

Ninth Report of The Official Liquidator of

CLICO Enterprises Limited
(In Liquidation)

For the period from January 1, 2012 to March 31, 2012

CLICO Enterprises Limited

(In Liquidation)

Ninth Report of the Official Liquidator (From January 1, 2012 to March 31, 2012)

C O N T E N T S

	Page
Introduction	1
Background and Basis of Appointment	1 - 2
Definitions	3
Steps Taken by the Official Liquidator	3
Concerns	4 - 8
Conclusion	9
Statement of Assets at Estimated Realizable Values and Liabilities	Appendix 1
Wellington Preserve Corporation - Report of the Debtor In Possession	Appendix 2

INTRODUCTION

The Ninth Report of the Official Liquidator of CLICO Enterprises Limited (“the Company”) (“CEL”) is intended for use by the Supreme Court of the Commonwealth of The Bahamas. This report sets out the steps taken by the Official Liquidator during the period from January 1, 2012 to March 31, 2012.

BACKGROUND AND BASIS OF APPOINTMENT

CLICO Enterprises Limited is a Bahamian Company, incorporated under the Companies Act, 1992, on August 23, 2000 as British Fidelity Holdings Limited. The Company changed its name to BF Enterprises Limited on August 24, 2001. The Company’s name was further changed to CLICO Enterprises Limited on April 7, 2005. My review of CLICO Enterprises Limited’s activities, led me to believe that the Company operated as a holding company for Clico (Bahamas) Limited’s non-insurance assets, locally and internationally.

As at December 31, 2008, CLICO Enterprises Limited received advances from Clico (Bahamas) Limited (“CBL”) of approximately US\$73.8M. These advances were received by the Company apparently for the purpose of paying for the acquisition and on-going expenses of the Company’s investment properties. It is unlikely that this loan can be repaid in full by the Company as the Company’s single largest asset, held by the Company’s wholly-owned subsidiary, Wellington Preserve Corporation (“WPC”), is the Wellington Preserve property, which is located in Palm Beach County, Florida, whose value cannot be fully realized in the current real estate market.

Included in the Company’s financial statements as at December 31, 2008, is a loan due from WPC in the amount US\$70M.

In addition to the loan to WPC, CEL also made a further direct investment in WPC in the sum of US\$13M.

The WPC real estate project in Wellington, Palm Beach County, Florida, at the date of my appointment as liquidator of CEL, consisted principally of 80 residential lots and various equestrian amenities and commercial sites, intended to be laid out in a 523-acre tract of land.

Among the many concerns arising out of the transfer of funds by CEL to related parties is whether or not CEL circumvented Exchange Control Regulations in The Bahamas to:

- Purchase real estate in The Bahamas without regulatory approval.
- Purchase real estate outside The Bahamas without regulatory approval.
- Repatriate revenue to the United States and elsewhere without the approval of the Central Bank of The Bahamas.
- Transfer funds from CEL to persons outside The Bahamas.

BACKGROUND AND BASIS OF APPOINTMENT (continued)

As a result of the various intercompany loans from CBL and on-going regulatory matters and concerns, it was later determined by Counsel and I, that it would be in the best interest of the creditors of CBL to place CEL into liquidation and that I be appointed as Official Liquidator to protect the assets of CEL.

On August 12, 2009, I appeared with Counsel in the Supreme Court of The Bahamas on the application filed in my capacity as Official Liquidator of CBL for an order that I be at liberty to file a winding-up petition for CEL under the supervision of the Supreme Court. A Petition to wind-up CEL was filed on that same date and Her Ladyship the Honourable Justice Mrs. Cheryl Albury, granted the application allowing me leave to proceed with the petition to wind-up CEL pursuant to Section 187 (d) of the Companies Act of 1992, Chapter 308 of the Statute Laws of The Bahamas on the ground that CEL was unable to pay its debts.

The Court also appointed me Provisional Liquidator of CEL to be assisted by Callenders & Co. as legal advisors.

It was also ordered that a Notice be published in the local gazette to inform members of the public that a winding-up petition had been filed on August 12, 2009 against CEL and that the said Petition was set down for hearing by the Supreme Court on September 8, 2009. In accordance with this order and direction, a Notice of the Petition was published on August 22, 2009.

I appeared with Counsel in the Supreme Court of The Bahamas on September 8, 2009, and on that date, it was ordered at the hearing of the said Petition that CEL be wound-up by the Court under the provisions of the Companies Act, 1992, and I was appointed Official Liquidator with Callenders & Co. as my legal advisors, to assist me in the performance of my duties. Notices were published in the local gazettes in The Bahamas, to advertise the granting of the Order for the liquidation of the Company, subject to the supervision of the Court.

DEFINITIONS

In this Report, the words and expressions hereunder shall mean, as follows:

“The Official Liquidator” means Craig A. (Tony) Gomez or any member of his (the Liquidation) team.

“I” or “Me” means Craig A. (Tony) Gomez or any member of his (the Liquidation) team.

“The Company” means CLICO Enterprises Limited (In Liquidation).

“CEL” means CLICO Enterprises Limited (In Liquidation).

“CBL” means Clico (Bahamas) Limited (In Liquidation).

“General Counsel” means Callenders & Co., the Liquidator’s Bahamian Counsel.

“United States Counsel” means Fowler White Burnett P. A. and/or Boyd & Jenerette, PA.

“Court” means the Supreme Court of the Commonwealth of The Bahamas.

“WPC” means Wellington Preserve Corporation.

“GBM” means Grand Bahama Millwork and Building Supplies Limited.

STEPS TAKEN BY THE OFFICIAL LIQUIDATOR (for the period from January 1, 2012 to March 31, 2012)

1. I continued my regular attendance to Court with General Counsel to provide a progress report on the liquidation to the Court. Representatives for the Insurance Commission of The Bahamas, the Ministry of Finance and the Office of the Attorney General also attended each meeting.
2. I met with General Counsel on the GBM and Golfview Apartments matters.
3. I met with General Counsel on the CEL shareholding matter.
4. I attended Court with General Counsel and provided an update to the Court on the GBM and Golfview Apartments matters.
5. I met with the Insurance Commission of The Bahamas and provided an update on the GBM and Golfview Apartments matters.
6. I attended Court with General Counsel and provided an update to the Court on the Demand on CL Financial Guarantee.

CONCERNS

- **Court Matters
(Bahamas)**

January 30, 2012

At this hearing the Court was updated on Grand Bahama Millwork & Building Supplies Limited and the Golfview Apartments matters.

February 2, 2012

At this hearing the Court heard and granted Orders for the following matters:

1. The 14th Affidavit, inter alia a request to sanction the appointment of Baker Tilly Gomez to provide back office services to the Official Liquidator and to approve the rates of Baker Tilly Gomez's back office services and approve the rates of Callenders & Co., and;
2. The 15th Affidavit, inter alia a request to sanction the appointment of Fowler White Burnett to assist in US real estate matters in the liquidation and to approve the rates of Fowler White Burnett and;

To sanction the appointment of Boyd & Jenerette PA. to assist with the US bankruptcy proceedings, recovery of assets and litigation in the liquidation and to approve the rates of Boyd & Jenerette.

The Court was also updated on Grand Bahama Millwork & Building Supplies Limited and the Golfview Apartments matters.

March 7, 2012

At this hearing the Court was updated on Grand Bahama Millwork & Building Supplies Limited and the Golfview Apartments.

CONCERNS

- **Court Matters** (continued)
(Bahamas)

March 15, 2012

At this hearing the Court heard and granted Orders for the following matters:

1. The Order was granted to approve the rates of the US Attorney, Fowler White Burnett.
2. The 39th Affidavit, inter alia a request to approve the fees for the United States real estate Attorney, Fowler White Burnett, from December 2009 to May 2011. The Order was granted to pay the fees.
3. Updated the court on the GBM matter.

March 22, 2012

At this hearing the Court was updated on the Demand on the CL Financial Guarantee.

- **Insurance Commission of The Bahamas**

On January 16, 2012, I met with the Insurance Commission of The Bahamas and provided them with an update on GBM and the Golfview Apartments matter.

- **General Counsel**

On January 30, 2012, I met with General Counsel to review the progress of the GBM Apartments matter.

- **Creditors Committee**

On March 26, 2012, a Creditors Committee Meeting was held and I provided the Creditors Committee with an update on the way forward with the GBM and the Golfview Apartments matter.

- **CLICO Enterprises Limited - Corporate Records**

It is apparent from my review of the records made available to me that CLICO Enterprises Limited was incorporated to hold assets for Clico (Bahamas) Limited that were not related to Clico's insurance business.

CONCERNS

- **CLICO Enterprises Limited - Corporate Records** (continued)

I conducted a search of the company's corporate records at the Companies Registry and discovered that the last Annual Return filed on behalf of CEL is dated September, 2007, listing the Company's shareholders as Mayco Holdings Ltd. and Nardco Holdings Ltd. Each company held one share in CEL.

General Counsel has approached certain government and regulatory agencies for assistance with respect to information on CEL. As at the date of this report no documents have been received to assist with this matter.

- **Assets**

1. **Real Estate - West Ridge Lots**

The Company owns 12.472 acres of land, which is divided into 12 lots, situated in Lake Point, Westridge Estates.

I am currently reviewing an offer received to purchase the entire property.

2. **Grand Bahama Millwork and Building Supplies Limited**

Grand Bahama Millwork and Building Supplies Limited is situated in Freeport, in the Civic Industrial Area, situated at Forest Ave. and Yellow Pine Street. The store is primarily involved in the sale of hardware, houseware, lumber and other building amenities.

General Counsel was able to obtain from a Regulator, the following documents:

- (a) A Management Agreement dated September 1, 2000, between Grand Bahama Millwork & Building Supplies Limited and Clico Enterprises Limited (formerly BF Enterprises Limited and formerly known as British Fidelity Holdings Limited).

This agreement appoints CEL as the Manager of GBM for a period of 99 years, whereby CEL shall become the beneficial owner of GBM's assets and its entire operations, including the operation of the hardware and building supplies stores.

CONCERNS

- **Assets** (continued)

- 2. **Grand Bahama Millwork and Building Supplies Ltd.** (continued)

The Agreement also stipulated that the Manager will pay compensation to GBM in the sum of \$100.00 per annum. The receipt of the payment was acknowledged in the Agreement.

