

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

**Jointly Administered under  
Case No. 08-45257**

Petters Company, Inc., et al.,

Court File No. 08-45257

Debtors.

Court Files No.'s:

(includes:

Petters Group Worldwide, LLC;

08-45258 (GFK)

PC Funding, LLC;

08-45326 (GFK)

Thousand Lakes, LLC;

08-45327 (GFK)

SPF Funding, LLC;

08-45328 (GFK)

PL Ltd., Inc.;

08-45329 (GFK)

Edge One LLC;

08-45330 (GFK)

MGC Finance, Inc.;

08-45331 (GFK)

PAC Funding, LLC;

08-45371 (GFK)

Palm Beach Finance Holdings, Inc.)

08-45392 (GFK)

Chapter 11 Cases  
Judge Gregory F. Kishel

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**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**

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TO: The entities specified in Local Rule 3007-1:

1. Douglas A. Kelley, Chapter 11 Trustee for Petters Company, Inc. ("PCI"), Petters Group Worldwide, LLC ("PGW"), PC Funding, LLC ("PC Funding"), Thousand Lakes, LLC ("Thousand Lakes"), SPF Funding, LLC ("SPF Funding"), PL Ltd., Inc. ("PL Ltd"), Edge One, LLC ("Edge One"), MGC Finance, Inc. ("MGC Finance"), PAC Funding, LLC ("PAC Funding"), and Palm Beach Finance Holdings, Inc. ("PBFHI") (collectively the "Debtors"), through his undersigned attorneys, moves the Court for the relief requested below.

A hearing on the Trustee’s objection to claims, described herein, will be held at a date to be determined later, subject to further notice.

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Petitions commencing the Chapter 11 cases of PCI and PGW were filed on October 11, 2008. Petitions commencing the Chapter 11 cases of PC Funding, Thousand Lakes, SPF Funding, PL Ltd, Edge One and MGC Finance were filed on October 15, 2008. The petition commencing the Chapter 11 case of PAC Funding was filed on October 17, 2008. The petition commencing the Chapter 11 case of PBFHI was filed on October 19, 2008 (collectively, the “Cases”). Venue of the cases and this motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The cases are pending before this Court.

3. This Objection arises under 11 U.S.C. § 502(d) and Fed. R. Bankr. P. 3007. This Motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 3.

**I. Claims Filed by the Palm Beach Group of Funds**

4. The proofs of claim which are the subject of this Objection are set forth in the chart below:

Case Number	Claim Number	Claimant	Amount	Debtor	Basis for Objection
08-45392	17	Palm Beach Finance II, L.P.	876,373,877.08	PBFHI	11 U.S.C. § 502(d)
08-45257	36	Palm Beach Finance II, L.P.	876,373,877.08	PCI	11 U.S.C. § 502(d)
08-45392	16	Palm Beach Finance Partners, L.P.	211,938,476.67	PBFHI	11 U.S.C. § 502(d)
08-45257	35	Palm Beach Finance Partners, L.P.	211,938,476.67	PCI	11 U.S.C. § 502(d)

08-45392	30	Geoff Varga, solely as Joint Official Liquidator of Palm Beach Offshore Limited and Palm Beach Offshore II Limited	720,000,000.00	PBFHI	11 U.S.C. § 502(d)
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5. The claims filed by Palm Beach Finance II, L.P. and Palm Beach Finance Partners, L.P. are referred to herein as the “Onshore Claims”. The claims filed by Geoff Varga, solely as Joint Official Liquidator of Palm Beach Offshore Limited and Palm Beach Offshore II Limited are referred to herein as the “Offshore Claims”. The Onshore Claims and Offshore Claims are collectively referred to as the “Palm Beach Claims”.

6. The Onshore Claims were executed and filed by Barry Mukamal, not individually, but solely as the chapter 11 trustee (the “Palm Beach Trustee”) for Palm Beach Finance Partner, L.P. and Palm Beach Finance II, L.P., collectively referred to as the “Palm Beach”.

