

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM DIVISION  
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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.

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**LIQUIDATING TRUSTEE'S TWENTY-SECOND OMNIBUS  
OBJECTION (LIMITED PARTNER SCHEDULED EQUITY  
INTERESTS IN CASE NO. 09-36396-PGH (PBF II))**

**IMPORTANT NOTICE TO INTEREST HOLDERS:**

**THIS IS AN OBJECTION TO YOUR SCHEDULED EQUITY INTEREST**

**This objection seeks to modify the percentage of your previously scheduled equity interest. 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 II, L.P. (“*PBF II*”) set forth below,<sup>1</sup> 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 were included on the list of equity security holders filed at the outset of the Debtors’ chapter 11 cases.<sup>2</sup> *See* ECF No. 21 in Case No. 09-36396-PGH. However, such limited partner’s scheduled equity interest was not calculated, in accordance with the Cash-in/Cash-out Order, using the cash-in/cash-out method. Accordingly, the Liquidating Trustee objects to such limited partner’s scheduled equity interest in Case No. 09-36396-BKC-PGH (*PBF II*) and requests that such limited partner’s equity interest be calculated (following the final resolution of all limited partners claims and equity interests) using the amount reflected in the column titled “Net Loss on a Cash-in/Cash-out Basis” as the numerator (which reflects the amount of such limited partner’s claim calculated using the cash-in/cash-out method based on the Debtor’s books and records) and the total of all allowed equity interests as the denominator.

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<sup>1</sup> 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.*

<sup>2</sup> None of the limited partners addressed by this Objection filed a proof of claim against the Debtors.

Finally, in certain instances, the name on 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 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 equity interest.

Name of Equity Holder	Net Loss on a Cash-in/Cash-Out Basis
ABR Capital Fixed/Option Income Strategic Fund, LP <sup>3</sup>	\$1,895.64 <i>See Schedule 1.</i>
ABR Signature Select Insurance Fund Series Interests of the SALI Multi-Series Fund, LP <sup>3</sup>	\$200,000.00 <i>See Schedule 1.</i>
BNP Paribas Bank & Trust Cayman Limited FBO Guardian Asset Finance Master BV <sup>4</sup>	\$3,066,000.00 <i>See Schedule 1.</i>
Frank H. Carruth, III <sup>5</sup>	\$17,829.38 <i>See Schedule 1.</i>
Citizen's Bank as custodian for Ocean Gate Opportunity Fund, LP <sup>6</sup>	\$3,500,000.00 <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

<sup>3</sup> ABR Capital Fixed/Option Income Strategic Fund, LP and ABR Signature Select Insurance Fund Series Interests of the SALI Multi-Series Fund, LP were listed on the schedule of equity holders as ABR Capital, LLC. *See* ECF No. 21.

<sup>4</sup> BNP Paribas Bank & Trust Cayman Limited FBO Guardian Asset Finance Master BV was listed on the schedule of equity holders as Guardian Capital, LLC. *See id.*

<sup>5</sup> Frank C. Carruth III was listed on the schedule of equity holders as Frank Carruth. *See id.* Upon information and belief, Mr. Carruth has since passed away. However, to date, the Liquidating Trustee has not been provided with notice or any information as to the administration of this asset by Mr. Carruth's estate.

considered 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 June 3, 2016, 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 A** and via U.S. Mail on the Claimants listed above at the addresses set forth on the attached **Exhibit B**.

s/ Jessica L. Wasserstrom  
Peter D. Russin, Esquire  
Florida Bar No. 765902  
[prussin@melandrussin.com](mailto:prussin@melandrussin.com)  
Jessica L. Wasserstrom, Esquire  
Florida Bar No. 985820  
[jwasserstrom@melandrussin.com](mailto: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 Liquidating Trustee

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<sup>6</sup> Citizen's Bank as custodian for Ocean Gate Opportunity Fund, LP was listed on the schedule of equity holders as Ocean Gate Capital Management, LP. *See id.*

