors filed for bankruptcy, are classified in class 3A and 3B. *Id.*

using the Allowed LP Claim Amount as the numerator and the total of all allowed equity interests as the denominator.

Finally, in certain instances, the name on the proof of claim form and/or the list of equity security holders differs slightly from the underlying documents in the Debtors' books and records evidencing the investment. Accordingly, the Liquidating Trustee requests that the claims register and list of equity security holders be modified, as necessary, to reflect the limited partner listed in the column entitled "Name of Claimant" below (which corresponds to the holder of the claim/equity interest according to the Debtors' books and records) as the actual holder of the claim and equity interest, respectively.

POC No.	Name of Claimant	Amount of Filed Claim
49-1	Calhoun Multi-Series Fund, L.P. ²	\$225,000.00 <i>See Schedule 1.</i>
11-1	Sumnicht Money Masters Fund LP ³	\$590,000.00 <i>See Schedule 1.</i>
26-1	West Capital Management ⁴	\$500,000.00 <i>See Schedule 1.</i>

RESERVATION OF RIGHTS

Nothing herein should be construed as the Liquidating Trustee waiving any of his rights as to issues relating to the priority of distributions (such as 11 U.S.C. §510); to the contrary, the Liquidating Trustee reserves all of such rights. The Liquidating Trustee's claims review process and legal analysis is ongoing, and the Trustee anticipates filing court papers in the future on these and any other appropriate grounds. Further, nothing herein is intended to be or should be considered a

² Calhoun Multi-Series Fund, L.P. (Claim 49-1) f/k/a Triumph Multi-Series Fund, L.P. was listed on the schedule of equity security holders as Calhoun Asset Management, LLC. *See* ECF No. 49.

³ Sunnicht Money Masters Fund LP (Claim 11-1) was listed on the schedule of equity security holders as Sunnicht & Associates. *See* ECF No. 49.

⁴ Pursuant to an agreement executed on or about October 8, 2008, Elliot and Arlene Stone transferred their limited partnership interest in PBFP to West Capital Management. *See Exhibit A.*

limit to the damages that the Liquidating Trustee - or any other party - can claim or recover against third parties.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 18, 2015, a true copy of the foregoing was served via the Court's Notice of Electronic Filing upon the Registered Users set forth on the attached **Exhibit B** and via U.S. Mail on the Claimants listed above at the addresses set forth on the attached **Exhibit C**.

s/ Jessica L. Wasserstrom
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Attorneys for Liquidating Trustee

Schedule I

LP Name	Filed POC #	Filed POC Amount	Total LP "In" Activity	Total LP "Out" Activity	Net LP Loss (Gain)	Proposed Allowed Claim Amount/Numerat or for Equity
Sumnicht Money Masters Fund, LP	POC-11	590,000.00	900,000.00	(310,000.00)	590,000.00	590,000.00
Triumph Multi Series Fund, LP fka Calhoun Asset Mgt	POC-49	225,000.00	225,000.00	-	225,000.00	225,000.00
West Capital Management (successor in interest to Elliot and Arlene Stone JTBE)	POC-26	500,000.00	500,000.00	-	500,000.00	500,000.00

Oct. 9. 2008 1:03PM

No. 0626 P. 2

TRANSFER AND RELEASE

This Transfer and Release (the "Agreement") dated October 8, 2008 (the "Execution Date") is given

BY ELLIOT AND ARLENE STONE (the "Transferor"), who are individuals with an address of 9990 Global Road, Philadelphia, PA 19115, their respective assigns, successors, representatives, employees, agents, affiliates and all others who may or can claim through them.

TO WEST CAPITAL MANAGEMENT, (the "Transferee"), a Pennsylvania Company with an address of 1818 Market Street, Suite 3323, Philadelphia, PA 19103, its respective assigns, successors, directors, representatives, agents, employees, members, affiliates and all others who may or can claim through them.

Whereas, Transferor has made a contribution of capital into Palm Beach Finance Partners, LP (the "Limited Partnership Interest") as an investment, for which Transferee is willing to purchase for the original price paid by Transferor; and

Whereas, Transferor paid the sum of five hundred thousand dollars (\$500,000) for the Limited Partnership Interest;

Therefore, in consideration of the mutual covenants contained herein, the adequacy of which are hereby acknowledged, Transferor and Transferee agree as follows:

1. **Transfer.** Transferor agrees to sell, and Transferee agrees to buy the Limited Partnership Interest.

