

1 UNITED STATES BANKRUPTCY COURT
2 DISTRICT OF MINNESOTA

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4 In Re:

5 Petters Company, Inc., et.al.

6 Case No. 08-45257

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8

9 BEFORE THE HONORABLE GREGORY F. KISHEL

10 United States Bankruptcy Judge

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12 * * *

13 TRANSCRIPT OF PROCEEDINGS

14 January 27, 2009

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18 Proceedings recorded by electronic sound recording,
19 transcript prepared by transcription service.

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22 NEIL K. JOHNSON REPORTING AGENCY
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24 Saint Paul, Minnesota 55102
25 LESLIE R. PINGLEY

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25

1 APPEARANCES

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MR. JAMES A. LODOEN, Attorney at Law, 80
5 South Eighth Street, Suite 4200, Minneapolis, Minnesota
6 55402 appeared on behalf of Debtors.

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MR. MICHAEL E. RIDGWAY and MR. ROBERT
10 RASCHKE, U.S. Trustee's Office, 300 South Fourth
11 Street, Suite 1015, Minneapolis, Minnesota 55415
12 appeared as U.S. Trustees.

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MR. JAMES M. JORISSEN and MR. BRIAN
16 KRAKAUER, Attorneys at Law, 100 South Fifth Street,
17 Suite 2500, Minneapolis, Minnesota 55402 appeared on
18 behalf of Ritchie Special Credit Investments, Ltd.,
19 Rhone Holdings II, Ltd., Yorkville Investment I, LLC,
20 Ritchie Capital Structure Arbitrage Trading, Ltd., and
21 Ritchie Capital Management, Ltd.

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1 APPEARANCES (CONT'D)

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4 MR. DAVID E. RUNCK, Attorney at Law,
5 775 Prairie Center Drive, Suite 400, Eden Prairie,
6 Minnesota 55344 appeared on behalf of the Unsecured
7 Creditor's Committee.

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10 Also present: Douglas Kelley

11 Dennis Ryan

12 Rick Chesley

13 George Singer

14 Ronald Peterson

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1 P R O C E E D I N G S

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3 THE COURT: We are on the record.

4 The matter at bar is in the jointly administered
5 Chapter 11 cases under the lead case of Petters
6 Company, Inc., File 08-45257.

7 Today's hearing concerns the United
8 States Trustee's appointment of a single trustee
9 for the estates of the various debtors in this
10 group of cases and the objection of certain
11 parties in interest to it.

12 I will ask counsel to note appearances
13 for record here first.

14 MR. JORISSEN: Good afternoon, Your
15 Honor, James Jorissen on behalf of Ritchie
16 Capital Management, Ltd., Limited, Ritchie
17 Capital Structure Arbitrage Tradings, Ltd.,
18 Ritchie Special Credit Investments, Ltd.,
19 Yorkville Investment I, LLC and Rhone Holdings
20 II, Ltd.

21 Also in court with me today, Your Honor,
22 is Brian Krakauer from Sidley & Austin in
23 Chicago, my co-counsel. Thank you.

24 THE COURT: Very good.

25 MR. RUNCK: Good afternoon, Your

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1 Honor. David Runck on behalf of the Unsecured
2 Creditor's Committee and with me today is
3 Mr. Ronald Peterson who's the chairperson of our
4 committee.

5 THE COURT: All right.

6 MR. LODOEN: James Lodoen on behalf
7 of Douglas Kelley. Also with me today is George
8 Singer and Mr. Kelley is in the courtroom as
9 well.

10 MR. RIDGWAY: Good afternoon, Your
11 Honor. Michael Ridgway and Robert Raschke on
12 behalf of the United States Trustee.

13 THE COURT: All right. Appearances
14 are as noted then.

15 Well, the matter is on for hearing on the
16 objection of the clients of Mr. Jorissen and
17 Mr. Krakauer. I think I'd like Mr. Ridgway maybe
18 to just frame up just the history of today's

19 proceedings so we can lay the groundwork and I am
20 sure you have got that readily at hand and can do
21 that in a couple of minutes.

22 MR. RIDGWAY: Thank you, Your Honor.
23 May it please the Court and Counsel, as the Court
24 notes these various cases were filed in mid to
25 late October, ten entities all associated with

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1 Thomas Petters in some fashion as the main
2 companies or subsidiary companies.

3 The United States Trustee on December 2,
4 2008 filed it's motion under Section 1104 of the
5 Bankruptcy Code for the appointment of a
6 Chapter 11 trustee, arising in no small part due
7 to the fact that Mr. Kelley as the District Court
8 appointed receiver, although we had authority to
9 file the bankruptcy petitions, it was the
10 position of the United States Trustee that from
11 that point thereafter he lacked any ability to go
12 forward and since none of these ten entities
13 really had management in place to act as a debtor
14 in possession, the United States Trustee filed
15 his motion.

16 On December 16, 2008 this Court conducted

17 a hearing with regard to that. The Ritchie
18 Company and the various entities also filed it's
19 motion for the appointment of a Chapter 11
20 trustee, although they went one step further in
21 that they had also asked for the appointment of a
22 separate trustee for PGW.

23 This Court by virtue of it's order dated
24 December 17, 2008 granted the United States
25 Trustee's motion for the appointment of a

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1 Chapter 11 trustee and to the extent that the
2 Ritchie Group also asked for that same release,
3 granted it, leaving it to the United States
4 Trustee's discretion under Federal Rule of
5 Bankruptcy Procedure 2009(c)(2) to conduct that
6 appointment.

7 Pursuant to the obligations imposed upon
8 him by Rule 2007.1(c) the United States Trustee
9 consulted the various parties in interest. You
10 will note that together with the application
11 seeking the Court's approval of Mr. Douglas
12 Kelley, those parties were set forth and they are
13 also set forth in the memorandum entitled United
14 States Trustee's Reply to the Ritchie Objection.