**Schedule 1**

LP Name	Total LP "In" Activity	Total LP "Out" Activity	Net LP Loss (Gain)	Proposed Numerator for Equity Holder %
ABR Capital Fixed/Option Income Strategic Fund, LP	200,000.00	(198,104.36)	1,895.64	1,895.64
ABR Signature Select Insurance Fund Series Interests of the SALI Multi-Series Fund, LP	200,000.00	-	200,000.00	200,000.00
BNP Paribas Bank & Trust Cayman Limited FBO Guardian Asset Finance Master BV	3,066,000.00	-	3,066,000.00	3,066,000.00
Carruth, Frank H. III	1,000,000.00	(982,170.62)	17,829.38	17,829.38
Citizen's Bank as custodian for Ocean Gate Opportunity Fund, LP	6,000,000.00	(2,500,000.00)	3,500,000.00	3,500,000.00

## 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.

- **Melissa Alagna** mma@gordichalagna.com
- **Vincent F Alexander** vfa@kttl.com, lf@kttl.com
- **Paul A Avron** pavron@bergersingerman.com, efile@bergersingerman.com; efile@ecf.inforuptcy.com; mday@bergersingerman.com
- **Scott L. Baena** sbaena@bilzin.com, eservice@bilzin.com; lflores@bilzin.com
- **Marc P Barmat** ndixon@furrcohen.com, mbarmat@furrcohen.com; atty\_furrcohen@bluestylus.com
- **Rachel K Beige** rachel.beige@csklegal.com, joseph.valdivia@csklegal.com
- **Sean M. Berkowitz** sean.berkowitz@lw.com, cheffiling@lw.com; roger.schwartz@lw.com; russell.mangas@lw.com; robert.malione@lw.com; megan.fitzpatrick@lw.com; barbara.pipchok@lw.com; alicia.davis@lw.com; jufileu1092@gmlaw.com; efileu1089@gmlaw.com; melissa.bird@gmlaw.com; efileu1435@gmlaw.com; efileu1094@gmlaw.com; efileu1093@gmlaw.com; gregory.stolberg@gmlaw.com
- **Steven M Berman** sberman@slk-law.com, bgoodall@slk-law.com
- **Mark D. Bloom** bloomm@gtlaw.com, MiaLitDock@gtlaw.com; miaecfbky@gtlaw.com
- **Ira Bodenstein** ibodenstein@shawgussis.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
- **Rilyn A Carnahan** rilyn.carnahan@gmlaw.com, efileu1092@gmlaw.com; efileu1089@gmlaw.com; melissa.bird@gmlaw.com; efileu1435@gmlaw.com; efileu1094@gmlaw.com; efileu1093@gmlaw.com; gregory.stolberg@gmlaw.com
- **Francis L. Carter** flc@flcarterpa.com
- **Francis L. Carter** flc@katzbarron.com
- **Francis L. Carter** flc@katzbarron.com
- **Lisa M. Castellano** lcastellano@bplegal.com, kmurphy@bplegal.com; aglatkowski@bplegal.com
- **Helen Davis Chaitman** , jgorchkova@beckerny.com; lblanco@beckerny.com; cdavis@beckerny.com
- **Helen Davis Chaitman** hchaitman@beckerny.com, jgorchkova@beckerny.com; lblanco@beckerny.com; cdavis@beckerny.com
- **Franck D Chantayan** franck@chantayan.com
- **Daniel DeSouza** ddesouza@desouzalaw.com
- **John R. Dodd** doddj@gtlaw.com, miaecfbky@gtlaw.com; mialitdock@gtlaw.com
- **John D Eaton** jeaton@shawde-eaton.com, sramirez@shawde-eaton.com
- **Darren D. Farfante** darren.farfante@bipc.com, Denise.Strand@bipc.com
- **Heidi A Feinman** Heidi.A.Feinman@usdoj.gov
- **Jonathan S. Feldman** jfeldman@pbyalaw.com, magon@pbyalaw.com
- **G Steven Fender** efileu1113@gmlaw.com, efileu1094@gmlaw.com; efileu1092@gmlaw.com; leslie.marder@gmlaw.com; efileu1435@gmlaw.com; efileu1093@gmlaw.com; melissa.bird@gmlaw.com; gregory.stolberg@gmlaw.com
- **David S Foster** cheffiling@lw.com
- **Robert G Fracasso Jr** rfracasso@shutts.com, fsantelices@shutts.com
- **Robert C Furr** bnasralla@furrcohen.com, atty\_furrcohen@bluestylus.com