7. The Offshore Claims were executed and filed by Geoff Varga (the “Offshore Liquidator”), solely as Joint Official Liquidator of Palm Beach Offshore Limited and Palm Beach Offshore II Limited (the “Offshore Funds”). The Offshore Funds are the largest creditors of Palm Beach and are currently in liquidation proceedings taking place in the Grand Cayman Islands. The indirect Offshore Claims filed by the Offshore Liquidator are included in this Objection with the Offshore Claims because they duplicate the Onshore Claims filed by the Palm Beach Trustee and the Offshore Funds are likely subsequent transferees pursuant to 11 U.S.C. § 550. *See* Fed. R. Bankr. P. 3007(d)(1).

8. On November 30, 2009, Palm Beach entities filed petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States

Bankruptcy Court for the Southern District of Florida. The cases are being jointly administered under the caption *In re Palm Beach Finance Partners, L.P., et al.*, case no. 09-36379-PGW.

9. From at least 2002 through the commencement of these Cases, Palm Beach invested in PBFHI, a wholly owned subsidiary of Thomas J. Petters (“Petters”). The investments by Palm Beach into PBFHI were pursuant to a Master Loan Agreement (the “Master Loan Agreement”).

10. Pursuant to the Master Loan Agreement, Palm Beach would provide funds to PBFHI to purportedly purchase certain durable goods that were purportedly to be sold to certain agreed upon retailers on credit, thereby generating a receivable payable by such retailer to the order of PBFHI. PBFHI would issue promissory notes to Palm Beach under the Master Loan Agreement (the “PBFHI Notes”).

11. Palm Beach had been granted a purported security interest in all of PBFHI’s assets as security for all funds advanced to PBFHI pursuant to the Master Loan Agreement.

## **II. The Petters Ponzi Scheme**

### **A. Petters and his Associates Utilized PCI, and its Alter Ego, PBFHI, to Conduct the Ponzi Scheme.**

12. Thomas J. Petters (“Petters”) operated a Ponzi scheme with the assistance of other individuals within certain Petters organizations from approximately 1993 through on or about the date of his arrest by federal agents on October 3, 2008. Petters, through various entities that he controlled—including, among others, PCI and PBFHI—laundered what is estimated to be an amount in excess of \$40 billion.

13. On December 1, 2008, Petters was indicted by a Federal Grand Jury in the District of Minnesota (the “Indictment”). The Indictment charged Petters and PCI with mail and wire fraud, conspiracy to commit mail and wire fraud, and conspiracy to commit money laundering,

and charged Petters alone with money laundering, all in connection with the perpetration of, and resulting from Petters' and PCI's participation in, the Ponzi scheme. On June 3, 2009, a Superseding Indictment was filed charging Petters and PCI with wire and mail fraud, conspiracy to commit mail and wire fraud, and money laundering conspiracy and charging Petters alone with money laundering, all in connection with Petters' and PCI's participation in the Ponzi Scheme. On December 2, 2009, a jury in the District Court found Petters guilty of all 20 counts charged in the Superseding Indictment. On April 8, 2010, Judge Richard H. Kyle sentenced Petters to 50 years in prison for his crimes. On September 29, 2010, PGW and PCI each pleaded guilty to wire fraud, conspiracy to commit mail and wire fraud, and conspiracy to commit money laundering.

14. At various times during the course of the Ponzi scheme, Petters was assisted in the operation of the scheme by numerous individuals and conspirators, Deanna Coleman ("Coleman"), Robert White ("White"), Larry Reynolds ("Reynolds"), Michael Catain ("Catain"), and James Wehmhoff ("Wehmhoff") (collectively referred to herein as "Associates"). Coleman has pleaded guilty to a single count of conspiracy to commit mail fraud. On September 2, 2010, Judge Richard H. Kyle sentenced Coleman to one year and a day of imprisonment for her crime. White has pleaded guilty to a single count of mail fraud. On September 15, 2010, Judge Richard H. Kyle sentenced White to five years imprisonment for his crime. Reynolds and Catain have each pleaded guilty to a single count of conspiracy to commit money laundering. On September 13, 2010, Judge Richard H. Kyle sentenced Catain to seven years and six months of imprisonment for his crime. Wehmhoff has pleaded guilty to conspiracy to defraud the United States, conspiracy to commit tax evasion, and one count of aiding and assisting in the filing of a false tax return.