13 here today on Ritchie's objection to the
14 appointment of Douglas A. Kelley as Trustee for
15 all of the debtors in these jointly administered
16 cases and for a number of reasons we do not
17 believe that Mr. Kelley can simultaneously serve
18 as Trustee for all of the debtors in these cases
19 as well as the receiver for all of the Petters
20 companies in the pending receivership action.

21 We also think that Mr. Kelley by virtue
22 of the obligations imposed upon him by law if he
23 were to be appointed Trustee for all of the
24 separate debtor's entities in these cases has
25 conflicts of interest which would preclude him

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1 from so serving.

2 I want to make it clear, Your Honor, that
3 we are not in this proceeding attacking
4 Mr. Kelley personally or professionally.

5 We simply believe that in view of his
6 obligations under the receivership order as well
7 as the obligations that would devolve upon him
8 were he appointed Trustee in each of these cases
9 that he has conflicts of interest or divided
10 loyalties which would preclude him from

11 faithfully fulfilling his obligations to all of
12 the different entities to which he will be a
13 fiduciary.

14 Now, during the hearing on Thursday of
15 last week, Your Honor, you indicated that the
16 question of whether Mr. Kelley in his capacity as
17 receiver has a conflict of interest which would
18 prevent him from serving as Trustee in these
19 cases can be determined by looking at the four
20 corners of the receivership order and that order,
21 of course, is the second amended order that Judge
22 Montgomery entered in the case that's part of the
23 record in these proceedings, so I am going to
24 start with the receivership order because I think
25 that's the framework in which you have indicated

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1 you would view this question.

2 Under the terms of the order Mr. Kelley
3 is obligated to, quote, coordinate with
4 representatives of the United States Attorney and
5 court personnel as needed to ensure that any
6 assets subject to the terms of this order are
7 available for criminal restitution, forfeiture or
8 other legal remedies and proceedings commenced by

9 or on behalf of the United States.

10 His charge then under the terms of the
11 receivership order is to maximize the assets of
12 the receivership estate and, in essence, to help
13 the United States to build his case -- to build
14 it's case for the inclusion of these assets in
15 the receivership estates ultimately so that they
16 can be made available for legal remedies that the
17 United States may wish to avail itself of.

18 THE COURT: What do you mean in
19 essence to help the United States build it's
20 case?

21 MR. JORISSEN: He is -- he's obliged
22 to coordinate with the United States to ensure
23 that all of the assets, all of the assets of all
24 of the affiliated companies covered by the order
25 are brought into the receivership estates and the

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1 order specifies that the purpose of doing so is
2 to make the assets available to the United States
3 for criminal restitution, forfeiture or other
4 legal remedies, so what is that charge? Well, to
5 me what that means is that his job is to put a
6 context around those assets that would bring them

7 into the receivership estate.

8 Now, how does that happen? Well, it
9 happens if they are ultimately determined to be
10 subject to some remedies by the United States.

11 He -- let me put in a different way,
12 Judge. He has an obligation to assist the United
13 States to ensure that the assets are part -- to
14 maximize the receivership estate and that is
15 the --

16 THE COURT: Is there even an estate
17 per se in a receivership? I mean we have an
18 estate in a bankruptcy case arising automatically
19 by operation of laws as soon as the bankruptcy
20 petition is filed, but does a so-called equity
21 receivership under the statutory authority that
22 the United States used, does that give rise to an
23 estate per se?

24 MR. JORISSEN: Well, I believe, Your
25 Honor, that the receivership order gives rise to

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1 an estate which consists of all of the property
2 that is subject to the receivership and the order
3 quite clearly delineates those assets that the
4 judge has directed Mr. Kelley to bring into the

5 estate or into the receivership, if you will, and
6 those assets consist broadly of all of the assets
7 of Petters Company, Inc., PGW and all of the
8 affiliated companies.

9 Now, in carrying out his mandate to help
10 the United States gather these assets, Mr. Kelley
11 has appointed and has been authorized to appoint
12 professionals including Price Waterhouse Coopers
13 and others to analyze the financial affairs of
14 PCI, PGW and the remainder of the bankrupt and
15 non-bankrupt affiliates.

16 These retentions were made outside of the
17 bankruptcy cases by Mr. Kelley in his capacity as
18 receiver.

19 The receivership order makes it clear
20 that the professionals Mr. Kelley retains,
21 including Price Waterhouse, are retained to help
22 him in fulfilling his duties under the terms of
23 the receivership order and specifically his duty
24 to coordinate with the United States to ensure
25 that the maximum amount of assets are available

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1 in the receivership proceeding.

2 Because of his responsibilities under the

3 receivership order, Mr. Kelley has a conflict of
4 interest. He is bound by Judge Montgomery's
5 order to help the United States to maximize the
6 pool of assets subject to the receivership.

7 THE COURT: Who is he chargeable too?
8 What does the order say?

9 MR. JORISSEN: The order says he's
10 accountable only to the District Court.

11 THE COURT: Right. And there's a
12 grant of judicial immunity --

13 MR. JORISSEN: Correct.

14 THE COURT: -- in so many words to
15 him and it says he's to account to the District
16 Court, it sort of serves as the District Court's
17 eyes, ears and hands in amassing and holding the
18 assets, right?

19 MR. JORISSEN: I concur with that,
20 Your Honor, yes.

21 THE COURT: Okay. All right.

22 MR. JORISSEN: It's his job to -- I
23 mean one way to look at it is it is his job to
24 help the United States to maximize this pool of
25 assets and the United States, if nothing else, if

1 you step back and look at this, they are a major
2 plaintiff or the major plaintiff in these cases,
3 these myriad of Petters and Polaroid cases. They
4 are at the end of day going to make some claim to
5 the assets of this receivership and although we
6 were unable to take discovery related to these
7 issues, it seems pretty clear that the efforts of
8 Price Waterhouse Cooper, Lindquist & Vennum and
9 the other professionals Mr. Kelley has retained
10 have all been directed toward helping the United
11 States to ensure the availability of these assets
12 or not all of their efforts, but a primary focus
13 of their efforts was to help the United States to
14 ensure that all the assets would be available for
15 whatever remedies or ultimately are prescribed.