(b) A purchase / sale agreement between Toma Beverages Limited and Grand Bahama Millwork & Building Supplies Limited (the vendors) and Clico Enterprises Limited (formerly BF Enterprises Limited) (the purchaser), dated September 1, 2000.

However, this purchase / sale agreement was not approved by the Ministry of Finance. This matter is currently being researched.

I met with the ICB on January 16, 2012 and provided them with an update on Grand Bahama Millwork and Building Supplies Limited and Golfview Apartments matter.

I met with General Counsel on January 30, 2012, to discuss the way forward for Grand Bahama Millwork and Building Supplies Limited and Golfview Apartments.

On February 6, 2012, I received from General Counsel the draft Affidavit on the injunction to be filed against GBM, for my review and comments. I responded to General Counsel with my comments on February 6, 2012.

- 3. **Golf View Apartments**

This property consists of an 8-unit town house apartment complex situated in Bahamia, at Rum Cay Drive, Freeport, Grand Bahama. Apparently seven (7) of the units are recorded in the name of CEL. However, after further investigation, I discovered that one of the units is not recorded in the name of CEL. This is presently being investigated by me.

- **Loan Agreement CEL / CBL**

On December 31, 2005, a loan agreement was executed between Clico (Bahamas) Limited and CLICO Enterprises Limited at a rate of 12%.

CONCERNS

- **Loan Agreement CEL / CBL (continued)**

The loans (advances) made by CBL to CEL's various subsidiary companies was guaranteed by CL Financial in the amount of \$US58M. General Counsel has requested the liquidator's Trinidadian Counsel to actively pursue the enforceability of CL Financial's Guarantee to CBL.

- **Promissory Note between CEL and Colonial Life Insurance Company (Trinidad) Limited**

On September 11, 2009, I received a claim in the amount of \$64,705,188.78 from Clico Life Insurance Company (Trinidad) Limited ("Clico Trinidad").

Below is the break-down of the claim:

Claim details	Amount
Promissory note	\$ 43,682,950
Interest on promissory note	8,889,779
Inter-company balance	12,132,460
Total	\$ 64,705,189

On April 8, 2008, CL Financial Limited issued a guarantee to Clico Trinidad to ensure prompt repayment of loans issued by Clico Trinidad to CEL.

The guarantee further states that the Creditor (Clico Trinidad and Clico (Bahamas) Limited, shall not be required to exhaust its remedies against the Principal (CEL) prior to enforcing its rights under the guarantee against the Guarantor (CL Financial Limited).

General Counsel continues to review this matter.

- **Wellington Preserve Corporation**

See Appendix 2 for the Debtor In Possession Report for Wellington Preserve Corporation ("WPC") for matters related to WPC.

- **Statement of affairs**

See Appendix 1 for the unaudited statement showing assets at estimated realizable values, and liabilities as at March 31, 2012.

CONCLUSION

From an operational perspective, I will continue to move the liquidation forward, primarily to realize the fair values from the sale of real estate and other properties for the benefit of creditors of which CBL is the majority creditor.

The primary challenges facing the liquidation are:

- (1) Ascertaining the shareholders and beneficial ownership of CEL.
- (2) Continuing the operations of GBM.
- (3) Realizing a fair value from the sale of the 12.427 acres of land in West Ridge, New Providence, The Bahamas.
- (4) Ascertaining the state of the property in Haiti and the possibility of a sale.
- (5) The settlement of the \$73.8M loan from Clico (Bahamas) Limited.
- (6) Addressing the Promissory Note from Colonial Life Insurance Company (Trinidad) Limited.
- (7) Successfully addressing the CL Financial Guarantee.
- (8) Realization of the principal asset in its wholly-owned subsidiary, Wellington Preserve Corporation in Florida.

Very truly yours

Craig A. (Tony) Gomez
Official Liquidator
CLICO Enterprises Limited
(In Liquidation)
Nassau, Bahamas
March 31, 2012

CLICO Enterprises Limited**(In Liquidation)**

Statement of Assets at Estimated Realizable Values

And Liabilities As Expected to Rank

As at March 31, 2012

(Expressed in Bahamian Dollars)

ASSETS:

Due from Subsidiary (Wellington Preserve Corporation)	\$ 30,000,000
Investment properties	6,801,754
Total assets	36,801,754

LIABILITIES:

Loan due to Clico (Bahamas) Limited (advances)	73,801,867
Loan due to Clico Trinidad Ltd.	52,572,729
Loan due to Sogebank (Shabisco) - Haiti	464,819
Accounts payable - (Shabisco) Haiti	90,567
Due to Clico (Bahamas) Limited (In Liquidation)	2,000
Total liabilities	126,931,982

ESTIMATED DEFICIT AS REGARDS MEMBERS	\$(90,130,228)
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APPENDIX 2

Report of The Debtor In Possession

Wellington Preserve Corporation
(In Chapter 11 Bankruptcy)

For the period from January 1, 2012 to March 31, 2012

Wellington Preserve Corporation
(In Chapter 11 Bankruptcy)

Report of the Debtor In Possession (January 1, 2012 to March 31, 2012)

C O N T E N T S

	Page
Introduction	1
Definitions	1
Back Ground and basis of Appointment	2 - 5
Steps Taken by the Debtor in Possession	6 - 7
Concerns	8 - 12
Conclusion	13
Statement of Assets at Estimated Realizable Values and Liabilities	Appendix 1
Statement of Receipts & Disbursements (DIP Report)	Appendix 2
List of Creditors	Appendix 3
Notice of Evidentiary Hearing	Appendix 4
Motion for Partial Summary Judgment Re: DIP'S Objection to Claim 1-4 of Internal Revenue Service (ECF #186)	Appendix 5
Order setting briefing schedule on Motion for Summary Judgment	Appendix 6
Letter to the IRS proposing a settlement to the IRS claim	Appendix 7
Letter received from the IRS acknowledging receipt of US Counsel's emails dated March 8 and 9, 2012, containing an offer to settle the IRS claim.	Appendix 8
Letter received from the IRS to accept US Counsel offer to settle the IRS claim	Appendix 9

Wellington Preserve Corporation

(In Chapter 11 Bankruptcy)

Report of the Debtor In Possession (January 1, 2012 to March 31, 2012)

C O N T E N T S (continued)

	Page
Debtor's Motion for the approval of settlement with the United States of America IRS and to cancel the Evidentiary hearing for April 9, 2012	Appendix 10
Order granting Debtor's Motion for approval of the settlement with the United States of America IRS.	Appendix 11

INTRODUCTION

The Report of the Debtor In Possession of Wellington Preserve Corporation (“the Company”) is intended for use by the Supreme Court of the Commonwealth of The Bahamas. This report sets out the steps taken by the Debtor In Possession (“DIP”) during the period from January 1, 2012 to March 31, 2012.

DEFINITIONS

In this Report, the words and expressions hereunder shall mean, as follows:

“Debtor In Possession” means Wellington Preserve Corporation.

“DIP” means Debtor In Possession.

“I” or “Me” means Craig A. (Tony) Gomez or any member of his team.

“The Company” means Wellington Preserve Corporation.

“CEL” means CLICO Enterprises Limited (In Liquidation).

“CBL” means Clico (Bahamas) Limited (In Liquidation).

“General Counsel” means Callenders & Co., the Liquidator’s Bahamian General Counsel.

“United States (“US”) Counsel” means Fowler White Burnett, PA.

“Court” means the Supreme Court of the Commonwealth of The Bahamas.

“United States (“US”) Court” means the Southern District Court of Florida.

“WPC” means Wellington Preserve Corporation.

“IRS” United States Internal Revenue Service.

BACKGROUND AND BASIS OF APPOINTMENT

The Wellington Preserve Corporation is a company incorporated in Florida and is a wholly-owned subsidiary of Clico Enterprises Limited, a company incorporated in the Bahamas under the Companies Act 1992.

The Wellington property originally consisted of approximately 640 acres of land situated in the Village of Wellington, Palm Beach County, Florida (the "Wellington Property"). The Wellington Property was purchased from Jadov/Levy Investment, LLC, a Florida limited liability company ("Jadov/Levy") on July 1, 2004, for a purchase price of US\$55 Million. The purchase price was funded by cash in the amount of US\$20 Million and a purchase money mortgage from the seller, Jadov/Levy, in the amount of US\$35 Million. As of April 27, 2010, the purchase money mortgage had been paid in full, through a combination of partial payments to Jadov/Levy prior to April 2009 by the Company, with the balance of approximately \$700K being paid by the Company from the proceeds of a loan from CLICO (Bahamas) Limited (in Liquidation).

The Wellington Property was designed to be an equestrian themed high-end residential subdivision. The property was subdivided into parcels of land for sale to equestrian-oriented buyers. So far, approximately 100 acres have been sold and 523 acres remain. The remainder consists of improved parcels which are ready for sale.

As of December 31, 2010, the development remained unfinished and, since it is unlikely that WPC can secure the financing necessary to complete the development, I decided that it was in the best interest of Wellington Preserve, and the creditors of CEL, that the property be sold as is.

I first procured copies of two existing independent US based appraisals of the property; the first from Anderson & Carr, Inc. of 521 South Olive Avenue, West Palm Beach ("Anderson valuation"). The Anderson valuation, as at January 20, 2009, based on the market value of a completed development, concluded the estimated market value of the Wellington property at a retail price US\$127,310,000.

Another valuation was received from Parrish & Edwards, Inc. as at December 31, 2008. The Parrish valuation, based on the market value, concluded the estimated market value of the Wellington property at a wholesale price US\$66,000,000.

Despite the necessity of the "as is" sale, I felt it was in the best interests of the debtor and its creditors to continue to safeguard the Wellington Property until a sale is completed.

BACKGROUND AND BASIS OF APPOINTMENT *(continued)*

In an effort to safeguard the property and prepare it for sale in 2010, there was an ongoing effort to complete a re-platting of the Wellington Property. The planned re-platting would allow for a 60-acre reservation at the center of the Wellington Property in which various equestrian amenities were planned to be constructed for the purchasers of units therein. Preparations required much engineering work including the installation of drainage, having utilities installed, and the like. It is believed that the re-platting and engineering work substantially enhanced the stability and marketability of the property.