15. The scheme orchestrated by Petters and his Associates was a common species of fraud known as a Ponzi scheme. Petters, through a multitude of entities and with the assistance of his Associates, would induce investors into financing the purchase of non-existent electronic equipment purportedly secured by fabricated purchase orders. Petters would then take the funds invested by later investors and repay initial investors not with the earnings from their investments, but with funds obtained from other investors. The payments were comprised of repayment of the principal amount invested (the “Principal”) and an amount which exceeded the amount invested (the “False Profits”).

16. Petters, through PCI and a multitude of shell companies through which Petters and PCI operated—such as PBFHI—intended that the payments to early investors would induce ongoing, repeated, greater, and more widespread investment in the Ponzi scheme and thereby further perpetrate and extend the life of the fraud.

17. By way of example, on or about November 26, 2002 Palm Beach entered into the Master Loan Agreement with PBFHI. Under the Loan Agreement, Palm Beach made funds available to PBFHI for the purpose of financing the accounts receivable which would result from the purported sale of electronic goods. Each investment was evidenced by a promissory note.

18. As a part of its transactions with Palm Beach, PCI entered into an Assignment Agreement (the “Assignment Agreement”) with PBFHI. Pursuant to the Assignment Agreement, PCI would assign its right, title, and interest in certain receivables backed by fabricated purchase orders to PBFHI.

19. Petters and his Associates told investors that funds paid to a specific special purpose entity (“SPE”)—such as PBFHI—were to be used to purchase inventory assets for

resale, when in reality the funds were being funneled to PCI or other entities formed by Petters in order to pay early investors with funds received from later investors.

20. To obtain investors in the Ponzi Scheme, Petters portrayed PCI or the SPE as a middleman that purchased consumer electronic goods from wholesalers and resold the merchandise to large, “big box” retailers such as Costco, Sam’s Club, and B.J.’s Wholesale Club. PCI and PBFHI, through Petters and his Associates, intentionally fabricated the documents to recruit investors into the Ponzi scheme. Petters and his Associates prepared and utilized fabricated documents that were represented to investors to be equipment purchase orders and related documents. The fabricated documents included, but are not limited to, (1) purchase orders from PCI to suppliers purportedly ordering electronic goods and (2) purchase orders from retailers to PCI purportedly ordering electronic goods for purchase from PBFHI. The purchase orders and the related documents were entirely fabricated by Petters and his Associates.

21. To assist PCI in its fictitious financing of what Petters and his Associates represented to be the acquisition of retail merchandise—and with the affirmative endorsement of Palm Beach and others— Petters and PCI formed a number of wholly-owned SPEs. PBFHI was one of several SPEs that was wholly owned by Petters and was formed to operate the Ponzi scheme.

22. Each SPE executed promissory notes in order to obtain funds to finance the acquisition of fictitious merchandise. The promissory notes were often personally guaranteed by Petters or PCI. The fictitious merchandise was evidenced by fabricated equipment purchase orders in which the investors would acquire a security interest

23. The high rates of return that were promised to investors promoted two essential goals of the Ponzi Scheme: (1) to entice investors, such as Palm Beach, to invest without

employing reasonable due diligence in Petters, PCI and PBFHI; and (2) to extend the life of the fraud and to enable Petters, PCI and the SPEs to pay other earlier investors in the fraudulent scheme.

B. Petters and His Associates Used Middlemen to Conduct the Ponzi Scheme.

24. Petters and his Associates knew that investor funds, such as funds received by PBFHI from Palm Beach, were ultimately going to be transferred to PCI to be used by Petters and PCI to conceal and disguise the nature, source, ownership, and control of the funds and to further the Ponzi scheme by paying amounts due to earlier investors. PCI and PBFHI did not purchase electronic goods with the funds Palm Beach provided to them, but rather used the funds to pay off earlier investors who had amounts due, to financially prop up Petters' other businesses, and to fund Petters' lavish lifestyle.