16 THE COURT: What was it that was the
17 immediate precipitant of this proceeding? Why
18 did the United States start the receivership
19 proceeding? Wasn't it pretty obvious that it was
20 the concern that substantial value, conceivably
21 in the hundreds of millions of dollars could
22 disappear?

23 MR. JORISSEN: Absolutely. I mean I
24 think what precipitated the commencement of the
25 receivership proceeding was in large part

1 information which we can only glean from the
2 search warrant which was executed by Special
3 Agent Price which is also included in the
4 materials that we have submitted to the Court and
5 I think in those materials what Special Agent
6 Price had indicated was that there was probable
7 cause to believe that PCI -- and I would note,
8 Your Honor, she does not say anything in her
9 affidavit which supported the search warrant
10 regarding PGW, but that PCI was in essence, and I
11 am taking substantial liberty with her affidavit
12 here, but it was being operated as a fraud on
13 creditors and no doubt the purpose that -- or
14 what lead to the commencement of the receivership
15 proceeding was the United States' belief that
16 wire and mail fraud were being committed and that
17 it would be appropriate to appoint a receiver to
18 try to preserve the value of the assets of the
19 Petters entities. I think that's not subject to
20 reasonable debate.

21 THE COURT: All right. But I mean
22 it's a hold in place measure?

23 MR. JORISSEN: Correct.

24 THE COURT: Nothing is to go beyond
25 the four C's, no assets, no money, no monies to

1 disappear, assets were not to disappear,
2 Mr. Kelley was appointed by the District Court
3 chargeable to Judge Montgomery to make sure that
4 that didn't happen, to collect things.

5 MR. JORISSEN: Well, I think that's
6 part of his charge, but I think his charge under
7 the receivership order is much broader than that.
8 He's to manage the entities. He's to take
9 control of the entities and notably he's to
10 assist the United States to ensure that the
11 maximum amount of assets are available for their
12 purposes, be they restitution, criminal
13 forfeiture or other legal proceedings and that
14 manifests from Term 7 of Judge Montgomery's
15 order.

16 THE COURT: So you're jumping over to
17 the verb assist from the verb coordinate?

18 MR. JORISSEN: Well, no. The verb is
19 actually ensure.

20 THE COURT: Ensure?

21 MR. JORISSEN: I mean coordinate with
22 the United States to ensure that, and I am taking
23 liberty with the language of Judge Montgomery's
24 order, but that the maximum amount of assets are

25 available for the purposes specified in the

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1 order.

2 THE COURT: Maybe I am taking liberty
3 with the remarks you just made, and I am saying
4 that with a smile quite frankly, but I thought I
5 heard the word assist in your remarks and maybe
6 I'm not doing justice but anyway, the record is
7 what it is. I can listen in.

8 MR. JORISSEN: No, and I do think,
9 Your Honor, that there is a tenure of the order
10 which clearly requires Mr. Kelley to assist the
11 United States and I think it's been going on. I
12 think the whole purpose of the forensic analysis
13 which has been conducted by Price Waterhouse
14 Cooper is to try to untangle the morass of
15 transactions which we have all heard about in
16 these proceedings and in the receivership
17 proceedings and a major point of that is to
18 provide that information to the United States so
19 that in the context of attempting to ascertain
20 what should be in the receivership they will have
21 a full picture of what all the different
22 interactions were between the Petters entities

23 and various other parties, so I think there is
24 indeed active assistance that is going on.

25 I would note that Mr. Kelley has

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1 indicated that he has had a number of discussions
2 with the U.S. Attorney's Office and we don't know
3 the scope and content of those discussions and we
4 haven't been able to discover that information in
5 the course of these proceedings, so we don't -- I
6 mean I am just telling you we don't know what the
7 game plan is as between Mr. Kelley and the United
8 States and we don't know the specifics of any
9 communications that Mr. Kelley has had with the
10 United States, but what we do know --

11 THE COURT: I got to remind you, you
12 know, we're talking about two different branches
13 of Government here though. The order makes him
14 chargeable to Judge Montgomery alone. She's in
15 the judicial branch.

16 MR. JORISSEN: I concur. He's
17 accountable, but he's also under a mandate under
18 the order again going back to Term 7 to work with
19 the United States, to ensure that the maximum
20 amount of assets are available for the remedies

21 that are outlined in the order, so I do think
22 that there is a cooperative element that is going
23 on between Mr. Kelley and the United States
24 Attorney's Office and I would venture to guess
25 that a large part of the reason for having Price

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1 Waterhouse do the forensic analysis is so that
2 the Government can have access to that
3 information as it moves forward both to prosecute
4 criminal claims, but also for purposes of civil
5 or criminal forfeiture or other proceedings.

6 As the receiver, Mr. Kelley is an
7 advocate for the receivership and we think he
8 gives direction to that effect to the
9 professionals that he retains and we think that
10 if he is fulfilling his mandate under the
11 receivership order he has no choice but to direct
12 the activities of his professionals in a manner
13 that will maximize the assets of the receivership
14 and ultimately to the benefit of the United
15 States.

16 Now, it is true that Mr. Kelley is not
17 the person who's going to finally determine what
18 assets are in, what assets are out, who gets what

19 assets, if anyone gets any assets out of these
20 receivership cases. That decision will
21 ultimately be made presumably by Judge Montgomery
22 or potentially by some other judge who would get
23 the draw in some form of ancillary proceeding for
24 that purpose.

25 But that doesn't change the fact that

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1 Mr. Kelley as receiver has the charge to maximize
2 the receivership estate or assets in the
3 receivership and we think his activities have
4 been undertaken with that end in mind.