These works were primarily financed via the refund of various deposits which have been placed in escrow at the request of the South Florida Water Management and the Village of Wellington. As improvements were completed, the escrows were released.

The safety of this asset was threatened by various creditors, as follows:

- **Brennan Financial, Inc.**

This issue involves an unsatisfied judgment resulting from an out-of-court settlement with respect to a claim for unpaid real estate brokers' commissions made between the broker, Brennan Financial, Inc. ("Brennan"), and Mr. Duprey, principal at the time of the CL Financial conglomerate. The unsatisfied judgment was payable in installments, which WPC defaulted on.

More specifically, Brennan had commenced litigation against Dalco Properties, Inc ("Dalco"), (a company owned by Mr. Duprey), and Mr. Duprey. Dalco and Mr. Duprey had initially used the services of Brennan's agent, William B. Walker, to negotiate the purchase of the Wellington Property. At some point during the transaction, there was a renegotiation between the parties, from which Brennan was excluded, which resulted in title to the property being ultimately taken by WPC. Brennan then sued for his unpaid real estate brokers' fees.

The dispute was settled out of court and for approximately US\$2 Million which was to be paid in annual installments of US\$200,000. The substance of the settlement was that Dalco and Mr. Duprey would be released from the liability and the case against them dismissed, while CEL and WPC would be liable for the payment of the annual installments. WPC and CEL (with Mr. Duprey as their control person) agreed to become parties to the settlement and an Order was entered in the US Courts making WPC and CEL parties to the action for the purpose of enforcing the settlement.

BACKGROUND AND BASIS OF APPOINTMENT *(continued)*

- **Brennan Financial, Inc.** (continued)

However, the settlement amount had not been fully repaid at the time I was appointed liquidator of CEL. On January 27, 2010 a Final Judgment in the Brennan litigation, in the amount of US\$1,445,490 plus interest was entered against WPC.

On February 11, 2010 a Motion for Stay of Execution of the Brennan Final Judgment was lodged with the US Courts by my US Counsel on behalf of WPC. This application came on for hearing on March 1, 2010 and was denied.

As of December 31, 2010, the Brennan financial judgment in the amount of \$1.445M, plus interest and attorneys fees, remained unpaid.

- **Operating Expenses**

Bills were generated for the continued upkeep of the Wellington Preserve property including manager expenses, insurance, ongoing accrual of real estate taxes at the rate of approximately \$1.5M per year; lawn services and the periodic mandatory testing of water runoff.

- **Taxes Due**

WPC also failed to file US tax returns for 2006 through 2009. Due to the lack of corporate records, US Counsel needed to obtain records from third parties to compile sufficient information needed for the filing of the returns.

The compendium of the above had led to the financial state of WPC as of April 2010, in short, WPC had virtually no cash; a judgment recorded against it; amounts owing in real property and other taxes and a miscellany of other financial obligations. In addition to this, it owed approximately US\$73,801,867 to its parent company, CEL.

Due to the aforementioned, I believed that the Wellington property was vulnerable to being foreclosed upon or sold by way of execution. In order to safeguard this asset, I further believed that it was in the best interests of Wellington Preserve and its creditors, including CEL, that WPC be placed into Chapter 11 Bankruptcy in the United States.

I was advised by my US Counsel that filing a Chapter 11 proceeding is among the alternatives available to prevent the forfeiture of the Wellington Property by virtue of an execution sale on behalf of the Judgment Creditor, Brennan.

BACKGROUND AND BASIS OF APPOINTMENT *(continued)*

The costs associated with the filing were not prohibitive and principally included:

- (i) Filing fees in the amount of US\$1,039 to be paid to the Clerk of the Court.
- (ii) Monitoring fees to be paid every quarter to the US Trustees' Office.
- (iii) Quarterly payments in respect of the turnover of the business operation; the minimum amount being US\$375 and the maximum amount US\$3,500.

I was further advised that the filing of the Chapter 11 would impose an automatic stay of most of the litigation affecting WPC until such time as the matter could be resolved in the Bankruptcy Court. The automatic stay prevents a Judgment Creditor from attempting to seize the property of the DIP, or to collect money from it. It would absolutely prevent the Judgment creditor from pursuing execution and would likewise prevent Palm Beach County from attempting to foreclose upon unpaid ad valorem real estate tax.

Another benefit of the filing is that a sale of the property under a confirmed Chapter 11 Plan of Liquidation is free of documentary stamp taxes. This may result, based on the current valuation of the property, in a savings in excess of US\$350,000 on the sale.

Further, I was advised that a Chapter 11 filing before April 27, 2010, would render the Judgment Lien or charge obtained by Brennan over the Wellington Property, a preferential transfer voidable by the DIP. We believed this would allow the DIP to negotiate a sale of the Wellington Property at market value, or as close thereto as possible, and thereafter enable retirement of the debts of WPC.

The combined effect of the Chapter 11 filing would be that any sale of the Wellington Property would result in a substantial recapture by CEL of the net proceeds, prorated with other unsecured creditors.

On April 27, 2010, I attended Court in the Bahamas with General Counsel seeking an Order to proceed with the Chapter 11 Bankruptcy filing in the United States. The Order was granted.

Thereafter, also on April 27, 2010, U.S. Counsel filed a Voluntary Chapter 11 Bankruptcy Petition on behalf of Wellington Preserve in the U.S. Court.

STEPS TAKEN BY THE DEBTOR IN POSSESSION (for the period from January 1, 2012 to March 31, 2012)

1. I attended Court with General Counsel to provide a progress report on the DIP to the Court. The Superintendent or a representative for the Insurance Commission of The Bahamas, Legal Counsel for the Insurance Commission of The Bahamas, a representative from the Ministry of Finance and Counsel on behalf of the Attorney General, also attended each meeting.
2. I received a Letter of Intent from a proposed buyer for the purchase of the remaining 420 acres of land in Wellington.
3. I met with a potential US buyer at my office and consummated a sale of 138 acres of land in Wellington.
4. United States Counsel appeared in the US Court for the Order granting a notice of Evidentiary Hearing to consider the objection to the IRS claim.
5. United States Counsel appeared in the US Court to file a Motion for Partial Summary Judgment Re: DIP's Objection to Claim 1-4 of Internal Revenue Service (ECF #186).
6. United States Counsel sent a letter to the IRS, proposing a settlement to the IRS claim.
7. United States Counsel received a letter from the IRS, acknowledging receipt of US Counsel's settlement proposal, for the outstanding IRS claim.
8. United States Counsel received a letter from the IRS accepting US Counsel offer to settle the IRS claim.
9. United States Counsel appeared in the US Court to obtain the Order, granting Debtor's Motion for approval of the settlement with the United States of America IRS.
10. United States Counsel appeared in the US Court to file the Motion for the approval of the settlement with the United States of America IRS and cancel the Evidentiary hearing scheduled for April 9, 2012.
11. United States Counsel appeared in the US Court and obtained the Order setting briefing on Motion for Summary Judgment.
12. United States Counsel appeared in the US Court on the Order continuing the hearing on supplemental final fee application for failure to provide required notice for the final fee payment to the US tax accountants to the debtor.

STEPS TAKEN BY THE DEBTOR IN POSSESSION (for the period from January 1, 2012 to March 31, 2012) (continued)

13. United States Counsel appeared in the US Court on the notice of withdrawal of reorganized debtor's motion to amend plan to approve purchase and sale agreement for real estate between debtor and the Oxford Limited Liability Company due to the buyer withdrawal from the transaction.
14. United States Counsel appeared in the US Court and obtained the Order granting second supplement to final fee application of Boyd & Jenerette, P.A., Counsel to the debtor.
15. United States Counsel appeared in the US Court and obtained the Order granting second supplement to final fee application of Fowler White Burnett, P.A.

CONCERNS

- **Court Matters
(Bahamas)**

January 16, 2012

At this hearing the Court was updated on the sale of the Wellington property.

- **Court Matters
(United States)**

United States Counsel appeared in the US Court on my behalf in the Southern District Court of Florida, on the following matters:

January 19, 2012

To obtain an Order granting a notice of Evidentiary Hearing to consider the objection to the IRS claim. The Order was obtained and the hearing is scheduled for April 9, 2012. See Appendix 4 for the details of the Notice.

February 27, 2012

To file a Motion for Partial Summary Judgment Re: DIP'S Objection to Claim 1-4 of Internal Revenue Service (ECF #186). This Motion was filed due to the IRS filing an objection to the Confirmation of the Joint Liquidating Plan (ECF #162). The IRS is claiming that WPC and CEL improperly sought to subordinate the IRS unsecured claim for penalties and interest. See Appendix 5 for the details of the Motion.

March 5, 2012

To obtain the Order setting briefing schedule on Motion for Summary Judgment. See Appendix 6 for the details of the Order.

March 13, 2012

To file Debtor's Motion for the approval of settlement with the United States of America (Internal Revenue Service) and to cancel the Evidentiary hearing scheduled for April 9, 2012. See Appendix 10 for the details of the Motion.

To obtain the Order granting Debtor's Motion for approval of the settlement with the United States of America (Internal Revenue Service). See Appendix 11 for the details of the Order.

CONCERNS

- **Wellington Property sale**

On January 3, 2012, the US real estate broker was anticipating a signed purchase and sale agreement for the remaining 420 acres of land in Wellington, from a proposed buyer. However, that proposed sale did not materialize.

On January 20, 2012, I discussed with US real estate Counsel, Fowler White Burnett and the US real estate broker an open issue with regard to the South Florida Water Management Department. This matter is relative to the continued water testing, which was put on hold until there is a rain fall, to allow a proper flow of water for testing.

On January 31, 2012, I liaised with US real estate Counsel and the US real estate broker with regard to a proposed buyer's interest in acquiring the remaining 420 acres of land in Wellington. However, that proposed sale did not materialize.

On February 2, 2012, I spoke with US real estate Counsel and the US real estate broker to address a more aggressive advertising strategy for the sale of the remaining parcels of land in Wellington.

On February 7, 2012, I liaised with US real estate Counsel and the US real estate broker with regard to a proposed buyer's interest in purchasing 356 acres of the remaining 420 acres of land in Wellington.