25. With respect to PCI's use of the SPEs, when investors wired funds into an SPE that was wholly owned by PCI, such as PBFHI, these funds were often wired through middlemen whose role was to create the false and materially fraudulent appearance of acquiring the fictitious goods and then forward such funds, less a commission, to PCI.

26. An illustration of how Petters systematically operated the Ponzi scheme through the SPEs of PCI is as follows: funds that were invested in the SPEs were generally transferred to either Nationwide International Resources, Inc. ("Nationwide") or Enchanted Family Buying Company ("Enchanted"). Nationwide is an entity owned and controlled by Reynolds and was used to conceal and disguise the nature, source, ownership, and control of funds used by Petters to further the Ponzi scheme. Enchanted is an entity owned and controlled by Catain and was used to conceal and disguise the nature, source, ownership, and control of funds used by Petters to further the Ponzi scheme.



27. Petters and his Associates intended that Nationwide and Enchanted serve the role of the intermediary “suppliers” of the merchandise purportedly being acquired by PCI for resale.

28. Petters engaged Catain, a Petters Associate, to open a bank account in the name of Enchanted in order to receive funds invested in PCI through its SPEs. Catain, as directed, would immediately redirect money to PCI after deducting a commission from the Enchanted bank account.

29. Petters similarly engaged Reynolds, another Petters Associate, to receive investor funds into a bank account opened in the name of Nationwide. Reynolds, as instructed, would immediately redirect money to PCI after deducting commissions from the Nationwide bank account.

30. After extracting commissions for their respective roles in the Ponzi scheme, Reynolds (through Nationwide) or Catain (through Enchanted) would transfer the funds to PCI, which would then transfer some or all of those funds back to the particular SPE involved with the transaction for repayment of Principal and earnings in the form of False Profits and for the payment of additional funds to PCI.

C. PCI, Through Its Alter Ego, PBFHI, Made Payments to Palm Beach.

31. PCI would show a “profit” on each transaction because PCI’s fabricated purchase order for the merchandise from the big box retailer was always for an amount greater than the amount of PCI’s fabricated purchase order to Nationwide or Enchanted for the same nonexistent merchandise. Petters and his Associates—through PCI and PBFHI—created fictitious profits at will on each and every transaction by simply writing in the appropriate quantity and price information on the two sets of purchase orders to “produce” the necessary funds. Because no electronic goods ever existed in this transaction, funds PBFHI transferred to Palm Beach were obtained from other investors.

32. Because the transactions described in the fictitious purchase orders in fact did not exist, the only way PCI was able to transfer sufficient funds to the operative SPE was by money obtained from other investors; in other words, through the operation, control, and management of the Ponzi scheme by Petters and his Associates and through PCI and PBFHI. Repayments of the Principal and “interest” in the form of False Profits to these investors comprised a Ponzi scheme because they were primarily, if not exclusively, from funds invested by other PCI investors.

33. Petters and his Associates knowingly and intentionally concealed the ongoing fraud in an effort to hinder and delay authorities and other current and prospective investors and other creditors of PCI and its SPEs from discovering the fraud.

### **III. PBFHI at All Times was, and is, an Alter Ego of PCI**

34. At all times relevant herein, Petters operated PBFHI as an alter ego of PCI. PBFHI is an entity created by Petters and utilized by PCI as an SPE through which to funnel funds from Palm Beach to PCI to further the Ponzi Scheme.

35. Petters formed and operated PBFHI as one of PCI’s SPEs for the sole purpose of receiving loan proceeds from investors such as the Palm Beach, to further the Ponzi scheme.

36. At all times relevant herein, PBFHI was nothing more than an instrumentality of Petters and PCI to further the Ponzi scheme and was used by PCI for the sole purpose of furthering the fraud orchestrated by Petters through the Ponzi scheme.