5 Now, we think that this creates a current
6 and direct conflict which precludes Mr. Kelley
7 from serving as trustee in these cases.

8 As Chapter 11 Trustee, Mr. Kelley's first
9 fidelity is to the creditors of the bankruptcy
10 estate and he is charged by law with the
11 responsibility to maximize the assets available
12 to creditors of the bankruptcy estates in these
13 cases and to that end he's supposed to be an
14 advocate for the Chapter 11 estates, but under
15 the Order and this gets back to the word ensure,
16 he has a duty to ensure that the maximum amount

17 of assets are available to the receivership and
18 as Chapter 11 Trustee, he may well have to -- he
19 does have to oppose the maximum amount to the
20 extent that any of the property that is currently
21 within the receivership estate is also either
22 arguably or actually property of the bankruptcy
23 estate.

24 He has a clear fiduciary duty as the
25 Trustee to seek to maximize that pool for the

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1 benefit of the Chapter 11 estates and he can't do
2 both. He can't maximize the receivership estates
3 and maximize the Chapter 11 estates. Every
4 dollar that gets pulled over into the
5 receivership estate is a dollar that doesn't come
6 into the Chapter 11 cases.

7 We -- it's really hard to imagine that
8 Mr. Kelley, given those parameters, given the
9 parameters of Judge Montgomery's order can
10 effectively and zealously and dispassionately and
11 disinterestedly fulfill his obligations to both
12 the receivership or to Judge Montgomery under the
13 receivership order and to the United States under
14 the receivership order and to the creditors in

15 these jointly administered cases and in
16 particular in the PGW case.

17 THE COURT: So is it your position
18 then that somehow his duties as receiver as to
19 the assets of these corporate entities now in
20 Chapter 11 somehow survived the Chapter 11
21 filings and he bears both statuses then, carries
22 both statuses as to these companies?

23 MR. JORISSEN: I think that's
24 correct, Your Honor. I think if you look at the
25 language of the receivership order there's

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1 nothing in the language of the order itself that
2 says that upon the commencement of a bankruptcy
3 case Mr. Kelley shall cease to be receiver and
4 shall cease to have the obligations specified
5 under the order, including, you know, all of
6 those things that we talked about, the management
7 of the companies, the rest of it. There's
8 nothing in the order to that effect.

9 All the order says is that in a
10 Chapter 11 case the rules of bankruptcy procedure
11 and the federal or the Bankruptcy Code will
12 apply, but Mr. Kelley hasn't stepped down as

13 receiver. He hasn't case indicated an intention
14 to step down as receiver and there's nothing in
15 the confines of the order itself which indicates
16 that if Mr. Kelley is some day appointed Trustee
17 in these Chapter 11 cases that his status as
18 receiver will be terminated, so I don't think
19 there is anything that says one way or the other
20 that Mr. Kelley has ceased his role as receiver
21 and I think the opposite is true. I think the
22 order makes it quite clear that until such time
23 as Judge Montgomery were to revisit the issue,
24 he's the receiver for PGW, for PCI and for all of
25 the other eight Petters entities that are debtors

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1 in these proceedings.

2 I think there are other provisions of the
3 order that are also inconsistent with
4 Mr. Kelley's services trustee for PGW or any
5 other debtors. The order as you noted gives
6 Mr. Kelley judicial immunity for his activities
7 as receiver.

8 As a Chapter 11 Trustee, he would
9 typically be accountable to the creditors for --
10 and I am not suggesting anything by this, but for

11 any misconduct or breach of his fiduciary duties
12 that occurred during the administration of these
13 cases and as an agent of the District Court with
14 judicial immunity under the receivership order,
15 it looks like Mr. Kelley has no accountability to
16 the creditors who populate these Chapter 11
17 estates and the -- there was a -- in the motion
18 to appoint a Trustee that the U.S. Trustee's
19 Office filed back in November, they cited a case
20 which talked about why a receiver is a custodian
21 and therefore cannot serve as debtor in
22 possession and has to -- is subject to the
23 turnover provisions under Section 543 and that
24 case noted that the receiver is, in fact, an
25 agent of the District Court accountable only to

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1 the District Court. The receiver's allegiances
2 thus lie first to the District Court and so there
3 is a question and I think it's a live question
4 about whether or not Mr. Kelley, given the broad
5 immunity that has been given him under Judge
6 Montgomery's order, has the kind of
7 accountability to the estates in this case that a
8 Chapter 11 Trustee or debtor in possession would

9 typically have.

10 THE COURT: The U.S. Trustee's order
11 or, excuse me, appointment does require him to be
12 bonded.

13 MR. JORISSEN: I understand that.

14 THE COURT: I mean that pre-supposes
15 an accountability then to the creditors.

16 MR. JORISSEN: But I guess the
17 confusion or maybe it's not confusion, but I
18 think, Your Honor, that the broad immunity that's
19 been granted in the receivership order has not
20 been explicitly set aside.

21 Mr. Kelley hasn't walked away from it. I
22 haven't -- there hasn't been any mention of any
23 intention to ask the District Court here to
24 revoke that immunity insofar as it relates to the
25 administration of these Chapter 11 cases and so I

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1 think that there's a live issue as it relates to
2 whether anyone could hold Mr. Kelley to account
3 for his activities as Trustee in these cases by
4 virtue of the immunity granted by Judge
5 Montgomery.

6 Now, the Trustee -- the U.S. Trustee and

7 the Creditor's Committee seek to dismiss the
8 conflict that arises by virtue of Mr. Kelley's
9 status as a receiver as imaginary and this kind
10 of goes back to your question about whether these
11 receivership or his role as receiver will be
12 terminated if he is permitted to serve as Trustee
13 and in their pleadings on this issue they just
14 make a leap of faith. They just say that the --
15 his role -- his job as receiver of PGW, of PCI
16 will just end if he's appointed Trustee, but
17 that's not what the receivership order says, nor
18 do they cite any case law to support that
19 premise.