On February 9, 2012, I liaised with US real estate Counsel and the US real estate broker on further development with regard to the proposed buyer who wanted to purchase 356 acres of the remaining 420 acres of land in Wellington. However, that proposed sale did not materialize.

On February 16, 2012, the US real estate broker met with a potential buyer who was desirous of purchasing 60 acres of land in Wellington. However, that proposed sale did not materialize.

On February 29, 2012, I received a Letter of Intent for the purchase of the remaining 420 acres of land in Wellington Florida with financing arrangements. However, that proposed sale did not materialize.

On February 29, 2012, I had a teleconference with my US real estate Counsel and the US real estate broker to review the contents of the Letter of Intent received to purchase the remaining 420 acres of land in Wellington.

CONCERNS

- **Wellington Property sale** (continued)

On March 1, 2012, I had a teleconference with the US real estate Counsel and the US real estate broker to continue the review of the contents of the Letter of Intent received to purchase the remaining 420 acres of land in Wellington.

On March 7, 2012, I liaised with the US real estate broker with regard to the offer received from the potential buyer, for the remaining 420 acres of land in Wellington.

On March 8, 2012, I liaised with US real estate Counsel and the US real estate broker on the proposed sale of the remaining 420 acres of land in Wellington. However, that proposed sale did not materialize.

On March 12, 2012, I liaised with my US real estate broker on a proposed sale of the remaining 420 acres of land in Wellington. We also discussed the relocation of the Tanens, to allow for the cohesive sales of parcels of land.

On March 16, 2012, I met with a proposed buyer at my office, for the purchase of 138 acres of land in Wellington and a sale was consummated, pending the execution of the purchase and sale agreement.

On March 19, 2012, US real estate Counsel sent the details of the agreed sale of the 138 acres of land to the proposed buyer's real estate developer and the real estate attorney acting on my behalf to interface with the Village of Wellington on the infrastructure development matters.

On March 19, 2012, I received the first draft of the purchase and sale agreement for the sale of 138 acres of land for my review and execution.

On March 19, 2012, I received a purchase and sale agreement from the US real estate broker for another proposed buyer, who wanted to purchase 26.74 acres of the Wellington property.

On March 20, 2012, I liaised with the US real estate broker on a proposed sale of 41 acres of the Wellington property.

On March 23, 2012, I extended the listing for the sale of the remaining 420 acres of the Wellington property to September 30, 2012.

CONCERNS

- **Wellington Property sale** (continued)

On March 27, 2012, I liaised with the US real estate broker on the pending sales and the agreement by Clico's creditors to proceed with the sales.

On March 30, 2012, I received a revised purchase and sale agreement from the proposed buyer of 41.16 acres of the Wellington property for my review and comments.

- **Internal Revenue Service**

On March 5, 2012, US Counsel at Boyd Jenerette sent a letter (by email in the first instance) to the IRS proposing a resolution to the IRS claim. See Appendix 7 for details of the letter.

On March 8, 2012, US Counsel sent an email to the IRS confirming the proposed settlement of all pending matters in the IRS claim against WPC.

On March 9, 2012, US Counsel received a letter, which was filed in the US Court from the IRS, acknowledging receipt of US Counsel's emails dated March 8 and 9, 2012, containing an offer to settle the IRS claim. See Appendix 8 for details of the letter.

On March 12, 2012, US Counsel received a letter, which was filed in the US Court from the IRS, accepting US Counsel offer to settle the IRS claim. See Appendix 9 for details of the letter.

- **Insurance Commission of The Bahamas ("ICB")**

On January 16, 2012, I met with the ICB and updated them on the progress of the land sale in Wellington.

On March 7, 2012, I met with the ICB and provided a further update on the progress of the land sale in Wellington.

- **Clico (Bahamas) Limited's Creditor's Committee**

On March 26, 2012, I along with General Counsel met with CBL's Creditors Committee to obtain their agreement to proceed with the sale of 138 acres of land in Wellington.

CONCERNS

- **Statement of Affairs**

See Appendix 1 for the unaudited statement showing assets at estimated realizable values and liabilities as at March 31, 2012.

- **Cash Receipts and Disbursements**

See DIP report at Appendix 2 for cash receipts and disbursements for the period.

- **List of Creditors**

See Appendix 3 for a list of Creditors.

CONCLUSION

From an operational perspective, I will continue to move the liquidation forward, primarily to realize the fair value from the sale of real estate and other properties for the benefit of creditors, of which CBL is the majority creditor.

The primary challenges facing the liquidation are:

- (1) Realizing a fair value from the sale of the remaining 420 acres of the Wellington Property.
- (2) The settlement of the \$73.8M loan from Clico Enterprises Limited.
- (3) Settling the outstanding IRS taxes.

Very truly yours

Craig A. (Tony) Gomez
President
Wellington Preserve Corporation
(In Chapter 11 Bankruptcy)
United States of America

Wellington Preserve Corporation
(In Chapter 11)

Statement of Assets at Estimated Realizable Values
And Liabilities As Expected to Rank

As at March 31, 2012
(Expressed in Bahamian Dollars)

ASSETS:

Investment property (Wellington)	\$ 30,000,000
Escrow cash - held by FWB	1,695,618
Total assets	31,695,618

LIABILITIES:

Clico Enterprises Limited	73,801,867
USA IRS Tax	1,000,000
Loan due to Clico (Bahamas) Limited (In Liquidation)	14,906
Total liabilities	74,816,773

ESTIMATED DEFICIT AS REGARDS MEMBERS **\$ (43,121,155)**

Wellington Preserve Corporation
(In Chapter 11)
List of Creditors

As at March 31, 2012
(Expressed in Bahamian Dollars)

CREDITORS:

Clico Enterprises Limited (In Liquidation)	\$ 73,801,867
Internal Revenue Services	1,000,000
Clico (Bahamas) Limited (In Liquidation)	14,906
Total	\$ 74,816,773

United States Bankruptcy Court
Southern District of Florida
www.flsb.uscourts.gov

Case Number: 10-22049-EPK
Chapter: 11

In re:

Wellington Preserve Corporation
c/o Ronald G. Neiwirth, Registered Agent
1395 Brickell Avenue
14th Floor
Miami, FL 33131

EIN: 98-0430995

NOTICE OF EVIDENTIARY HEARING

NOTICE IS HEREBY GIVEN THAT AN EVIDENTIARY HEARING will be held on **April 9, 2012 at 09:30 AM**, at the following location:

Flagler Waterview Building, 1515 N Flagler Dr Room 801 Courtroom B, West Palm Beach, FL 33401

to consider the following:

Objection to Claim of IRS [# 1-4], [Debtor's Objection to Claim 1(4) of the United States of America (Internal Revenue Service) Filed by Debtor Wellington Preserve Corporation. (186) and Response Thereto (193)

THE MOVANT (OR MOVANT'S COUNSEL if represented by an attorney) SHALL SERVE A COPY OF THIS NOTICE OF HEARING and, unless previously served, the above-described pleading on all required parties within the time frames required by the Bankruptcy Rules, Local Rules, or orders of the Court, and shall file a certificate of service as required under Local Rules 2002-1(F) and 9073-1(B). Any party who fails to properly serve any pleadings or other paper may be denied the opportunity to be heard thereon.

PLEASE NOTE: Photo identification is required to gain entrance to all federal courthouse facilities. Electronic devices, including but not limited to cameras, cellular phones (including those with cameras), pagers, personal data assistants (PDA), laptop computers, radios, tape-recorders, etc., **are not permitted** in the courtroom, chambers or other environs of this court. These restrictions (**except for cameras not integrated into a cell phone device**) do not apply to attorneys with a valid Florida Bar identification card, attorneys who have been authorized to appear by pro hac vice order and witnesses subpoenaed to appear in a specific case. An attorney seeking entry to the Ft. Lauderdale courthouse facilities must also be admitted to practice in the Southern District of Florida or be authorized to appear by pro hac vice order. **No one is permitted to bring a camera or other prohibited electronic device into a federal courthouse facility except with a written order signed by a judge and verified by the United States Marshal's Service. See Local Rule 5072-2.**

Dated: 1/19/12

CLERK OF COURT

By: Cindy Klopp
Courtroom Deputy

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division

IN RE: Case No.10-22049-BKC-EPK
Chapter 11
WELLINGTON PRESERVE CORPORATION
Debtor.

**MOTION FOR PARTIAL SUMMARY JUDGMENT RE: DIP'S OBJECTION TO
CLAIM 1-4 OF INTERNAL REVENUE SERVICE (ECF #186)**

WELLINGTON PRESERVE CORPORATION, the reorganized Debtor respectfully moves this Honorable Court for Partial Summary Judgment sustaining its objection to Claim No.1-4 of the United States of America (Internal Revenue Service) (hereafter the "IRS"), and in support thereof, respectfully submits the following:

INTRODUCTION

WELLINGTON PRESERVE CORP, a Florida Corp. (hereinafter, "WELLINGTON") is the reorganized Debtor in this case. It filed a Voluntary Petition for Chapter 11 relief on April 27, 2010 (ECF #1). On April 22, 2011, WELLINGTON joined by its parent company, CLICO ENTERPRISES, LTD., (a Bahamian limited liability company) ("CEL") filed their "Second Amended Joint Plan of Liquidation of Debtor and CLICO ENTERPRISES, LTD." (the "Joint Liquidating Plan") (ECF #152). The Plan was followed by an Order of the Court on Motion of WELLINGTON which set a Confirmation Hearing; set a deadline for objections to confirmation, waived the

necessity for a Disclosure Statement; and described the obligations of the Plan proponents (ECF #155).

The IRS filed an Objection to Confirmation of the Joint Liquidating Plan (ECF #162). The IRS Objection, at paragraph 4, complained that WELLINGTON and CEL improperly sought to subordinate the IRS' unsecured claims for penalties and interest on those penalties to other general unsecured creditors.¹ No one from the IRS appeared for the Confirmation Hearing however; either in person or via Court Call. (Confirmation Order, ECF #183, page 3, line 5-6). The IRS' Objection to Confirmation was overruled and the Joint Liquidating Plan was confirmed. (ECF #183).