37. Petters and his Associates at all times relevant herein knew that investor funds and accounts were commingled, used, and transferred by Petters and his Associates as necessary to further the Ponzi scheme. Funds that were intended for PBFHI were instead routed to PCI for subsequent distribution to other investors in other SPEs. For example, PCI would transmit misappropriated funds to its SPEs—including PBFHI—for ultimate payments to investors in furtherance of the fraud. Petters and his Associates caused monies received from PBFHI by the

fictitious vendors of Nationwide and Enchanted to be rerouted and transferred directly to PCI accounts for the operations of PCI, repayment of investors, payment of False Profits, and for Petters' personal use.

38. Petters and his Associates expressly authorized and approved commingling of funds by and between numerous entities, such as between PCI and the SPEs. PBFHI was used solely as a conduit of funds ultimately destined for PCI to repay Palm Beach and other investors. Funds generated by Petters through PBFHI were funneled to PCI, or to Petters individually, and were used by PCI and Petters to pay other investors. Similarly, funds transferred from PCI into PBFHI to pay Palm Beach originated, in large part, from funds sourced from other investors.

39. PCI maintained a number of bank accounts, including a bank account at M&I Bank. From 2001 to 2008, PCI transferred funds from its M&I bank account to SPEs—including PBFHI—in the amount of approximately \$19.6 billion. PCI also received approximately \$4 billion from its SPEs. PCI's M&I bank account also received approximately \$12.6 billion from Enchanted (owned by Catain, who plead guilty to conspiracy to commit money laundering) and approximately \$12.2 billion from Nationwide (owned by Reynolds, who plead guilty to conspiracy to commit money laundering), co-conspirators in the money laundering scheme. This flow of funds illustrates that funds were routed through and around PBFHI to give the appearance of legitimate business activity and that PBFHI, among other entities, was used as an artifice to perpetrate a massive financial fraud.

40. PBFHI was never independently or sufficiently capitalized because PBFHI conducted no legitimate business operations, had no employees, and all funds provided to, or paid on behalf of, PBFHI were for the sole purpose of furthering the Ponzi scheme and were ultimately forwarded to PCI for distribution.

41. Petters directed certain of his Associates and PCI employees—including Coleman and White—to prepare fabricated transactional documents that PBFHI used to perpetuate the Ponzi scheme.

42. Petters and his Associates dominated and controlled all aspects of the business operations of PBFHI at all times relevant herein for the sole and exclusive purpose of furthering the Ponzi Scheme that Petters orchestrated through PCI. PBFHI conducted no business activity other than the fraud.

43. PCI and PBFHI shared the same corporate offices at 4400 Baker Road, Minnetonka, MN.

44. Petters and PCI oversaw and directed all operations of PBFHI.

45. PCI and PBFHI did not maintain correct accounting records of their inter-company transfers and obligations.

46. PCI caused PBFHI to enter into the investments with Palm Beach, and in return PCI caused PBFHI to grant purported security interests to Palm Beach to secure the purchase of fictitious goods backed by fabricated invoices.

47. Petters conflated the multiple entities that he used to operate the Ponzi scheme by, among other things, transferring funds interchangeably among the entities, ultimately for the benefit of PCI and to generate the payment of False Profits pursuant to the promissory notes to perpetrate and further the Ponzi scheme.

48. Throughout the duration of the Ponzi Scheme, PCI account statements reflect that Petters and his Associates caused at least more than \$8 billion PCI funds to be transferred into PBFHI—to the detriment of PCI's creditors—to be paid out to Palm Beach to perpetrate the Ponzi scheme.

49. The amount of funds provided to PBFHI to fund the fraudulent investment activities confirms that PBFHI was never capitalized to operate apart from, or independent of, PCI and that PBFHI, in fact, had no existence separate and apart from Petters, PCI and the Ponzi scheme, as was well known to Petters and his Associates.

50. Injustice, fundamental unfairness, and a violation of an established public policy against fraud would occur if PCI and PBFHI's abuse of creating an artificial corporate veil to promote and perpetrate a fraud on the creditors and investors of PCI is allowed.