20 They have cited no authority, no case
21 law, no statutory authority that says that a
22 receiver who is still a receiver who is appointed
23 as a Trustee somehow ceases to be the receiver
24 and I don't think there is any support for that
25 position.

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1 I think that Mr. Kelley is the receiver
2 for these entities and I think he will continue
3 to do so until that status is revoked by Judge
4 Montgomery or he abdicates that status.

5 Now, because Mr. Kelley is the receiver
6 for PGW, PCI and all of these Petters entities,
7 there's another legal impediment that precludes
8 him from serving and it's the same legal
9 impediment that lead the United States Trustee to
10 seek a motion to appoint a Trustee in the first
11 instance and that is he's subject as receiver to
12 the turnover provisions under Section 543 and
13 under Section 543(a) as was discussed at the last
14 hearing on this topic once a bankruptcy case is
15 commenced a receiver is a custodian and as a
16 custodian they are required to turn over all
17 property of the estate to the Trustee, but 543(a)
18 goes further and it says that custodian can take
19 no further action in the administration of the
20 property of the debtor or property of the
21 estates, so under 543(a) because he is still the
22 receiver he's disqualified from serving for the
23 same reason that he was disqualified from serving
24 last time.

25 And I would note that the prohibition

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1 under 543(a) which precludes or would preclude a
2 custodian from taking action in the

3 administration of property, that prohibition
4 would seem to preclude Mr. Kelley from
5 undertaking most of the obligations that he would
6 have as Trustee in these jointly administered
7 Chapter 11 cases.

8 We also believe, Your Honor, that
9 Mr. Kelley cannot simultaneously serve as the
10 Trustee for both PCI and PGW.

11 THE COURT: So you have just been
12 talking what I would call sort of the external
13 conflict that you allege?

14 MR. JORISSEN: Yes.

15 THE COURT: External to the structure
16 of bankruptcy and now you're going to talk about
17 what I would call an internal conflict?

18 MR. JORISSEN: Correct. The conflict
19 of one Trustee representing more than one
20 bankruptcy estate in this context.

21 And as we have outlined in our objection
22 and elsewhere, Your Honor, probably more times
23 than you would have liked, as the PGW Trustee,
24 Mr. Kelley would be duty bound to attempt to
25 maximize the assets of PGW for the benefit of

1 PGW's creditors and as Trustee for PCI he will
2 have the same obligations for PCI's creditors.

3 And during the October 22nd, 2008 hearing
4 in this matter very early on Mr. Lodoen pointed
5 out that Polaroid appears to be the major asset
6 that will come under administration by Mr. Kelley
7 and, as you know, Your Honor, Polaroid is a
8 wholly owned PGW subsidiary and as the Trustee
9 for PCI we have no doubt that Mr. Kelley in
10 fulfilling his obligations to the creditors of
11 PCI will be duty bound to pursue claims against
12 PGW and as Trustee for PGW he would have
13 obligations to try and fend off those claims for
14 the benefit of PGW's creditors.

15 We do believe and I have talked about
16 this already, but I will briefly run through it,
17 we do believe that the evidence that has been
18 made public thus far shows that PCI was the
19 vehicle through which this fraud was undertaken
20 and it is true that the indictment broadly
21 implicates all of the Petters entities including
22 PGW in this fraud, but the indictment addendum
23 itself only mentions PGW in a couple of places.
24 There are no specific allegations of any
25 wrongdoing by PGW other than defendants -- other

1 than a conclusary defendants engaged in the
2 following activities.

3 The search warrant on the other hand
4 which we have put into the record lays out in
5 detail what the Government believes the fraud was
6 in this case and that search warrant makes no
7 mention of PGW. It talks in detail about how PCI
8 sold -- lent or got loans from creditors based on
9 fictitious inventory and how the whole Ponzi
10 scheme was apparently carried out, but there's no
11 mention of PGW engaging in any of those sorts of
12 activities.

13 PGW has operating assets and PCI doesn't
14 and the reality is that they were operated or
15 they appear to have been operated or at least the
16 best information that we can glean from what's
17 publicly available is that PGW was operated as a
18 separate company and engaged in separate
19 transactions and was not the vehicle through
20 which the Ponzi scheme was undertaken.

21 Now, instead of really focusing on the
22 conflict issue, Mr. Kelley and his counsel and in
23 some ways the Creditor's Committee and the U.S.
24 Trustee have staked out a position that Ritchie
25 is not a creditor of PGW because the funds that

1 it wired to fund loans to PGW were sent to PCI
2 and in their proof they have selectively
3 disclosed portions of what -- of materials which
4 bear the legend attorney-client privilege,
5 attorney-work product and they have put that into
6 the record, but whatever their contentions in
7 that regard, there is no dispute, no dispute and
8 no one said it that PGW signed and delivered
9 promissory notes to the Ritchie entities and
10 there is no dispute that Ritchie is a creditor
11 which has a contract claim against PGW.

12 The argument that Ritchie is not a
13 creditor of PGW necessarily rests upon the
14 conclusion which has not been substantiated that
15 PGW was insolvent at the time that these notes
16 were given to Ritchie.

17 To the extent that this analysis has been
18 performed, we have not been made privy to any of
19 that analysis and that insolvency analysis, if
20 it's undertaken, eventually will depend in large
21 part on the validity of lots of claims and lots
22 of assets depicted on financial statements and
23 undoubtedly a very complicated analysis to figure
24 out whether PGW was, in fact, insolvent, but the
25 fact that Mr. Kelley or his counsel believed that

1 these transactions may be proven to be avoidable
2 as to PGW someday does not undermine Ritchie's
3 status as a PGW creditor at this juncture or it's
4 status as a party in interest who -- withstanding
5 to raise the arguments that have been raised
6 here.

