

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.

**JOINT STIPULATION WITH RESPECT TO CLAIMS 12-1, 13-1,
14-1 AND 15-1 IN CASE NO. 09-36379 (PBFP), CLAIMS 10-1 AND 11-1
IN CASE NO. 09-36396 (PBF II) AND CORRESPONDING EQUITY INTERESTS¹**

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*”), on the one hand, and MIO Partners, Inc. (“*MIO*”), Compass Special Situation Fund, LP (“*CSSF*”), Compass Offshore Special Situations PCC Ltd. (“*COSS*”), Special Situations Investment Fund, L.P. (“*SSIF*”), McKinsey Master Retirement Trust (“*MMRT*”), and Security Benefit Life Insurance Company Variable Annuity Account IX (“*SBL-DIF*,” and, together with MIO, CSSF, COSS, SSIF and MMRT, the “*MIO Entities*”),² on the other hand, by and through their respective undersigned counsel, file this Joint Stipulation requesting that the Court enter an Order, on an agreed, *ex parte* basis, resolving Claims 12-1, 13-1, 14-1 and 15-1 filed against Palm

1 This Joint Stipulation resolves, and is filed in lieu of, the Liquidating Trustee’s fifth omnibus objection to claims and scheduled interests. The Liquidating Trustee drafted and numbered more than 25 omnibus objections prior to reaching a consensual resolution with the MIO Entities (as defined herein). Accordingly, in the interests of conserving estate resources, the omnibus objections are not being re-numbered.

2 The Liquidating Trustee and the MIO Entities shall at times be individually referred to herein as a “*Party*” or collectively, the “*Parties*.”

Beach Finance Partners, L.P. (“**PBFP**”), Claims 10-1 and 11-1 filed against Palm Beach Finance II, L.P. (“**PBF II**”), and the MIO Entities’ scheduled equity interests.³

On July 30, 2015, the Court entered the 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**”), 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.

In accordance with the Cash-in/Cash-out Order, the Parties request that each of the below claims be reduced and allowed as a general unsecured claim in the amount reflected in the column titled “Net Loss on a Cash-in/Cash-out Basis,” 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 (“**Proposed Allowed LP Claim Amount**”).

In addition, the Parties request that the previously scheduled equity interest of each limited partner listed below be calculated (following the final resolution of all limited partner claims and equity interests) using the Proposed Allowed LP Claim Amount as the numerator and the total of all allowed equity interests as the denominator.

Moreover, 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.

³ 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.*

Accordingly, the Parties request 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 and equity interest according to the Debtors' books and records) as the actual holder of the equity interest.

POC No.	Name of Claimant	Amount of Filed Claim	Net Loss on a Cash-in/Cash-Out Basis
12-1 (PBFP)	Special Situation Investment Fund, LP ⁴	\$2,849,531.00	\$1,882,500.00 <i>See Schedule 1</i>
13-1 (PBFP)	Compass Special Situations Fund LP	\$6,333,506.00	\$4,700,000.00 <i>See Schedule 1</i>
14-1 (PBFP)	McKinsey Master Retirement Trust ²	\$30,669,652.00	\$19,997,321.00 <i>See Schedule 1</i>
15-1 (PBFP)	Security Benefit Life Variable Annuity Account IX ²	\$1,052,434.00	\$579,819.00 <i>See Schedule 1</i>

Finally, the following claims filed against PBF II shall be disallowed and stricken inasmuch as the claims are based on claimant's investment in Palm Beach Offshore Ltd. (and not PBF II).⁵

POC No.	Name of Claimant	Amount of Filed Claim
10-1 (PBF II)	McKinsey Master Retirement Trust	\$18,637,184.00
11-1 (PBF II)	Compass Offshore Special Situations, PCC Ltd.	\$7,008,617.72

RESERVATION OF RIGHTS

Nothing herein should be construed as the Liquidating Trustee or the MIO Entities waiving any of their rights as to issues relating to the priority of distributions (such as 11 U.S.C. §510); to the contrary, the Liquidating Trustee and the MIO Entities reserve all of such rights. Further, nothing

⁴ The equity interests for Special Situation Investment Fund, LP (Claim 12-1), McKinsey Master Retirement Trust (Claim 14-1) and Security Benefit Life Variable Annuity Account IX (Claim 15-1) were collectively listed on the schedule of equity holders as MIO Partners, Inc. *See* ECF No. 49.

⁵ Consistent with this fact, the schedule of equity security holders in Case No. 09-36396 (PBF II) did not include McKinsey Master Retirement Trust or Compass Offshore Special Situations, PCC Ltd.

herein is intended to be or should be considered a limit to the damages that the Liquidating Trustee, the MIO Entities or any other party can claim or recover against third parties.

Accordingly, the Parties respectfully request entry of an Order, substantially in the form of the agreed Order attached hereto as **Exhibit A**, granting the relief requested herein.

Dated: November 4, 2015.