51. The artificial and fraudulent corporate entity of PBFHI must be reverse-pierced to reflect the true nature of the structure and operations of PBFHI as a mere alter ego of PCI at all times relevant herein, and the assets of PBFHI must be made available to the many creditors and victims of PCI.

52. For all the foregoing reasons, the creditors of PCI would suffer great injustice if the assets of PBFHI are not made available to satisfy the debts of PCI, particularly since funds provided to Petters and PCI were not used for their intended purpose but were funneled to repay Palm Beach's Principal and False Profits and thereby to promote and perpetuate a massive fraudulent scheme through the artifice of PBFHI.

#### **IV. PREFERENTIAL AND FRAUDULENT TRANSFERS TO PALM BEACH**

53. From 2001 through the Petition Date, PCI and PBFHI made payments to Palm Beach in the approximate amount of \$8,045,725,891 (the "Transfers"). The Trustee alleges that PCI and PBFHI made the Transfers to Palm Beach with the actual intent to hinder, delay, and defraud creditors of PCI and PBFHI. The Trustee further alleges that the Transfers were made while PCI and PBFHI were insolvent and for less than reasonably equivalent value. Accordingly, the Transfers constitute fraudulent transfers which may be avoided within the meaning of 11 U.S.C. §§ 548(a)(1)(A) and 548(a)(1)(B), and 11 U.S.C. § 544(b), Minn. Stat. §§

513.41 – 513.50. The Trustee acknowledges that certain affirmative defenses may apply to the Transfers.

54. During the 90 days preceding the Petition Date PBFHI made payments totaling \$7,255,265 (the “Preferential Transfers”) to Palm Beach. The Trustee alleges that the Preferential Transfers constitute preferential transfers within the meaning of 11 U.S.C. § 547(b). The Trustee alleges that the Preferential Transfers constitute preferential transfers within the meaning of 11 U.S.C. § 547(b) because the Preferential Transfers were to or for the benefit of Palm Beach, a creditor of PCI and PBFHI, on account of antecedent debt owed by Palm Beach before the Preferential Transfers were made and made while PBFHI was insolvent. The Preferential Transfers enabled Palm Beach to receive more than it would receive if this case were a case under Chapter 7, the Preferential Transfers had not been made and Palm Beach received payment to the extent provided by the Bankruptcy Code. The Trustee acknowledges that the Preferential Transfers may be subject to certain affirmative defenses.

55. The Trustee alleges that Palm Beach is a transferee of the Preferential Transfers which are transfers avoidable under section 544, 547 and 548 of the Bankruptcy Code and Minn. Stat. §§ 513.41 – 513.50 sufficient to disallow the Onshore Claims pursuant to 11 U.S.C. § 502(d).

56. The Trustee alleges that the Offshore Funds are subsequent transferees of certain transfers which are recoverable under section 550 of the Bankruptcy Code sufficient to disallow the Offshore Claims pursuant to 11 U.S.C. § 502(d).

57. As a result of the automatic stay in place in the Palm Beach chapter 11 case and the liquidation proceedings of the Offshore Funds taking place in the Cayman Islands, the Trustee hereby seeks only the disallowance of the Onshore Claims and Offshore Claims until

such time as avoidable transfers are satisfied or an agreement is made with Palm Beach and the Offshore Funds with respect to such transfers and their claims in these cases. The Trustee also seeks the preservation of a section 502(d) objection. The Trustee specifically reserves the right to amend this Objection at a later date to include other grounds to object to the Palm Beach Claims.

## **V. LEGAL ANALYSIS**

### **A. Defensive Claim Objection**

11 U.S.C. § 502(d) is one of many grounds upon which a claim may be disallowed.

Section 502(d) states:

Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

11 U.S.C. § 502. Accordingly, if a claimant has (1) filed a proof of claim in the Debtor's bankruptcy case, and (2) is a transferee of a transfer avoidable or property that is recoverable under the sections enumerated in section 502(d), then the claimant's entire claim shall be disallowed in the Debtor's case until it has paid that amount to the Debtor's estate.

