



ORDERED in the Southern District of Florida on October 21, 2013.

**Paul G. Hyman, Chief Judge
United States Bankruptcy Court**

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 MOTION FOR (1) APPROVAL OF SETTLEMENT WITH KBC FINANCIAL PRODUCTS (CAYMAN ISLANDS) LTD. AND ASSOCIATED COUNTER-PARTIES AND (2) PAYMENT OF CONTINGENCY FEE

THIS MATTER comes before the Court upon the *Liquidating Trustee's Motion to Approve Settlement with KBC Financial Products (Cayman Islands) Ltd. and Associated Counter-Parties* [ECF No. 1968] (the "**Motion**").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.

In its Motion, the Liquidating Trustee, on behalf of the Liquidating Trusts, Debtors and their respective bankruptcy estates, seeks entry of an order barring certain claims against KBC Financial Products (Cayman Islands) Ltd. (“*KBC*”) and affiliated parties and Karasel II, LP (“*Karasel II*”) 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 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).

2. The Motion is **GRANTED**.

3. The Court finds that the Liquidating Trustee is authorized to enter into and be bound by the Stipulation in accordance with its terms.

4. The Settlement is **APPROVED** and the terms and provisions of the Stipulation shall be binding upon all the parties thereto as set forth therein.

5. The Settlement Payment will be allocated and apportioned among the estates as follows: 18% to Palm Beach Finance Partners Liquidating Trust and 82% to the Palm Beach Finance II Liquidating Trust (the “*Pro Rata Allocation Formula*”).

6. MRB’s initial contingency fee resulting from the Settlement Payment in the amount of \$235,000 is approved (“*Initial Contingency Fee*”). The Liquidating Trustee is authorized and directed to make payment of the Initial 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. MRB’s subsequent contingency fee resulting from the sale of the Offshore Interest is approved (“*Subsequent Contingency Fee*”). The Liquidating Trustee is authorized

and directed to make payment of the Subsequent Contingency Fee from the net proceeds received by the Liquidating Trusts from the sale of the Offshore Interest without the need for further Court Order, in accordance with the Pro Rata Allocation Formula, promptly upon receipt of such net proceeds.

8. 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.

9. 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 Liquidating Trustee with the Defendants is the result of collusion among the parties or that there has been any intent to prejudice any interested parties.

10. 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).

11. The following additional definitions apply to the provisions of this Order barring certain claims as set forth in paragraph 12 below:

a. “**PBDI**” shall mean Palm Beach Diversified Income, L.P., together with any and all of its successors and assigns, including, without limitation, any successor receiver, administrator, liquidator, or trustee in such capacity.

b. “**Claim**” or “**Claims**” shall mean any obligations, 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 that relate in any manner whatsoever to Petters Company, Inc. or the Debtors or KBC.

c. **“Released Entities”** shall mean (i) KBC; (ii) the parent, sister, and direct and indirect subsidiary companies of KBC (**“KBC Affiliates”**); (iii) current and former employees, officers, directors, agents and attorneys of KBC or the KBC Affiliates, and each of their respective spouses, heirs, executors and assigns; and (iv) Karasel II.

12. To the extent the Liquidating Trustee or the Debtors, or any of their successors or assigns, either directly or in any other capacity, asserts any Claims against PBDI (a **“PBDI Adversary”**), PBDI is permanently barred and enjoined from commencing, prosecuting, or asserting either directly or in any other capacity any Claims that PBDI now has, ever had, or may assert to have in the future, against the Released Entities for contribution, indemnity or otherwise resulting from any such Claims asserted against PBDI.

13. In connection with any PBDI Adversary, upon request of PBDI, the court or tribunal determining such claim shall determine whether the Released Entities would have been liable to PBDI in the absence of this Bar Order (a **“Barred Claim”**). If the court or tribunal so determines, it shall reduce any judgment against PBDI in an amount equal to the amount the Released Parties would have been liable on a Barred Claim in the absence of this Bar Order. Nothing herein shall prejudice or operate to preclude the right of PBDI to (i) provide notice of this Bar Order to the court or tribunal hearing the PBDI Adversary at any point, or (ii) raise any other issues, claims or defenses regarding judgment reduction or proportionate share of fault in the court or tribunal hearing the PBDI Adversary at any point in accordance with applicable law or procedure.

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

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Submitted By:

s/ Jonathan S. Feldman, Esq.

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Copies Furnished To:

Jonathan S. Feldman, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.