2. **Release.** Transferor releases and gives up any and all claims and rights which they may have, including those of which they are not aware and those not mentioned in this Agreement, against the Transferee, with respect to the following:

Any and all actions and causes of action, damages, either direct or consequential, debts, liabilities, demands, obligations, contracts, agreements, costs, expenses, of any nature, character and description, known or unknown, at law or in equity including, but not limited to, any claims asserted, or that could have been asserted, pertaining to the Limited Partnership Interest.

3. **Consideration.** Transferee will pay good consideration as described herein, for the Limited Partnership Interest. Transferee shall make best efforts to return capital of Transferor by the date Transferor could have withdrawn his investment. Such actions that Transferee shall pursue includes actions such as litigation, payments, as well as other reasonable actions.

4. **Rights of Transferor.** All rights of Transferor shall revert back to Transferor should Section 3, not occur by the original date Transferor could withdraw investment from Palm Beach.

Oct. 9. 2008 1:03PM

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5. Confidentiality. Transferor agrees to keep the terms of this Agreement confidential and shall not disclose the terms or contents of this Agreement or the Limited Partnership Interest to any person or entity without the Transferee's express written consent. Furthermore, the Transferor has an affirmative duty to enforce this Paragraph 5 against all parties that the Transferor may have consulted, discussed or spoke to with regard to the original purchase of the Limited Partnership Interest or this Agreement. This clause shall survive this Agreement and remain in full force and effect for a period of ten (10) years from the Execution Date.

6. **Who is Bound.** Transferor and Transferee, and their respective successors, assigns, and heirs are bound by this Agreement.

7. **Remedies.** Transferor and Transferee agree that a material breach of this Agreement, will result in damages that are difficult to calculate and therefore agree:

- a. A material breach by Transferor shall be a violation of Section 5 stated above. Such a breach shall entitle Transferee to full refund of the amount that Transferee has paid for under this Agreement, as well as recovery in law.

8. **Signatures.** Transferor and Transferee understand and agree to the terms of this Agreement and have signed this Agreement voluntarily and with full knowledge of the effect of so signing.

9. **Execution.** This Agreement may be executed by facsimile signature, which shall be deemed an original.

10. **Advice of Counsel.** In entering into this Agreement, Transferor and Transferee represent that they have been given the opportunity to seek the advice of counsel, and that they fully understand and voluntarily accept the terms set forth herein.

11. **Choice of Law and Jurisdiction.** The interpretation and construction of this Release shall be governed by the laws of the State of Pennsylvania, and the appropriate federal or state court in the State of Pennsylvania shall have jurisdiction to enforce this Agreement and any action, suit or proceeding arising out of or relating to this Agreement.

12. **Effect.** This Agreement transfers all rights in the Limited Partnership Interest from the Transferor to the Transferee and terminates all claims, as enumerated in Paragraph 2, which the Transferor has against the Transferee. The Transferor acknowledges that this Agreement does not constitute in any way, an admission of liability on the part of the Transferee. The Transferor further acknowledges that this Agreement assigns the right to assert all claims enumerated in Section 2 to Transferee, and ensures Transferor will expend any and all reasonable efforts to assist Transferee in the commencement and prosecution of any such claim Transferee may choose to assert.

13. **Sophistication of the Parties.** This Agreement is meant to be and is construed to be an "arms length transaction" between Transferor and Transferee. Both Transferor and

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Transferee are considered to be sophisticated parties and have the capacity and power to understand this transaction and enter into this Agreement.

14. **Approval.** This Agreement is subject to the approval of the general partner of Palm Beach Finance Partners, LP to assign and transfer the Limited Partnership Interest. In the event that the assignment and transfer not be allowed and the rights to any claims enumerated in Paragraph 2 remain with Transferor, Transferor agrees to expend any and all reasonable efforts to assist Transferee in the commencement and prosecution of any such claim Transferee may choose to assert.

15. **Severability.** Should one or more of the paragraphs or terms of this Agreement be determined to be invalid, the remaining terms shall survive and remain binding on the Transferor and Transferee.

16. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

17. **Section Headings.** The Section Headings of this Agreement are meant to be helpful and are not to constitute order of importance or any imply any significance.

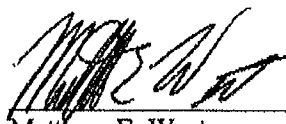
18. **Waiver.** Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

Witnessed or Attested by:

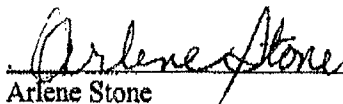
WEST CAPITAL MANAGEMENT



Elliot Stone 10-8-08
Date



Matthew E. West 10/08/08
Date
CEO



Arlene Stone 10/8/08
Date

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.

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