The primary focus of this Motion for Partial Summary Judgment is concerned with the dispute framed by the parties prior to Confirmation – i.e., whether or not it was appropriate, given the factual context of this case, for IRS penalties and interest accrued on those penalties, which collectively can be considered as a “...fine, penalty, forfeiture, or damages (which) are not compensation for actual pecuniary loss suffered by the (IRS)” (see 11 U.S.C. §726(a)(4)), to be classified in a class subordinate to the class of general unsecured creditors (Class 3) under the Plan, as well as subordinate to the claim of CEL in the amount of \$73 million (Class 4) according to the Plan.

¹ It did not complain, however, about CEL subordinating itself to the Class 3 claims, so that part of the IRS' claim would be paid in full.

Accordingly, WELLINGTON respectfully moves for Partial Summary Judgment with respect to its objection to the Claim N o. 1-4 of the IRS for the following relief:

A. Determining that in the confirmed Plan, wherein CEL subordinated its general unsecured claim of \$73 million to trade creditors and the compensatory unsecured claim of the IRS so that they could be paid in full, rather than obtain only a partial distribution, demonstrated both valid consideration as well as a good and sufficient business reason for the separate classification of the IRS' non-compensatory penalty when measured against (a) the general antipathy of Chapter 11 reorganization courts to the allowance punitive claims, together with (b) congressional policy, which expressly subordinates such claims to general unsecured creditors in Chapter 7 liquidation.

B: Since CEL voluntarily subordinated to certain claims and not to others; notably the IRS penalties and the interests accrued thereon, if the Court should now determine, *ex post facto*, that the classification of the non-compensatory portion of the IRS claim was inappropriate, the IRS should then be limited to a dividend on its total unsecured claim of no greater percentage than all of the general unsecured creditors would have received in the absence of the voluntary subordination.

PROCEDURAL BACKGROUND

WELLINGTON filed a Voluntary Petition for Chapter 11 relief on April 27, 2010 (ECF #1). The original reason for the filing was to avoid potential execution on an existing judgment in favor of BRENNAN FINANCIAL, INC., the holder of an executable judgment in the approximate amount of \$1.45 million. See "Motion to Compromise Controversy with Brennan Financial Inc." (ECF #123). WELLINGTON, at the time of the Petition, was the owner and holder of approximately 525 acres of land in the Village of Wellington, Palm Beach County, Florida (See Bankruptcy Schedules, ECF ## 2 and 23). From its inception, the intention of WELLINGTON was to provide for the orderly liquidation of the property for the purpose of payment to its creditors, since, even in the absence of any mortgage encumbering the property (See Schedule "D".ECF #23), WELLINGTON's total outstanding debt (albeit, overwhelmingly unsecured) considerably exceeded the value of the property. According to the "Certificate of Proponent of Plan on Acceptance of Plan, etc." (ECF #172) the total of all debts was \$81,374,595.81. Of that amount, property tax claims were \$4,506,127.34 (*id*). The Class 1 claim under the Plan (BRENNAN FINANCIAL's secured claim) was \$1,445,490.58. Class 2 claims were mechanics' liens of \$51,855.90. Class 3 was the class of general unsecured claims. According to ECF #172. This class amounted to \$961,743.98. The universe of general unsecured claims was considerably larger, however. The total of all

general unsecured claims included those in Class 3, who might be called “unrelated trade creditors,” or “compensatory unsecured claims,” plus IRS’ general unsecured claim involving actual pecuniary loss.

Class 4 consisted of the voluntarily-subordinated debt to CEL in the amount of \$73,000,000. Class 5, in the amount of \$887,130.79, is the portion of the IRS’ claim 1-4 which consisted of penalties, and interest accrued upon those penalties.²

Under the terms of the confirmed Plan (ECF #152), WELLINGTON had three pending real estate transactions: The first was an exchange under Internal Revenue Code 1031 of certain lots owned by WELLINGTON, for equivalent lots owned by previous purchasers; the purpose of the exchange was to “square off” a parcel of land of slightly over 100 acres, which was to be sold for \$10,000,000.00 (the second transaction). The third transaction was the proposed sale of the remainder, or approximately 425 acres of land, for \$40,000,000.00. Thus, in all, Plan contemplated receipts of approximately 50 million dollars to be distributed to creditors, the face amount of whose claims exceeded \$81,000,000.00.³

CEL is engaged in a proceeding for “winding up” in the Supreme Court for the Bahamas, its home country. This is a form of court - supervised liquidation.

² While Wellington contests the amount of the IRS claims, this Motion for Partial Summary Judgment is limited to the confirmed plan’s treatment of the penalties and accrued interest thereon.

³ Since then, the third transaction has not come to fruition. Reorganized Wellington is currently entertaining offers for the 425 acres at a lower price.

The Joint Liquidating Plan was proposed by WELLINGTON and CEL, which is in liquidation under Gomez, as the Liquidator. Generally speaking, the Joint Second Amended Liquidating Plan (ECF #152) provided first for the payment of administrative costs; next for the payment of priority claims; next for secured real estate tax claims; then for payment of Class 1 (BRENNAN FINANCIAL INC.) then Class 2 mechanic's liens. All of those were to be paid in full, 100 cents on the dollar, as required.

When it came to unsecured creditors, however, it appeared that the proposed sale proceeds, according to the proposed sale contracts set forth in the Plan, would leave the approximate equivalent of a 53-54% distribution to general unsecured creditors.⁴

Rather than treat the *bona fide* trade creditors in such a manner, WELLINGTON and CEL instead proposed the Joint Liquidating Amended Plan, which was confirmed. Under the proposed Plan, unsecured creditors were divided into three different segments: The first was Class 3, consisting of IRS' compensatory general unsecured claim and the compensatory claims of trade creditors. The second group was Class 4, wherein CEL, holding the claim in the amount of \$73,000,000.00, enabled the Class 3 compensatory unsecured creditors to receive payment in full, rather than a pro-rated

⁴ The third initial contract sale which was contemplated by the Plan has since fallen through, and has not closed. A subsequent contract for the remaining 425 acres was approved by the court at \$32,500,000.00, which would have reduced the potential dividend if all general unsecured creditors were left together in one class, to approximately 44.8%.

percentage dividend, by voluntarily subordinating itself to the compensatory unsecured claims and thereby "gifting" a portion of the ultimate proceeds that it would otherwise have received, to them. CEL did not, however, voluntarily subordinate itself and its claim to the portion of the IRS claim for penalties and interest, which was placed in Class 5. The amount of the Class 5 portion of the IRS claim is \$887,130.79 (See Claim 1-4).

If the classification of claims under the confirmed Plan remains in force, then Class 5, as a matter of fact, will receive nothing, as there will be insufficient proceeds from the sale of the remaining property to satisfy the Class 4 claim. On the other hand, should the Court decide to invalidate the classification established by the confirmed Plan, then the maximum IRS should be able to recover on its penalty claim and the interest thereon, should be no more than the pro rata general unsecured share it would have received, had the classification not been split; IRS should not receive a windfall of 100% of the penalties and the interest thereon.

ARGUMENT

The IRS' last Amended Proof of Claim (Claim #1-4) includes a priority portion of \$521,747.22; a general unsecured portion of \$116,824.30 for interest; \$887,130.79 in penalties and interest accrued upon the penalties. In its Joint Liquidating Plan, WELLINGTON and CEL classified the \$887,130.79 portion of the IRS' general

unsecured claim in Class 5, which is subordinate in distribution to all other general unsecured creditors. Consideration was given by plan proponent CEL for the classification, via its voluntary subordination to all compensatory general unsecured claims. The dominant size of CEL's allowed claim made that subordination meaningful. As a result, Class 3 general unsecured compensatory claims have already received 100% of their allowed amount.⁵

Policy Concerning Punitive or Penalty Claims in General

Both in Chapter 11 and in Chapter 7, the law disfavors the allowance of punitive claims on equal footing with compensatory claims, in the unsecured class. The general reason for the disfavor is that penalties and punitive damages are designed to punish a wrongdoer; the practical result of allowing such claims on equal footing with claims that actually represent compensation for pecuniary loss, is that the wrong parties are punished—the creditors who sold goods or advanced credit in good faith see their share of the proceeds of a liquidation diluted, in a misguided effort to punish the perpetrators of the problem, who are usually long gone.

In Re Hollywell, 913 F.2d 873, 880 (11th Cir. 1990), the 11th Circuit explained:

Section 1122 provides that “a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. 11 U.S.C.A. § 1122 (1979). . . . Although the

⁵ Due to a dispute over the amount of the IRS' claim, Wellington reserved 110% of the total amount of the IRS claim pending the outcome of the dispute.

proponent of a plan of reorganization has considerable discretion to classify claims and interests according to the facts and circumstances of the case, this discretion is not unlimited. '[T]here must be some limit on a debtor's power to classify creditors The potential for abuse would be significant otherwise.' (Citation omitted). If the plan unfairly creates too many or too few classes, if the classifications are designed to manipulate class voting, or if the classification scheme violates basic priority rights, the plan cannot be confirmed (emphasis added).

In re *Main Line Corp.*, 335 B.R. 476, 478-79 (S.D. Fla. Banker. 2005), Judge Hyman refused to confirm a Plan. The Plan at issue would have created two different classes of unsecured claims, despite the fact that both of them involved the same legal rights and the same stake in the outcome; therefore, there was no legitimate business reason to separate the claims, and the same was an attempt to gerrymander the voting.

The court explained:

U.S.C. § 1122 governs the classification of claims and interests under a reorganization plan and provides:

(a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

(b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

While the statute itself deals only with the requirement that dissimilar claims may not be classified together, courts have uniformly held that it also prohibits separate classification of similar claims unless supported by legitimate business reasons. One clear rule that emerges from § 1122 claims classification case law is 'thou shalt not classify similar claims differently in order to gerrymander an affirmative vote on a reorganization plan.'

Although the proponent of a plan of reorganization has considerable discretion to classify claims and interests according to the facts and circumstances of the case, this discretion is not unlimited. 'There must be some limit on a debtor's power to classify creditors . . . The potential for abuse would be significant otherwise.' If the plan unfairly creates too many or too few classes, if the classifications are designed to manipulate class voting, or if the classification scheme violates basic priority rights, the plan cannot be confirmed. Furthermore, Courts have found that where all unsecured claims receive the same treatment in terms of the plan distribution, separate classification of unsecured claims is highly suspect. (All citations omitted).