- **Solomon B Genet** sgenet@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.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
- **Daniel L. Gold** dan.gold@wilsonelser.com, alma.cuevas@wilsonelser.com; Jackie.Benitez@wilsonelser.com; Thomas.Manisero@wilsonelser.com
- **Michael I Goldberg** michael.goldberg@akerman.com, charlene.cerda@akerman.com
- **Lawrence Gordich** LAG@gordichalagna.com, mma@gordichalagna.com
- **Scott M. Grossman** grossmansm@gtlaw.com, scottla@gtlaw.com; MiaLitDock@gtlaw.com; FTLLitDock@GTLaw.com; miaecfbky@gtlaw.com
- **Matthew W Hamilton** e-notice@fulcruminv.com
- **Zachary N James** zjames@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com
- **Kenneth M Jones** kjones@moodyjones.com
- **Michael A Kaufman** michael@mkaufmanpa.com, diamondmk@aol.com; kaufmanesq@gmail.com; kwatson@mkaufmanpa.com
- **Stephen J Kolski Jr** stevekolski@skolskilaw.com, jessica@skolskilaw.com
- **Harris J. Koroglu** hkoroglu@shutts.com, fsantelices@shutts.com
- **James A Lodoen** jlodoen@lindquist.com, ghildahl@lindquist.com
- **Coral Lopez-Castro** clc@kttl.com, rep@kttl.com
- **David S Mandel** dmandel@mandel-law.com, susan@mandel-law.com
- **Joshua A Marcus** jmarcus@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com
- **Joshua A Marcus** jmarcus@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com
- **Aleida Martinez Molina** amartinez@wsh-law.com, jfuentes@wsh-law.com
- **Paul J McMahon** pjim@pjmlawmiami.com
- **Brian M Mckell** brian.mckell@wilsonelser.com, lourdes.riestra@wilsonelser.com
- **Yvonne F Mizusawa** yvonne.f.mizusawa@frb.gov
- **James C. Moon** jmoon@melandrussin.com, ltannenbaum@melandrussin.com; mrbnefs@yahoo.com
- **Barry E Mukamal** bemtrustee@kapilamukamal.com, FL64@ecfbis.com
- **Barry E Mukamal** bankruptcy@marcumllp.com, FL64@ecfbis.com
- **Barry E. Mukamal** bemtrustee@kapilamukamal.com
- **David J Myers** myers@fsblegal.com
- **Office of the US Trustee** USTPRegion21.MM.ECF@usdoj.gov
- **Leslie S. Osborne** office@rorlawfirm.com
- **John E Page** jpage@sfl-pa.com, scusack@sfl-pa.com; lrosettoparr@sfl-pa.com; dwoodall@sfl-pa.com; bshraibergecfmail@gmail.com; scusacksfl@gmail.com
- **Kristopher E Pearson** kpearson@stearnsweaver.com, mmasvidal@stearnsweaver.com; bank@stearnsweaver.com; ross@stearnsweaver.com; dillworthcdp@ecf.epiqsystems.com; larrazola@stearnsweaver.com; cgraver@stearnsweaver.com
- **Jennifer H Pinder** Jennifer.pinder@myfloridalegal.com, crowell@foley.com
- **Chad P Pugatch** cpugatch.ecf@rprslaw.com
- **Cristopher S Rapp** csrapp@jones-foster.com, eservice@tobinreyes.com; dboentgen@tobinreyes.com; hvaldes@tobinreyes.com; rar@tobinreyes.com; mhorton@tobinreyes.com
- **Cristopher S Rapp** csrapp@tobinreyes.com, eservice@tobinreyes.com; dboentgen@tobinreyes.com; hvaldes@tobinreyes.com; rar@tobinreyes.com; mhorton@tobinreyes.com
- **Patricia A Redmond** predmond@stearnsweaver.com, jmartinez@stearnsweaver.com; bank@stearnsweaver.com; ross@stearnsweaver.com; cgraver@stearnsweaver.com; sdaddese@akingump.com
- **Patricia A Redmond** predmond@stearnsweaver.com, jmartinez@stearnsweaver.com; bank@stearnsweaver.com; ross@stearnsweaver.com; cgraver@stearnsweaver.com; sdaddese@akingump.com