7 The arguments that Mr. Kelley and his
8 counsel have raised regarding the nature of
9 Ritchie's claims are also suggestive of a certain
10 bias against a class of PGW creditors.

11 Mr. Kelley appears to have prejudged the
12 validity of Ritchie's claims. He's done so based
13 on a transactional analysis performed by his
14 professionals in the receivership which by his
15 own admission are at this point incomplete and
16 given that the charge of those professionals
17 acting under the authority granted to Mr. Kelley
18 in the receivership action was to maximize the
19 assets available to the receivership estates.

20 It wouldn't be and I have no evidence of
21 this, but it would not be impossible to imagine
22 that the analysis was geared to scrutinize
23 certain transactions to drive potentially a

24 certain result and again we haven't been able to
25 get to the bottom of that, but it's not hard to

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1 believe that that could be the case.

2 Now, with respect to this representative
3 conflict issue, Your Honor, we do think that
4 Mr. Kelley has a personal stake in his status as
5 receiver. He does receive fees for the
6 performance of his duties as receiver and it also
7 appears that he intends or he hasn't indicated an
8 intention not to. He intends to administer the
9 PGW PCI assets in the receivership proceedings.
10 He hasn't indicated that he would step aside from
11 those duties.

12 So to the extent that he's engaged in the
13 administration of those assets or those assets
14 are retained in the receivership, he stands to
15 benefit from that because he is compensated
16 through the receivership proceedings for the work
17 that he performs in that -- in that capacity.

18 The argument of the Trustee and the
19 Creditor's Committee that the appointment of
20 separate Trustees will create duplication of
21 effort and additional expense is somewhat of a

22 red herring.

23 First, Your Honor, we are not saying that
24 the Court needs to appoint 11 Trustees. As I
25 said at the last hearing on our motion and the

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1 Trustee's motion to appoint a trustee, we have an
2 interest in having what we consider to be a
3 disinterested Trustee in the PGW bankruptcy case.
4 We think that the other estates are closely
5 aligned with PCI because we think that those
6 other bankrupt entities were largely used as
7 funding vehicles to bring money into PCI. So we
8 don't think that the Court needs to appoint 10
9 separate Trustees, one for PGW would be fine with
10 us.

11 We also would note that despite the
12 arguments about increasing the cost of
13 administration the debtors or the Trustee or
14 Mr. Kelley, his representatives, have appointed
15 Houlihan & Lokey or have sought the employment of
16 Houlihan & Lokey and they are getting a pretty
17 good deal. They are not -- their fees will be
18 earned without reference to the value that is
19 provided to the estate or the hourly work that

20 they have performed in getting to whatever result
21 they ultimately get to.

22 Similarly, although the Creditor's
23 Committee objects on the same basis that there
24 will be an incremental increase in expense
25 associated with the appointment of a different

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1 trustee for PGW, the Creditor's Committee despite
2 the fact that Mr. Kelley has already retained a
3 lot of professionals who are doing forensic
4 accounting work and the like in the receivership
5 case and in the Polaroid case, frankly, the
6 Creditor's Committee has retained it's own
7 financial advisors to work on the issues that
8 interest the Committee and they don't seem to
9 have any qualms about those increased costs of
10 administration.

11 The -- whatever the incremental expense,
12 and I would submit that this is not going to
13 create a keystone cops scenario that's been
14 suggested by other Counsel, whatever the
15 incremental cost the case law seems to be pretty
16 clear that where there is a conflict, where the
17 Trustee is not disinterested, then costs have to

18 yield to disinterestedness and so we think that
19 although no doubt there would be some additional
20 expense if a Trustee were appointed for PGW, we
21 don't think that that factor should in any sense
22 carry the day here.

23 With respect -- I just want to offer an
24 illustration of why we think -- a couple of
25 illustrations of why we think there are conflicts

35

1 here, Your Honor.

2 In the first illustration is PGW has been
3 indicted and we urged Mr. Kelley after the
4 indictment came out to retain independent
5 criminal counsel to represent PGW's interest in
6 that case and as I noted in our last proceeding
7 on these issues, we were concerned that in the
8 absence of an independent lawyer for PGW we were
9 concerned that -- some kind of plea would be
10 negotiated which would result in an imminent
11 forfeiture and to his credit Mr. Kelley has
12 indicated through his Counsel, and I am not sure
13 I know what the status of this is at this point,
14 but they have indicated that they will reach out
15 and pursue the appointment of independent counsel

16 and it may be that they have already found
17 someone and that someone has been retained.

18 The concern though is that that counsel,
19 his client, is the PGW Trustee and so it's
20 Mr. Kelley and insofar as Mr. Kelley has these
21 divergent strains on his activities, he has the
22 imperative from the District Court to maximize
23 the assets available for the receivership on the
24 one hand and he has the imperative under the
25 Bankruptcy Code to maximize the assets available

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1 for these Chapter 11 estates. It puts him in a
2 terrible position in terms of trying to figure
3 out how to deal with PGW. Do you fight the
4 charges, do you enter a plea, what do you do
5 about that and that is an obligation that as
6 Chapter 11 Trustee he may ultimately be called
7 upon to decide.

8 I think another illustration of the
9 conflict, Your Honor, is that Mr. Kelley and his
10 counsel themselves believe that the receivership
11 order prohibits activities by the creditors in
12 this case, that creditors undertake in Chapter 11
13 bankruptcy cases and without revisiting the

14 hearing we had last Thursday, when we served
15 discovery on them their glib response was we
16 don't have to respond. We have got the District
17 Court's receivership order and that -- that
18 insulates Mr. Kelley from participating in
19 discovery in these proceedings.

20 Now, that attitude, I guess, is
21 reflective of a less than sincere desire to
22 engage in these bankruptcy proceedings in the
23 manner in which they should be engaged in and we
24 think that that's just another example of the
25 overlay, if you will, of the competing legal

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1 regimes interfering with what we think would be
2 the functioning of a disinterested Trustee.