Here, there is a significant tradeoff in the Plan. It provides for payment in full to all general unsecured creditors except CEL, which is the largest general unsecured creditor, by far. The only other debt not paid in full is the IRS penalty claim component, classified in Class 5. CEL is a proponent of the Plan and it voluntarily subordinated itself to trade creditors and to the valid amount of all IRS claims for actual pecuniary loss or taxes, but did not subordinate itself to penalty claims. If it had not done so, then all of the general unsecured creditors would have been in a single class along with the entire general unsecured IRS claim, including penalties and interest thereon. Had this

been done, then the distribution to general creditors other than CEL, but including the IRS, would have been approximately 55%, rather than 100%, based on the original sales contract.⁶

According to *Hollywell Corp., supra*, the proponent of a Plan has considerable discretion to classify claims and interests according to the facts and circumstances of the case, although that discretion is not unlimited. Similarly, *In re Main Line Corp., supra*, explains that separate classification of similar claims is not permitted unless supported by a legitimate business reason. Here, there are legitimate business and policy reasons for the subordination of the IRS penalty claim. First, the Plan pays compensatory general unsecured creditors other than CEL in full. Second, this was done via voluntary subordination by CEL, the dominant creditor. Had CEL not done so, then neither the IRS penalty claim nor its unsecured compensatory claim would have had the opportunity for full payment – only a fraction. There is a tradeoff in the Plan and the tradeoff is a reasonable exercise of business judgment.

Policy considerations also support the subordination of the penalty portion together with accrued interest thereon, of the IRS claim.

Binding authority in the Eleventh Circuit holds that punitive damages are not allowable in bankruptcy, as the effect of allowance of such a claim would be to dilute

⁶ Now, the projected percentage would be @44%, due to current circumstances.

the pro rata yield to the unsecured creditors. Punitive damages are designed to deter future wrongful conduct. This end would not be served when the damages are paid from the wrongdoer's estate, rather than from his own pocket. The result would be that "the effect of allowing a punitive damages claim would be to force innocent creditors to pay for the bankrupt's wrongdoing. Such a result would be inequitable, and a punitive damages claim was properly stricken." *In Re: GAC Corporation*, 681 F. 2d 1295, 1301 (11th Cir. 1982). This policy is echoed in the Code in Chapter 7 cases.

11 USC Section 726(a) (4) is part of the section entitled "Distribution of Property of the Estate." Section 726 sets a sequence of priorities for payment of final distributions. Sub Section (a) (4) specifically subordinates claims:

...whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim. [Emphasis added]

While the IRS is correct in arguing that 11 USC Section 726 does not automatically apply in respect of chapter 11 cases, there is no logically justifiable reason why the same principle should not be applied to a liquidation taking place in Chapter 11, as opposed to a liquidation taking place in a Chapter 7.

The IRS argues that *U.S. v. Noland*, 517 US. 535, 537 (1996) prohibits the subordination of a claim by the IRS for penalties and the interest accrued thereon, but *U.S. v. Noland* is inapposite.

The issue in *Noland* was the subordination of IRS' post petition claims for non-pecuniary tax penalties that accrued after the debtor had filed a petition under Chapter 11, but before the case was converted to Chapter 7. The penalties in question were Chapter 11 administrative expense priority claims; not pre-petition. The bankruptcy court had subordinated the IRS penalties in the ensuing Chapter 7 liquidation, as a matter of equity. The Sixth Circuit Affirmed the Bankruptcy Court and "concluded that 'post petition, non-pecuniary loss penalty claims' are 'susceptible to subordination' by their very 'nature.'" *Id.* at 541.

The Supreme Court reversed, explaining that: "(w)e do hold that (in the absence of a need to reconcile conflicting congressional choices) the circumstances that prompt a court to order equitable subordination must not occur at the level of policy choice at which Congress itself operated in drafting the Code." *Id.* at 543 "in this instance, Congress could have, but did not, deny non-compensatory, post petition tax penalties the first priority given to other administrative expenses, and bankruptcy courts may not take it upon themselves to make that categorical determination under the guise of equitable subordination." *Id.* at 543.

Here, *GAC, supra*, has never been expressly overruled. Moreover, the subordination was part of a tradeoff, for which consideration was given within the plan - the consensual subordination by the dominant creditor to compensatory general unsecured claims, which allowed that class, as defined by the Plan, to achieve more than double what it would otherwise have received, and moreover, to receive its dividend promptly, rather than waiting for the sale of all of the property, to see how the eventual liquidation came out.

Why, then, should the IRS obtain an \$887,130.79 windfall, simply because the liquidation in question took place in a Chapter 11, rather than a Chapter 7 case?

The Confirmed Plan Is *Res Judicata* as To Classification of Claims

11 USC Section 1141 is entitled "Effect of Confirmation." It provides, in relevant part, that:

(a) except as provided in sub sections (d) (2) and (d) (3) of this section, the provisions of a confirmed plan bind the debtor ... any entity acquiring property under the plan, and any creditor, equity security holder... whether or not the claim or interest of such creditor... is impaired under the plan and whether or not such creditor... has accepted the plan.

Here, the IRS filed an objection to the plan. No one from the IRS appeared at the confirmation hearing to argue its objection to the plan. In addition to the classification of a portion of its claim, the court was also aware of an objection to the IRS claim itself. In accordance with normal procedure, the disputed claim was fully reserved for, under

the plan. The Joint Second Amended Plan (ECF #152) was confirmed. According to Section 1141 (a), the confirmed plan is binding upon all creditors, including the IRS. See, e.g.: *In Re Greenlee*, 2010 Bankr. Lexis 96 (Bankr. M.D. AL 2010) citing *Florida Department of Revenue v. Omine (In Re Omine)*, 485 F.3d 1305, 1311-12 (11th Cir. 2007) (quoting *In Re Aircraft Corp.*, 244 F.3d 1289, 1296 (11th Cir. 2001)). Confirmation of a plan bars the parties from re-litigating a matter that was, or could have been raised in that action. Here, IRS did raise an objection to the plan on the basis of classification, but the objection was overruled.

The Order confirming the Chapter 11 plan was rendered by this Court, which is a court of competent jurisdiction. As such, it is a final judgment on the merits. “(A) bankruptcy court’s order confirming a plan of reorganization has given the same effect as any district court’s final judgment on the merits.” *Wallis v. Justice Oaks II, Ltd. (In Re Justice Oaks II)*, 898 F. 2d 1544, 1550 (11th Cir. 1990).

Carve Out and Gifting

Some rearrangement of the unsecured creditors’ classification was permissible, by reason of CEL’s gifting of additional funds to the compensatory general unsecured creditors, but not to the IRS’ penalty claim.

The seminal case on gifting from one class to another is *In Re SPM Manufacturing Corp.*, 984 F. 2nd 1305 (1ST Cir. 1993). There, an under secured creditor negotiated a deal

under which it would pay to the Estate certain portion of the proceeds it was to receive in part satisfaction of its allowed secured claim. The gift was directed to general unsecured creditors, although the IRS held a substantial priority tax claim which would not receive any portion of the “carve out.”

Ultimately, the “carve out” in favor of unsecured creditors was approved on the basis that there was no misallocation of property of the estate; rather, the funds in question were clearly destined to be paid against an otherwise-unavoidable secured claim, and it was the secured creditor who authorized its dividend to be redirected to general unsecured creditors.

The practice of asset reallocation, also known as “gifting” or “sharing” has recently emerged as a powerful tool in accelerating efficient and non-adversarial means by which to complete and conclude a Chapter 11. Importantly, it serves to provide value to general unsecured creditors who would otherwise be frequently be “out of the money.” This “gifting” may bypass an intermediate class of creditors, who argue that the absolute priority rule of 11 USC Section 1129 is violated. Section 1129 requires that no class of creditors may receive assets from the estate, if any class senior to the junior class is impaired and not paid in full. The offended creditor may not receive less than he would receive in the Chapter 7 liquidation of the same estate.

Here in Chapter 7 liquidation, the IRS' Class 5 penalties and the interest thereon would receive nothing. Nor, other than the voluntarily subordinating CEL – i.e., the grantor of the gift – is anyone junior to the IRS receiving anything, either. If done properly, the reallocation should pass legal muster, because the distribution to the beneficiaries comes from assets which would otherwise be destined to be paid to the grantor of the gift – CEL, another creditor in the case. Here, it is beyond dispute that CEL is owed an enormous amount of money. The effect of its voluntary gift, carried out in the form of subordination, was to allow the recipients of the gift – i.e., the compensatory unsecured creditors in Class 3 - to receive 100% of the allowed amount of their claims forthwith, instead of waiting to see what the final liquidation would bring by way of percentage dividend, months or years later. See *Gifts and Asset Allocation in Chapter 11 Proceedings: A Synthesized Approach*, Isenberg, Leah, 29-7 ABIJ 50 (September 2010).

CONCLUSION

For the foregoing reasons, the Reorganized Debtor submits that it is entitled to partial Summary Judgment on its objection to Claim 1-4 of the IRS as follows:

- A. Determining that in the confirmed Plan, where CEL subordinated its general unsecured claim of \$73 million to trade creditors and the compensatory unsecured claim of the IRS so that they could be paid in full, rather than obtain

only a partial distribution, demonstrated both valid consideration as well as a good and sufficient business reason for the separate classification of the IRS' non-compensatory penalty.

B. Since CEL voluntarily subordinated to certain claims and not to others; notably the IRS penalties and the interests accrued thereon, if the Court should now determine, *ex post facto*, that the classification of the non-compensatory portion of the IRS claim was inappropriate, the IRS should then be limited to a dividend on its total unsecured claim of no greater percentage than all of the general unsecured creditors would have received in the absence of the voluntary subordination.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A).