<p><u>s/ Jessica L. Wasserstrom</u> Peter D. Russin, Esquire Florida Bar No. 765902 <u>prussin@melandrussin.com</u> Jessica L. Wasserstrom, Esquire Florida Bar No. 985820 <u>jwasserstrom@melandrussin.com</u> MELAND RUSSIN & BUDWICK, P.A. 3200 Southeast Financial Center 200 South Biscayne Boulevard Miami, Florida 33131 Telephone: (305) 358-6363 Telecopy: (305) 358-1221 <i>Attorneys for Liquidating Trustee</i></p>	<p>E-filed with consent by: <u>s/ Robin E. Keller</u> Robin E. Keller, Esq. Hogan Lovells US LLP 875 Third Ave New York, NY 10022-7222 <i>Attorneys for the MIO Entities</i></p>
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 4, 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**.

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

**AGREED ORDER APPROVING JOINT STIPULATION WITH RESPECT TO CLAIMS
12-1, 13-1, 14-1 AND 15-1 IN CASE NO. 09-36379 (PBFP), CLAIMS 10-1 AND 11-1
IN CASE NO. 09-36396 (PBF II) AND CORRESPONDING EQUITY INTERESTS**

THIS CAUSE came before the Court upon the *Joint Stipulation With Respect To Claims 12-1, 13-1, 14-1 and 15-1 in Case No. 09-36379 (PBFP), Claims 10-1 and 11-1 in Case No. 09-36396 (PBF II) and Corresponding Equity Interests* [ECF No. ____] ("**Stipulation**"). The Court, having reviewed the Stipulation, noting the parties consent to the entry of this agreed order, and based on the record, does

ORDER as follows:

1. The Stipulation is **APPROVED** as set forth herein.

2. Claim No. 12-1 filed by Special Situation Investment Fund, LP (“**SSIF**”), in Case No. 09-36379 (PBFP) is allowed as a general unsecured claim in the amount of \$1,882,500.00 (“**Allowed Claim 12-1**”). In addition, SSIF shall have an allowed equity interest in Case No. 09-36379 (PBFP), which shall be calculated (following the final resolution of all limited partner claims and equity interests) using the foregoing allowed claim amount as the numerator and the total of all allowed equity interests as the denominator.

3. Claim No. 13-1 filed by Compass Special Situations Fund LP (“**CSSF**”), in Case No. 09-36379 (PBFP) is allowed as a general unsecured claim in the amount of \$4,700,000.00 (“**Allowed Claim 13-1**”). In addition, CSSF shall have an allowed equity interest in Case No. 09-36379 (PBFP), which shall be calculated (following the final resolution of all limited partner claims and equity interests) using the foregoing allowed claim amount as the numerator and the total of all allowed equity interests as the denominator.

4. Claim No. 14-1 filed by McKinsey Master Retirement Trust (MIO Partners Inc.) (“**MMRT**”), in Case No. 09-36379 (PBFP) is allowed as a general unsecured claim in the amount of \$19,997,321.00 (“**Allowed Claim 14-1**”). In addition, MMRT shall have an allowed equity interest in Case No. 09-36379 (PBFP), which shall be calculated (following the final resolution of all limited partner claims and equity interests) using the foregoing allowed claim amount as the numerator and the total of all allowed equity interests as the denominator.

5. Claim No. 15-1 filed by Security Benefit Life Variable Annuity Account IX, (“**SBL**”) in Case No. 09-36379 (PBFP) is allowed as a general unsecured claim in the amount of \$579,819.00 (“**Allowed Claim 15-1**,” and together with Allowed Claim 12-1, Allowed Claim 13-1 and Allowed Claim 14-1, the “**Allowed Claims**”). In addition, SBL shall have an allowed equity interest in Case No. 09-36379 (PBFP), which equity interest shall be calculated (following

the final resolution of all limited partner claims and equity interests) using the foregoing allowed claim amount as the numerator and the total of all allowed equity interests as the denominator.

6. The scheduled equity interest in Case No. 09-36379 (PBFP) in the name of MIO Partners, Inc. shall be stricken and expunged.

7. Claim No. 10-1 filed by McKinsey Master Retirement Trust in Case No. 09-36396 (PBF II) shall be stricken and expunged.

8. Claim No. 11-1 filed by Compass Offshore Special Situations, PCC Ltd. in Case No. 09-36396 (PBF II) shall be stricken and expunged.

9. Notwithstanding the foregoing, the Liquidating Trustee's right to seek subordination of the Allowed Claims, whether under section 510 of the Bankruptcy Code or any other basis, is hereby preserved, and any and all claims or defenses of the MIO Entities with respect to subordination are also preserved.

10. In addition, nothing herein is intended to, or should be considered, a limit to the damages that the Liquidating Trustee, the MIO Entities or any other party can claim or recover against third parties.

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Submitted By:

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Copies Furnished To:

Peter D. Russin, Esquire, is directed to serve copies of this Order on all parties in interest 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 email notice/service for this case.

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Security Benefit Life Variable Annuity Account IX

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Security Benefit Life Variable Annuity Account IX

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