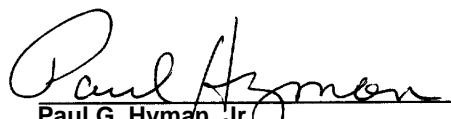




ORDERED in the Southern District of Florida on August 25, 2015.


Paul G. Hyman, Jr.
Chief United States Bankruptcy Judge

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 (1) TO APPROVE SETTLEMENT WITH BMO HARRIS BANK N.A.; (2) FOR ENTRY OF A BAR ORDER; AND (3) TO APPROVE PAYMENT OF CONTINGENCY FEE

THIS MATTER came before the Court on August 25, 2015 at 9:30 a.m. upon the *Liquidating Trustee's Motion (1) to Approve Settlement with BMO Harris Bank N.A.; (2) For Entry of a Bar Order; and (3) To Approve Payment of Contingency Fee ("Motion")* [ECF No. 2670].¹ The Court has reviewed the Motion, considered the arguments of counsel and is otherwise duly advised in the premises.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion and the Stipulation attached as Exhibit 1 to the Motion.

In its Motion, the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, Debtors and their respective bankruptcy estates, seeks entry of an order barring certain claims against the BMO Parties (as defined below) as described in detail below (the “**Bar Order**”).

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 Settlement is **APPROVED**. The Stipulation is approved in its entirety and is fully binding and enforceable pursuant to its terms.
3. 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).
4. BMO shall pay (or cause to be paid) to the Palm Beach Liquidating Trusts sixteen million dollars (\$16,000,000) (“**Settlement Payment**”), by no later than the Settlement Payment Date, which, as defined in the Stipulation, is the 10th business day from the later of the following events: (i) the date on which this Order becomes a final non-appealable order; (ii) the date of final resolution of all appeals and the expiration of time for any further appeals from or related to this Order, unless such appeals have been determined by a court of appropriate jurisdiction to have been rendered moot; and (iii) the receipt by BMO from the Liquidating Trustee of: (x) wire transfer instructions; and (y) a fully completed and executed, current W-9 form to allow BMO to process the Settlement Payment.
5. The Settlement Payment will be allocated and apportioned among the Debtors as follows: 18% to Palm Beach Finance Partners, L.P. Liquidating Trust and 82% to Palm Beach Finance II, L.P. Liquidating Trust (the “**Pro Rata Allocation Formula**”), and the Settlement Payment shall be made in the amounts in accordance with this allocation.

6. The Contingency Fee in the total amount of \$1,600,000 is approved. Meland Russin & Budwick, P.A. shall be entitled to \$1,280,000 of the Contingency Fee, and Mandel & Mandel LLP shall be entitled to \$320,000. The Liquidating Trustee is authorized and directed to make payment of the Contingency Fee without the need for further Court Order, in accordance with the Pro Rata Allocation Formula, promptly upon receipt of the Settlement Payment.

7. 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.

8. 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 that this Order is fair and equitable. *See In re U.S. Oil & Gas Litigation*, 967 F.2d 489, 495 96 (11th Cir. 1992); *In re 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). This Order shall be interpreted as broadly as possible so as to effectuate the purposes stated herein.

9. The following additional definitions apply to the provisions of this Order barring certain claims as set forth in Paragraph 10 below:

A. The term “***Adversary Cases***” shall mean Adv. Case Nos. 11-03015-PGH and 14-01660-PGH in the Bankruptcy Court (as defined below).

B. The term “***Adversary Claims***” shall mean any and all direct, indirect and/or derivative claims, whether known or unknown, and whether alleged (or could be, or could have been, alleged) as arising under the Bankruptcy Code, applicable non-bankruptcy law, or any other theory of recovery or law whatsoever, that: (i) were alleged in the Adversary Cases; (ii) relate to or arise from, in any manner whatsoever, the facts, transactions, and/or occurrences

alleged in the Adversary Cases; (iii) could have been brought in the Adversary Cases; or (iv) subsequently are alleged or otherwise brought, whether by the Liquidating Trustee or otherwise, in any adversary proceeding or other action seeking any type of recovery against any of the BMO Parties for the benefit of any creditors of or other parties-in-interest in the Bankruptcy Cases relating in any way to the Adversary Cases, the PBF Claims, the PBLT Claims, the MN BMO Adversary Case, the Enchanted/Nationwide Adversary Judgments or the PCI Bankruptcy Cases. For avoidance of doubt, the Adversary Claims do not include any Claims against any parties other than the BMO Parties.