- **Jason S Rigoli** jrigoli@furrcohen.com, ndixon@furrcohen.com;atty\_furrcohen@bluestylus.com
- **Kenneth B Robinson** krobinson.ecf@rprslaw.com
- **Joseph Rodowicz** bankruptcy@rodowiczlaw.com, rodowiczlaw@gmail.com
- **Robin J. Rubens** rjr@klsg.com, esf@klsg.com
- **Peter D. Russin** prussin@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfs@yahoo.com;ltannenbaum@ecf.inforuptcy.com
- **Luis Salazar** salazar@salazarjackson.com, jackson@salazarjackson.com;cloyd@salazarjackson.com;aguilar@salazarjackson.com;davila@salazarjackson.com;lee-sin@salazarjackson.com
- **Franklin H Sato** fsato@wickersmith.com, alazaro@wickersmith.com
- **Bradley M Saxton** bsaxton@whww.com, scolgan@whww.com;rweinman@whww.com;arox@whww.com
- **Michael L Schuster** mschuster@gjb-law.com, gjbecf@gjb-law.com;mchang@gjb-law.com;scomer@gjb-law.com;ekelly@gjb-law.com
- **Patrick S. Scott** patrick.scott@gray-robinson.com
- **Michael D. Seese** mseese@seeselaw.com, sseward@seeselaw.com
- **Steven E Seward** steven.seward@gmail.com
- **Bradley S Shraiberg** bshraiberg@sfl-pa.com, dwoodall@sfl-pa.com;lrosettoparr@sfl-pa.com;scusack@sfl-pa.com;blee@sfl-pa.com;bshraibergecfmail@gmail.com;emateo@sfl-pa.com
- **Paul Steven Singerman** singerman@bergersingerman.com, mdiaz@bergersingerman.com;efile@bergersingerman.com;efile@ecf.inforuptcy.com
- **Jeffrey I. Snyder** jsnyder@bilzin.com, eservice@bilzin.com;lflores@bilzin.com
- **James S Telepman** jst@fcohenlaw.com
- **Charles W Throckmorton** cwt@kttl.com, lf@kttl.com;ycc@kttl.com
- **Charles W Throckmorton** cwt@kttl.com, lf@kttl.com;ycc@kttl.com
- **Trustee Services Inc 2** court@trusteeservices.biz, sandirose.magder@gmail.com
- **Skipper J Vine** jonathan.vine@csklegal.com, Stefanie.copelow@csklegal.com;iraida.avila@csklegal.com;denise.allwine@csklegal.com
- **Skipper J Vine** jonathan.vine@csklegal.com, Stefanie.copelow@csklegal.com;iraida.avila@csklegal.com;denise.allwine@csklegal.com
- **Jessica L Wasserstrom** jwasserstrom@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfs@yahoo.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

**EXHIBIT B**

Name of Equity Holder
ABR Signature Select Insurance Fund Series Interests of the SALI Multi-Series Fund, LP c/o Alan B. Rosenthal 4645 Delafield Ave Riverdale, NY 10471 email: <a href="mailto:abr@abrcapital.com">abr@abrcapital.com</a>
ABR Capital Fixed/Option Income Strategic Fund, LP c/o Alan B. Rosenthal 4645 Delafield Ave Riverdale, NY 10471 email: <a href="mailto:abr@abrcapital.com">abr@abrcapital.com</a>
BNP Paribas Bank & Trust Cayman Limited FBO Guardian Asset Finance Master BV c/o Guardian Capital Management 3225 Aviation Ave, #601 Miami, FL 33133-4741
Frank H. Carruth, III ( <i>deceased</i> ) c/o Linda Carruth Strugar 240 Summa St West Palm Beach, FL 33405-4718
Citizen's Bank as custodian for Ocean Gate Opportunity Fund, LP c/o Ocean Gate Capital Management 5 Sewall Street Marblehead, MA 01945