3 So to sum it up, Your Honor, we believe
4 that Mr. Kelley has conflicts of interest which
5 preclude his service as Chapter 11 Trustee in the
6 PGW case.

7 As receiver he has to advance the
8 interests ordered by Judge Montgomery to maximize
9 the receivership estates and this conflicts with
10 his obligation as Chapter 11 Trustee to maximize
11 the assets available for the bankruptcy estates

12 and in addition we believe a separate trustee
13 should be appointed for PGW as we think that any
14 Trustee for PCI, for the reasons we have
15 expressed, would labor under conflicts of
16 interests which would preclude that person from
17 fulfilling his or her fiduciary obligations.

18 THE COURT: Let me ask a question
19 that's really functional, really outcome oriented
20 in nature. What are you asking me to do? Are
21 you asking me to rule that Mr. Kelley can't serve
22 as Trustee at all in any of these cases and that
23 the U.S. Trustee to address what you term to be
24 the internal conflict should appoint then at
25 least two new persons as Trustee, one for PGW and

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1 then one for any or all of the other entities?
2 Is that what you want to see coming out of this,
3 your client wants to see?

4 MR. JORISSEN: Your Honor, I think
5 our primary objective is to have a separate
6 Trustee appointed for PGW. We do think that in
7 view of the arguments that I have offered to Your
8 Honor that Mr. Kelley does have a conflict
9 because of the duties imposed under the

10 receivership order, but our primary objective is
11 to have a separate Trustee appointed for PGW.

12 THE COURT: So Ritchie wouldn't walk
13 away from this completely dissatisfied if I were
14 to leave the appointment of Mr. Kelley as Trustee
15 standing as to PCI and eight of the other
16 entities, but nonetheless rule that the U.S.
17 Trustee must appoint a separate Trustee for PGW.

18 MR. JORISSEN: I think your
19 assessment of that is correct, Your Honor.

20 THE COURT: I just wanted to know
21 exactly what you want me to do because when you
22 get into the abstractions like this sometimes
23 that gets lost.

24 MR. JORISSEN: I understand.

25 THE COURT: Then when I go back to my

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1 chambers I try to figure out where -- where the
2 end really should lie if I buy into your
3 argument. All right. Okay. I don't have any
4 other questions.

5 MR. JORISSEN: Thank you, Your Honor.

6 THE COURT: All right. I think the
7 U.S. Trustee would be the next one on here.

8 Mr. Ridgway.

9 MR. RIDGWAY: Thank you again, Your
10 Honor.

11 Again, referring to the rules to kind of
12 frame-up procedurally what we're all about here
13 today in the fact that Ritchie has filed the
14 objection to our application to this Court
15 seeking Mr. Kelley's approval. I think it's
16 worthwhile to refer to Federal Rule of Bankruptcy
17 Procedure 2009(d) which actually places the
18 burden upon them as the objecting creditor to
19 show that the different estates will be
20 prejudiced by conflicts of interest of a common
21 Trustee.

22 We submit, Your Honor, that they have
23 failed to do so in several respects.

24 In looking at the parameters of Judge
25 Montgomery's Second Amended Receivership Order

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1 which was modified on December 8th of 2008 and I
2 cited this in my materials both on the front end,
3 on the motion seeking the appointment and in the
4 reply to Ritchie's objection, specifically
5 Section 4, Paragraph B, Subpart 2C, noting

6 specifically that any bankruptcy cases so
7 commenced by the receiver shall during their
8 pendency be governed by and administered pursuant
9 to the requirements of the United States
10 Bankruptcy Code, 11 United States Code Section
11 101 at C and the applicable Federal Rules of
12 Bankruptcy procedure.

13 Contrary to the assertion of Ritchie that
14 there's a problem here, I would submit that the
15 obligations of Kelley in his role as receiver for
16 the non-bankruptcy entities and Kelley in his
17 role, if approved by this Court, as the Trustee
18 for all of the bankruptcy cases are co-extensive
19 in the sense that, and I am going to borrow here
20 from the response of the committee, with regard
21 to the common goal, a single purpose, if you
22 will, to identify, preserve assets and maximize
23 the value for the benefit of creditors.

24 If approved by this Court, Mr. Kelley as
25 Trustee, and I do agree with Ritchie here, there

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1 is an fiduciary obligation to the creditors of
2 those ten bankruptcy estates and he's got to
3 justify his conduct, not only to the creditors

4 but to this Court.

5 In that sense, he goes out, he identifies
6 assets, he does what he can to get the pool
7 together, but then before any distribution can be
8 had, he has to seek this Court's approval and
9 presumably with the giving of appropriate notice
10 for any hearing to be held there on. Similarly,
11 his role as receiver over here for the
12 non-bankruptcy entities goes forward,
13 unencumbered with what his duties are as a
14 fiduciary if appointed by this Court for the
15 Chapter 11 estates.

16 Mr. Jorissen had indicated that we had
17 cited no authority for the proposition that a
18 receiver has no further authority. I would
19 respectfully indicate that he was mistaken. In
20 both the motion and in the reply we cite to In
21 Re: Madison Avenue Limited Partnership out of the
22 Southern District of New York, a 1997 case,
23 specifically quoted there from, since no section
24 of the Code includes a receiver who remains in
25 possession within the definition of Trustee, the

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1 receiver does not take on the obligations and

2 duties of a Chapter 11 Trustee or the somewhat
3 different ones of a debtor in possession.

4 Simply put, the receiver has absolutely
5 no responsibility to perform any other duties
6 which are the prerogative and burden of a debtor
7 in possession and a Trustee and, Your Honor, I
8 know and at the risk of sounding like a broken
9 record, the position of the United States Trustee
10 has always been that upon the filing of those
11 petitions his authority as receiver terminated by
12 operation of law. That was the motivation for
13 the United States Trustee to file his motion
14 seeking the appointment of a Trustee.