C. The term “*Bankruptcy Court*” shall mean the United States Bankruptcy Court for the Southern District of Florida.

D. The term “*Barred Claims*” shall mean any and all direct, indirect and/or derivative Claims (as defined below), whether known or unknown, and whether arising under federal, state, or local statute, law, regulations or common law by any and all Releasors (as defined below) against the BMO Parties that: (i) constitute Adversary Claims, (ii) were threatened by the Liquidating Trustee, (iii) are in any way related to, or based directly or indirectly upon facts, events, transactions or scenarios related to, alleged in, could have been alleged in, embraced by, or otherwise referred to at any time in the Adversary Claims, the PBF Claims, the PBLT Claims, the MN BMO Adversary Case, or the Enchanted/Nationwide Adversary; and (iv) any and all Claims in any way related to Tom Petters, Petters Company, Inc. and/or any Petters related or affiliated company.

E. The term “*BMO Parties*” shall mean: BMO; BMO’s affiliate and subsidiary companies; and, to the extent acting in their capacities related to BMO, their respective present and former officers, directors, employees, agents, attorneys, professionals,

successors, predecessors (including, but not limited to, M&I Marshall & Ilsley Bank), subsidiaries and affiliates, and indemnitors and insurers.

F. The term “*BMO Released Claims*” shall have the same meaning assigned to such term in Paragraph 7 of the Stipulation.

G. The term “*Claims*” shall mean any obligations, causes of action, demands of any type that a person or entity 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, and whether alleged (or could be alleged) as arising under the Bankruptcy Code, applicable non-bankruptcy law, or any other theory of recovery whatsoever. Without limiting the generality of the foregoing, when the term “*Claims*” is used with respect to any Claims relating to, or that were asserted or that could be asserted against, any of the BMO Parties, it shall include, without limitation: (i) any and all Claims against any of the BMO Parties in any way related to, or based directly or indirectly upon facts, events, transactions or scenarios related to, alleged in, could have been alleged in, embraced by, or otherwise referred to at any time in the Adversary Cases, the PBF Claims, the PBLT Claims, the MN BMO Adversary Case, the Enchanted/Nationwide Adversary Judgments or the PCI Bankruptcy Cases; (ii) any and all Claims against any of the BMO Parties arising under federal, state, or local statute, law, regulations or common law; and (iii) any and all Claims against any of the BMO Parties in any way related to Tom Petters, Petters Company, Inc. and/or any Petters related or affiliated company.

H. The term “*Enchanted/Nationwide Adversary*” shall mean the action styled *Barry E. Mukamal, in his capacity as Liquidating Trustee for the Palm Beach Finance*

Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust, v. Nationwide International Resource, et al., Adv. Case No. 11-02857-PGH, filed in the Bankruptcy Court and in the Bankruptcy Cases.

I. The term “***MN Bankruptcy Court***” shall mean the United States Bankruptcy Court for the District of Minnesota

J. The term “***MN BMO Adversary Case***” shall mean Adv. Case No. 12-04288 in the MN Bankruptcy Court.

K. The term “***Participant***” shall mean the participant disclosed in the Joint Motion for Approval of Omnibus Supplemental Disclosure Filed by Kinetic Partners (Cayman) Ltd. and Levine Kellogg Lehman Schneider + Grossman LLP, as Consultant and Local Counsel, respectively, to Geoffrey Varga, Liquidating Trust Monitor for Palm Beach Finance II, L.P [Bankruptcy Cases, ECF No. 2118], solely in its capacity as a participant in the assets of the Palm Beach Offshore Limited and Palm Beach Offshore II Limited in the liquidation proceedings pending in the Cayman Islands.