Respectfully submitted,

/s/ Ronald G. Neiwirth
RONALD G. NEIWIRTH
Florida Bar No. 152175
BOYD & JENERETTE
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rneiwirth@boyd-jenerette.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of February 2012 electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Ronald G. Neiwirth
Ronald G. Neiwirth

**CLICO Enterprises, Ltd.
c/o Craig A. (Tony) Gomez, Liquidator
P.O. Box N 1991
28 Cumberland Street
Nassau Bahamas**

**CLICO (Bahamas) Limited
c/o Craig A. (Tony) Gomez
P.O. Box N 1991
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Nassau, Bahamas**

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Suite 23
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**Jamie J. Byington
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#900
Coral Gables, FL 33134-7420**

**Office of the U.S. Trustee
51 S.W. First Avenue, 12th Fl
Miami, FL 33130**

**F. Martin Perry
Perry & Taylor, P.A.
2401 PGA Blvd., # 110
Palm Beach Gardens, FL 33410-3515**

**Philip M. Schreiber
U.S. Department of Justice, Tax Division
POB 14198
Washington, DC 20044**

00127161 - 5; WEL01 - RN1005



ORDERED in the Southern District of Florida on March 2, 2012.

Erik P. Kimball, Judge
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

In re: Case No.:10-22049-EPK
Chapter 11
Wellington Preserve Corporation,
Debtor(s).
_____ /

**ORDER SETTING BRIEFING SCHEDULE
ON MOTION FOR SUMMARY JUDGMENT**

THIS MATTER came before the Court upon the *Motion for Partial Summary Judgment Re: DIP's Objection to Claim 1-4 of Internal Revenue Service (ECF #186)* [ECF No. 265] (the "Motion for Summary Judgment") filed by Wellington Preserve Corporation (the "Movant"). With the Court being fully advised in the premises, it is hereby **ORDERED** that:

1. United States of America (Internal Revenue Service) (the "Respondent") has until March 22, 2012 to respond to the Motion for Summary Judgment. The title of the responsive pleading shall reference the title of the original motion. Failure to file a timely response may result in the granting of the Motion for Summary Judgment.

2. Movant and Respondent are hereby ordered to file with this Court a Joint

Stipulation of Facts on or before March 22, 2012. The title of the Joint Stipulation of Facts shall reference the title of the original motion.

3. Movant will then have until April 2, 2012 to file a reply to the response. The title of the reply shall reference the title of the original motion.

4. Absent prior permission of the Court, no party shall file any legal memorandum exceeding twenty (20) pages in length, with the exception of a reply which shall not exceed ten (10) pages in length. Title pages preceding the first page of text in a memorandum, signature pages, and certificates of service shall not be counted as pages for purposes of this rule. If a party wants the Court to consider affidavits, declarations, or other materials in support of or in opposition to the motion, then: (A) the movant must serve with the motion all such materials; and (B) the opposing party must serve with the opposing memorandum all such materials in opposition to the motion. The movant may serve a reply memorandum with affidavits, declarations, or other materials provided that all such materials are strictly limited to rebuttal of matters raised in the opposing memorandum. Absent prior permission of the Court, no party shall file affidavits or declarations that exceed twenty (20) pages in the aggregate.

###

Copies Furnished To:

Ronald G Neiwirth, Esq.

Ronald G Neiwirth, Esq. is directed to serve a conformed copy of this Order on all appropriate parties not listed above and to file a certificate of service with the court.



ONE BRICKELL SQUARE | 801 BRICKELL AVENUE, SUITE 1440 | MIAMI, FLORIDA 33131

(P) (305) 537-9111 | (F) (305) 537-9130 | (W) BOYD-JENERETTE.COM

VIA E-MAIL / US MAIL

RONALD G. NEIWIRTH
RNEIWIRTH@BOYD-JENERETTE.COM
DIRECT PHONE (305) 537-9114
DIRECT FAX (305) 537-9130

March 5, 2012

Philip M. Schreiber
U.S. Department of Justice, Tax Division
POB 14198
Washington, DC 20044

Re: *Wellington Preserve Corp., Chapter 11. Debtor's Objection to IRS Claim*

Dear Mr. Schreiber:

The purpose of this letter is to propose a consensual resolution to the dispute between the reorganized Debtor and the Internal Revenue Service.

We have now filed a Motion for Partial Summary Judgment, which I am sure that you have seen. We would like to explore with you a consensual resolution of the outstanding disputes, which we would intend to culminate in an agreement, approval by the Bankruptcy Court of the agreement, and immediate payment of the agreed amount.

We do not believe that there is any actual dispute over the facts that we have laid out in the Motion for Partial Summary Judgment. IRS' claim has a priority portion; a general unsecured component denominated as interest; a \$500.00 estimated component; and a large measure of penalties, and interest accrued on the penalties.

Part of the Plan included the voluntary subordination by CLICO Enterprises Ltd., the dominant creditor, to the general unsecured claims which were placed in Class 3, but not to the IRS penalty portion of the claim, nor the accrued interest on the penalties.

We believe that if you should prevail – i.e. the Bankruptcy Court determines that the classification of the IRS penalties, and the interest thereon should not have been placed in a separate class, then CLICO Enterprises Ltd. had not subordinated to that component of your client's claim. Based upon current numbers, absent subordination, the eventual distribution to a unified general unsecured class would appear to be approximately 44%.

We therefore propose the following:

The reorganized Debtor to pay the total sum of \$900,000.00 in full and final satisfaction of IRS' claims in the Chapter 11 case. Payment to be made promptly following approval by the Court of the proposed consensual agreement.

We believe that this is very close to what IRS would obtain should it prevail. It would eliminate all further dispute and discussion over the tax returns for 2004, 2005, and 2006, as well as all issues about imputed interest and the like. Moreover, it would allow IRS to receive payment promptly.

May we have your thoughts?

We are aware that a proposal of this nature must pass through a number of hands, both in your office and that of your client. We suggest that a consensual resolution will save both sides a considerable amount of further effort and preparation. We note that the current response deadline is March 22 for the Motion for Partial Summary Judgment, so we see that as a date to try to get this resolved.

Once again, we look forward to hearing from you with your earliest convenience.

Very truly yours,

BOYD & JENERETTE, P.A.



Ronald G. Neiwirth

cc: Howard Gorton, Esquire
Mr. Craig A. "Tony" Gomez
Mr. Edward Rolle
Norman I. Weil, Esquire



U.S. Department of Justice

Tax Division

Civil Trial Section, Southern Region

Trial Attorney: Philip M. Schreiber
 Attorney's Direct Line: (202) 514-6069
 Facsimile Nos. (202) 514-4963 or 514-9868

Mailing Address:
 P. O. Box 14198
 Washington, DC 20044

Street address:
 555 4th St., NW, Ste. 6222
 Washington, DC 20001

5-18-24402
 CMN 2011101714

March 9, 2012

By Electronic and US Mail

Ronald G. Neiwirth
 Boyd & Jenerette, P.A.
 801 Brickell Ave, Suite 1440
 Miami, FL 33131
rneiwirth@boyd-jenerette.com

Re: In re: Wellington Preserve Corporation, 10-22049-EPK (S.D. Fla. Br.)

Dear Mr. Neiwirth:

We have received your e-mails dated March 8 & 9, 2012 containing an offer to settle this bankruptcy case, which is based on the IRS' March 9, 2012 Proof of Claim for the unpaid taxes, interest, and penalties of Wellington Preserve Corporation ("Wellington") for the 2005 tax year. Based on your correspondences, we understand the offer is as follows:

1. The IRS shall have an allowed ^{PRIORITY} unsecured claim of \$521,247.22 (\$403,484.50 in tax plus \$117,762.72 in interest), representing Debtor's unpaid income tax liability for 2005, plus interest to the petition date. The IRS' allowed priority claim will be paid in full promptly upon the bankruptcy court's approval of the proposed settlement. Plan
2. The IRS shall have an allowed Class 3 unsecured general claim of \$478,752.78, representing the penalties the IRS imposed on Debtor for failure to withhold and pay over taxes pursuant to 26 U.S.C. § 1442. Payment on the IRS' general unsecured claim in the amount of \$478,752.78 will also occur promptly upon approval by the bankruptcy court of the proposed settlement.
3. Wellington will therefore pay the IRS a total of \$1,000,000 on account of the above-referenced claims.
4. Since Class 5, under the confirmed Second Amended Plan of Reorganization, currently consists entirely of IRS penalties and interest accrued thereon, as a result of the proposed settlement there will no longer be any Class 5 claims.

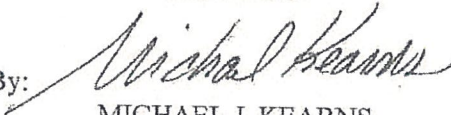
5. This settlement would resolve any and all disputes between the Reorganized Debtor, Wellington, on the one hand, and the IRS, on the other, with respect to all matters to and through May 16, 2011, the date upon which the bankruptcy court confirmed Wellington's liquidating plan. The settlement would not cover Wellington's returns and tax liabilities, if any, with respect to the 2011 tax year or thereafter.
6. To avoid unnecessary labor and expense, the parties would mutually agree to seek a continuance of the evidentiary hearing presently scheduled for April 9, 2012, and all prehearing deadlines, if the United States does not act on a proposed settlement offer by March 22, 2012.

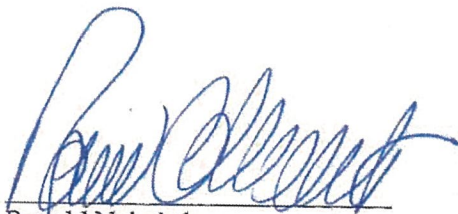
If you would like to make an offer to settle on the terms and conditions set forth above, please sign and date the letter below. Upon receipt of the signed acknowledgement, we will process the offer under our normal procedures.

Once we have completed our evaluation, final action will be taken by the Attorney General or his delegate. Please understand that, unless you receive a formal written acceptance of this offer from the Attorney General or his authorized delegate, the United States is in no way committed or bound to a settlement in this matter.

Sincerely yours,

JOHN A. DiCICCO
Principal Deputy Assistant Attorney General,
Tax Division

By: 
MICHAEL J. KEARNS
Chief, Civil Trial Section,
Southern Region


Ronald Neiwirth
Counsel for Wellington Preserve Corporation

Date: 3/9/12

**U.S. Department of Justice****Tax Division***Civil Trial Section, Southern Region*

Trial Attorney: Philip M. Schreiber
Attorney's Direct Line: (202) 514-6069
Facsimile Nos. (202) 514-4963 or 514-9868

Mailing Address:
P. O. Box 14198
Washington, DC 20044

Street address:
555 4th St., NW, Ste. 6222
Washington, DC 20001

5-18-24402
CMN 2011101714

March 12, 2012

By Electronic and US Mail

Ronald G. Neiwirth
Boyd & Jenerette, P.A.
801 Brickell Ave, Suite 1440
Miami, FL 33131
rneiwirth@boyd-jenerette.com

Re: In re: Wellington Preserve Corporation, 10-22049-EPK (S.D. Fla. Br.)