If the claimant in the Debtor's case is also a debtor under the Bankruptcy Code, special considerations must be taken to ensure the claimant's automatic stay is respected. Section 362

(a)(1) of the Bankruptcy Code provides:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

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(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

In this case, the Trustee does not seek payment of avoidable transfers. He only seeks to preserve a defense under section 502(d) which is available to the Debtors' estates and by following case law in this district must be filed before October 11, 2010.

B. This Claim Objection Must be Filed Prior to the Expiration of the Two Year Period Contained in Section 546(a)

The Bankruptcy Code does not provide a deadline to object to claims and anticipates negotiations with Palm Beach and the Offshore Funds to arrive at a mutually acceptable way of resolving these issues. However, applicable law may require that a claim objection based upon section 502(d) be commenced prior to the expiration of the two year limitations period of section 546(a).

Under normal circumstances, the Trustee would commence suit prior to the expiration of the section 546(a) time period to preserve avoidance claims against non-debtor defendants. Since the claimants are also debtors under the Bankruptcy Code and are protected by the automatic stay, the Trustee is limited in his approach to preserve valid section 502(d) defenses of the Debtors' estate. Accordingly, the Trustee is objecting to the claimant's claims asserting the receipt of fraudulent and preferential transfers, as a basis for disallowance, prior to the expiration of the section 546(a) time period to ensure such claims are preserved, albeit defensively. In



addition, the Trustee has filed claims in the Palm Beach bankruptcy cases asserting claims for avoidable transfers.

WHEREFORE, the Trustee respectfully requests the court enter an order disallowing the Palm Beach Claims filed against PCI and PBFHI pursuant to 11 U.S.C. § 502(d), and grant such other and further relief as may be just and equitable.

DATED: October 8, 2010

**LINDQUIST & VENNUM P.L.L.P.**

By:           /e/ James A. Lodoen            
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George H. Singer (262043)  
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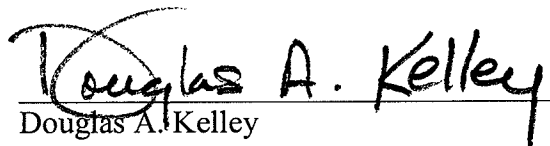
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**ATTORNEYS FOR  
DOUGLAS A. KELLEY,  
CHAPTER 11 TRUSTEE**

**VERIFICATION**

I, Douglas A. Kelley, Chapter 11 Trustee, declare under penalty of perjury that the facts set forth in the preceding Trustee's Second Omnibus Claim Objection are true and correct according to the best of my knowledge, information and belief.

Executed on: 10/6, 2010

  
Douglas A. Kelley  
Chapter 11 Trustee

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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Chapter 11 Cases  
Judge Gregory F. Kishel

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**ORDER**

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This matter came on before the Court on \_\_\_\_\_, 2010 on the Motion of Douglas A. Kelley, Chapter 11 Trustee, for the disallowance of certain claims pursuant to 11 U.S.C. § 502(d). James A. Lodoen appeared for the Chapter 11 Trustee. Other appearances were as noted on the record. Based on the arguments of counsel, moving documents and the record made at the hearing, and the Court's findings of fact and conclusions of law, if any, having been recorded in open court following the close of evidence,

IT IS HEREBY ORDERED:

1. The 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 Fund II Limited is sustained;

2. The following claims are disallowed in their entirety:

Case Number	Claim Number	Claimant	Amount	Debtor	Basis for Objection
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08-45257	35	Palm Beach Finance Partners, L.P.	211,938,476.67	PCI	11 U.S.C. § 502(d)
08-45392	30	Geoff Varga, solely as Joint Official Liquidator of Palm Beach Offshore Limited and Palm Beach Offshore II Limited	720,000,000.00	PBFHI	11 U.S.C. § 502(d)

Dated:

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Gregory F. Kishel  
United States Bankruptcy Judge