L. The term “***PB Parties***” shall mean the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, Palm Beach Finance Partners, L.P., Palm Beach Finance Partners II, LP., the Debtors and their estates, and their successors and assigns, including without limitation any other estate representative, administrator, creditor, or other party-in-interest, claiming on behalf of or through the Debtors and their estates.

M. The term “***PBLT Claims***” shall mean the claims asserted by or on behalf of the Palm Beach Liquidating Trusts or their predecessors in interest against the PCI bankruptcy estates in the proofs of claim filed in the PCI Bankruptcy Cases (as defined below) as set forth on Schedule I to the Stipulation, which the Liquidating Trustee represents are all of the proofs of

claims so filed by the Palm Beach Trusts or their predecessors in interest in such bankruptcy cases as of the date of execution of the Stipulation. The Parties acknowledge that the PCI Trustee (as defined below) has filed *Trustee's Second Omnibus Objection to Claims of Palm Beach Finance Partners, L.P., Palm Beach Finance II, L.P., Palm Beach Offshore Limited, and Palm Beach Offshore II Limited* [ECF No. 636] in the PCI Bankruptcy Cases (as defined below).

N. The term “**PBF Claims**” shall mean the claims asserted by the Liquidating Trustee, on behalf of the Palm Beach Liquidating Trusts, against BMO in the Adversary Cases.

O. The term “**PCI Bankruptcy Cases**” shall mean the substantively consolidated Petters Company, Inc. bankruptcy case(s) pending in the MN Bankruptcy Court, Case No. 08-45257 or, to the extent the Order directing such substantive consolidation should be reversed on appeal, the individual cases of such presently-consolidated debtors.

P. The term “**PCI Trustee**” shall mean Douglas A. Kelley, in his capacity as the Court-appointed Chapter 11 trustee of Petters Company, Inc., the debtors in the PCI Bankruptcy Cases and their estates, and their successors and assigns, including, without limitation, any other estate representative, administrator, creditor, committee or other party-in-interest, claiming on behalf of or through the debtors and their estates or authorized to pursue any litigation on behalf of such bankruptcy estates pursuant to any confirmed Chapter 11 plan or other court order.

Q. The term “**Releasors**” shall mean all shareholders, limited partners, and past or present creditors of the Debtors, including Varga (as defined below) and the Participant, other than the PCI Trustee. The PCI Trustee is explicitly not included within this definition.

R. The term “**Varga**” shall mean Geoffrey Varga, not in his individual capacity, but solely in his capacity as monitor for the Palm Beach Finance II Liquidating Trust.

10. Releasors are permanently barred and enjoined from commencing, prosecuting, or asserting either directly or in any other capacity, against the BMO Parties, any and all Barred Claims; provided, however, that (a) this Bar Order does not release or enjoin any of Releasors from commencing, prosecuting, or asserting any claims to interpret or enforce the terms of the Stipulation or this Order; (b) this Bar Order does not release or enjoin any of Releasors from commencing, prosecuting, or asserting any claims against any party other than the BMO Parties; (c) this Bar Order does not release or enjoin any of the Releasors from commencing, prosecuting, or asserting any Claims against the BMO Parties other than Barred Claims; and (d) nothing in this Bar 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 BMO Parties, or (ii) release or discharge any person or entity, including the BMO Parties, from any claims, rights, powers or interests held or assertable by the SEC.

11. Insofar as the PB Parties, Varga, the Participant, and the BMO Parties are concerned, any conflict between the provisions this Order and those of the Stipulation (including, without limitation, as to the scope of the BMO Released Claims) shall be governed by the provisions of the Stipulation.

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

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Submitted By:

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Attorneys for the Liquidating Trustee

Copies Furnished To:

Zachary N. James, Esquire, is directed to serve a conformed copy of this Order upon all parties in interest and to file a Certificate of Service.