Dear Mr. Neiwirth:

This refers your March 9, 2012 offer, as amended on March 12, to settle debtor's objection to the IRS' proof of claim in the above-referenced case. Your offer has been accepted on behalf of the Attorney General. After the bankruptcy court enters its order approving of the settlement, please send a certified check or a cashier's check, made out to "United States Treasury," by overnight mail to:


Philip M. Schreiber
U.S. Department of Justice, Tax Division
555 4th Street, NW
Room 6222
Washington, DC 20001

If you have any questions, please contact Mr. Schreiber.

Sincerely yours,

JOHN A. DiCICCO
Principal Deputy Assistant Attorney General,
Tax Division

By:


MICHAEL J. KEARNS
Chief, Civil Trial Section,
Southern Region

cc (US Mail):

Kenneth A. Hochman
Associate Area Counsel
Internal Revenue Service
1000 South Pine Island Road, Royal Palm One, Suite 300
Plantation, FL 33324
Attn: D'Aun Clark

Wifredo A. Ferrer
United States Attorney for the Southern District of Florida
99 NE 4th Street
Miami, FL 33132
Attn: Civil Chief

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division

IN RE:

Case No.10-22049-EPK
Chapter 11

WELLINGTON PRESERVE CORPORATION

Reorganized Debtor,

_____/

**DEBTOR'S MOTION FOR APPROVAL OF SETTLEMENT WITH
UNITED STATES OF AMERICA (INTERNAL REVENUE SERVICE)
(Cancels Evidentiary Hearing Scheduled for April 9, 2012)**

WELLINGTON PRESERVE CORPORATION, the Reorganized Debtor herein, having confirmed its Chapter 11 Plan on May 16, 2011 (the "Debtor"), through undersigned counsel, and pursuant to Fed. R. Bankr. P. 9019, moves for the entry of a Order of this Honorable Court approving Debtor's proposed compromise and settlement of its pending controversies with the United States of America (Internal Revenue Service) ("IRS") (the "Motion"). In support of the Motion the Debtor respectfully submits the following:

1. The Debtor commenced this case with a voluntary filing of a Chapter 11 Petition for Relief on April 27, 2010 (the "Petition Date"). After the Petition Date, on May 11, 2010, the IRS filed its Proof of Claim No. 1 in the Chapter 11 case. Its most recent amendment to its Claim No. 1 was filed as Claim No. 1-5 on March 9, 2012.
2. According to claim 1-5, the IRS sought a total of \$521,247.22 as unsecured priority claims, and the further sum of \$1,003,855.09, including penalties and interest, as general unsecured claims, for a total claim of \$1,525.102.31.

3. The Second Amended Chapter 11 Plan proposed by the Debtor and its parent company and primary creditor, CLICO ENTERPRISES LTD., provided that allowed priority claims would be paid in full, in cash on the effective date of the Plan, or, if disputed, following allowance by the Court. The Plan split the IRS non-priority unsecured claims between those which the Debtor considered to be compensatory - i.e., \$116,824.30, which was placed in Class 3 under the Plan, and those which it considered to be claims which were not in compensation for actual pecuniary loss (referring to penalties and accrued interest thereon) in the amount of \$887,130.79, which were placed in Class 5.

4. The IRS objected to confirmation of the Plan, claiming that it could not be confirmed because the Debtor could not classify the different components of the IRS' non-priority unsecured claim separately. Inasmuch as there were other disputes to the IRS' claim, the Plan reserved 110% of the entire claim pending the outcome of the Debtor's disputes with the IRS, and the Second Amended Plan was confirmed over the objection of the IRS (see Order of Confirmation, May 16, 2011, ECF No. 152).

5. The Debtor proceeded to file an Objection to the claim of the IRS (ECF No. 186), and the IRS responded. Finally, the Debtor filed a Motion for Partial Summary Judgment regarding its objection to the IRS claim.

6. Since the filing of the Objection, the Debtor and the IRS have diligently undertaken discovery and have attempted to resolve their differences. They have now reached a consensual resolution of their dispute, subject to the approval of this Court.

TERMS OF THE SETTLEMENT

7. Claim No. 1-5 of the Internal Revenue Service shall be allowed in part, and disallowed in part, as follows.

a) The unsecured priority portion of the IRS' claim shall be allowed in the full amount of \$521,247.22, as claimed in its March 9, 2012 Amended Proof of Claim, No. 1-5.

b) The general unsecured portion of the IRS' claim No. 1-5 shall be allowed as a Class 3 General Unsecured Claim to the extent of \$478,752.78; and the remainder of the IRS' general unsecured claim shall be disallowed.

c) The Debtor shall pay to the IRS 100% of the allowed unsecured priority claim and 100% of the allowed general unsecured claim within thirty (30) days following entry of an Order of this Court approving this proposed settlement.

d) This settlement shall resolve all issues between the Debtor and the IRS concerning its Proof of Claim and any and all open matters for tax years which concluded before the date of confirmation of the Plan on May 16, 2011. It shall be without prejudice as to any matters between the Debtor and the IRS, which arose after the Confirmation Date.

8. A copy of the parties' settlement letter, as amended, is attached as Exhibit "A."

DISCUSSION

9. As many courts have stated, "approval of a settlement in a bankruptcy proceeding is within the sound discretion of the Court, and will not be disturbed or modified on appeal unless approval or disapproval in an abuse of discretion." *In Re: Arrow Air, Inc.*, 85 Bankr. 886, 891 (Bankr. S.D. Fla. 1988) (citing *Rivercity v. Herpel (In Re: Jackson Brewing Co.)*, 624 F2d 599,

602-03 (5th Cir. 1980); *Anaconda-Ericsson, Inc. v. Hessen, (In Re: Teltronics Servs., Inc.)*, 762 F2d 185, 189 (2nd Cir. 1985); *In Re Prudence Co.*, 98 F2d (2nd Cir. 1938), *cert. denied sub nom. Stein v. McGrath*, 306 U.S. 636 (1939).

10. In determining whether a proposed compromise is in the best interests of the estate, the Bankruptcy Court should consider the following factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interests of the creditors and a proper deference to their reasonable views in the premises. *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990), *cert denied*, 498 U.S. 959 (1990).

11. After consideration of the probability of success, and the complexity, expense, inconvenience and delay attendant to continued litigation of the Preference Action, the Debtor-In-Possession believes in its business judgment that the compromise set forth above is fair and equitable and in the best interests of the parties and the Debtor's Estate.

12. In particular, the Reorganized Debtor, following careful consideration of controlling law, and all facts relevant to the consideration of this Motion, would represent the following:

a). A settlement would eliminate the time, expense, another resources that would need to be allocated to the continue to prosecution of the Debtor's objection to the IRS' claim, with the potential for adverse ruling, appeal, and further delay;

b). The proposed settlement results in a significant reduction of the IRS' claim - i.e., \$521,247.22. Since the Debtor had reserved 110% of the gross amount of the claim

pending the outcome of the dispute, this will “free up” significant cash for other uses by the Reorganized Debtor.

13. The Reorganized Debtor further believes that it is in the best interest of the debtor and its remaining creditor, CLICO ENTERPRISES, LTD., to settle the dispute with the IRS. The Debtor believes that the foregoing factors weigh in favor of the proposed settlement.

14. A proposed form of Order approving settlement is attached as Exhibit “B.”

WHEREFORE the Debtor respectfully prays for the entry of an Order approving the proposed compromise with the United States of America (Internal Revenue Service), fixing the allowed amount of the IRS’ claims and providing for payment in full of the allowed claims, in order to bring this case to a resolution.

Respectfully submitted,

/s/Ronald G. Neiwirth

Ronald G. Neiwirth
Fla. Bar No. 152175
FOWLER WHITE BURNETT P.A.
Espirito Santo Plaza, 14th Floor
1395 Brickell Avenue
Miami, Florida 33131-3302
Telephone: (305) 789-9200
Facsimile: (305) 789-9201

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served this 13th day of March 2012, upon all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Ronald G. Neiwirth
Ronald G. Neiwirth

CLICO Enterprises, Ltd.
c/o Craig A. (Tony) Gomez, Liquidator
P.O. Box N 1991
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Nassau Bahamas

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Philip M. Schreiber
U.S. Department of Justice, Tax Division
POB 14198
Washington, DC 20044

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division

IN RE:

Case No.10-22049-EPK
Chapter 11

WELLINGTON PRESERVE CORPORATION

Reorganized Debtor.

ORDER GRANTING DEBTOR'S MOTION FOR APPROVAL
OF THE SETTLEMENT WITH THE UNITED STATES OF AMERICA
(INTERNAL REVENUE SERVICE)

THIS MATTER came before the Court the ____ day of March 2012, the date set for hearing in respect of the debtor's Motion for approval of its proposed settlement with the United States of America (Internal Revenue Service), concerning disputes over the Internal Revenue Service's Claim No. 1-5.

The Court having reviewed the file, and having read and considered the relevant pleadings and being otherwise fully advised in the premises, it is:

ORDERED that:

1. The proposed settlement between the Reorganized Debtor and Internal Revenue Service is **APPROVED**;

2. The unsecured priority claim of the Internal Revenue Service is allowed in the amount of \$521,247.22;

3. The Class 3 General Unsecured Claim of the Internal Revenue Service is allowed to the extent of \$478,752.78; and

4. The Reorganized Debtor is authorized and directed to make payment in full of both allowed components of the Internal Revenue Service's claim, totaling the sum of \$1,000,000.00, within thirty (30) days following the entry of this Order.

#

Copies furnished to:

Ronald G. Neiwirth, Esq.
Philip M. Schreiber, Esq.

Mr. Neiwirth to furnish conformed copy of this Order upon all parties-in-interest, and file a Certificate of Service with the Court.