15 THE COURT: And that position then is
16 premised on what? There is, of course, the codes
17 explicit prohibition on the appointment of a
18 receiver by the bankruptcy court or within a
19 bankruptcy case after it's commenced, right?

20 MR. RIDGWAY: That's correct, 105 --

21 THE COURT: And then No. 2 you have
22 got the turnover obligation under Section 543.

23 MR. RIDGWAY: That's correct.

24 THE COURT: Which sort of has it's
25 bedrock presumption the fact that we don't do

1 receiverships in Bankruptcy Court. We do
2 trusteeships and Trustees or DIP's are the ones
3 who are legally charged with the assets.

4 MR. RIDGWAY: That's correct, Your
5 Honor.

6 THE COURT: So is there anything else
7 in the code that I have missed over the course of
8 nearly 25 years during which this issue has
9 almost never come up?

10 MR. RIDGWAY: Now, you haven't, Your
11 Honor. You have hit it very well and very
12 distinctly put I might add and you will recall
13 from Day 1 on the so-called first day motions, I
14 rose and qualified my remarks that day by
15 specifically referencing Section 543.

16 There is a concern here because these
17 corporations were essentially rutter less and
18 even though Mr. Kelley had been empowered by the
19 District Court order to collect assets and to do
20 his thing for the other assets and indeed gave
21 him the authority and power to file a petition,
22 it ceased upon the filing of those petitions by
23 virtue of the case law and the statutory
24 codifications we have just been visiting about
25 here.

1 I would also draw the Court and Counsel's
2 attention to the footnote that I dropped on
3 Page 6 here regarding the misapprehension, if you
4 will, of Ritchie's characterization of what
5 Mr. Kelley's role as a receiver is vis-a-vis the
6 Court and vis-a-vis the other party and I think
7 it bears repetition that Mr. Kelley, as receiver
8 now, is obligated to the Court, not the parties,
9 simply because a party may have put forth his
10 name, so to speak, does not make him in
11 allegiance with that party and the cases I have
12 cited, and it's a 1944 case, and as far as I know
13 it's still good law, Ledbetter vs. Farmers Bank
14 and Trust out of the Fourth Circuit, stands for
15 that proposition. His obligation is to the
16 Court. His obligation is to Judge Montgomery
17 collect the assets, again, for the non-bankruptcy
18 entities.

19 He does that over there and over here as
20 Trustee of these bankruptcy estates. He
21 identifies assets, preserves them and maximizes
22 their value for ultimate distribution to the
23 creditors and parties in interest.

24 THE COURT: It's never really been
25 built out in the record here and I only have sort

1 of a hazy understanding of what's really going on
2 in the District Court, but I have been able to
3 glean from all media coverage, for instance,
4 accessing some parts of the District Court's
5 public record through CM/ECF, I mean as receiver
6 Mr. Kelley is still administering assets that
7 have been personally vested in Tom Petters as an
8 individual, right?

9 MR. RIDGWAY: That's my
10 understanding too, Your Honor.

11 THE COURT: And at least by media
12 reportage there was some significant value there
13 which he's been administering?

14 MR. RIDGWAY: That's correct.

15 THE COURT: And any other corporate
16 entities in which value was lodged presumably are
17 under the receivership still?

18 MR. RIDGWAY: That's correct.

19 THE COURT: Okay.

20 MR. RIDGWAY: In fact, I would go
21 one step further then, Your Honor, by saying that
22 the reports that he has filed to date actually
23 demonstrate that as well, so it's more than just

24 media reporting. Those are in the actual
25 documents on file and I might add too

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1 parenthetically that Mr. Kelley is under an
2 obligation from Judge Montgomery to file a report
3 every 60 days and he's also bonded there too I
4 might add and the Court had mentioned and again
5 parenthetically I will mention that if this Court
6 approves his appointment he will have to submit
7 yet another bond that's suitable in form and
8 substance through the office -- through the
9 executive office of the United States Trustees in
10 Washington.

11 Let's turn now for a moment to the
12 allegations of fraud that are contained in the
13 indictment. The indictment was rendered by a
14 Minnesota Grand Jury on December 1, 2008 and the
15 three principal defendants are, of course,
16 Mr. Petters himself individually as well as his
17 two companies, Petters Company, Inc. and Petters
18 Group Worldwide, LLC and Ritchie seems to
19 belittle, I guess for lack of a better term, the
20 exposure of Petters Group Worldwide with regard
21 to what that document says.

22 Now, keep in mind that the duly issued
23 indictment is a charge. It's an allegation, but
24 there had to be a finding of probable cause for
25 that grand jury to issue that, and keeping in

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1 mind the presumption of beyond a reasonable doubt
2 and all that, but I think it's still bears
3 mentioning and I will and I noticed it in my
4 reply that the language involving all of these
5 defendants is more than just a passing reference
6 to PGW in one count of the various counts.

7 For example, Counts 1 through 7 of the
8 indictment charge both PCI and PGW, together with
9 Mr. Petters, with aiding and abetting mail fraud
10 in violation of 18 U.S. Code Sections 1341 and
11 Section 2 and Section 2 is the aiding abetting
12 statute, that if an individual or an entity is
13 charged as an aider and abetter the code looks at
14 them as if it was a principal, chargeable to the
15 same extent and to the same degree.

16 Counts 8 through 10 of the indictment,
17 again charge both PCI and PGW with aiding and
18 abetting wire fraud and again Sections 343 and 18
19 U.S. Code Sub-Section 2.

20 Count 11 alleges Thomas Petters, PCI and
21 PCW, quote, did knowingly and wilfully combine,
22 conspire and agree with each other and with
23 others known and unknown to the grand jury to
24 commit offenses against the United States.

25 Count 12 alleges that Petters

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1 individually along with PCI and PGW were involved
2 in a money laundering conspiracy, a conspiracy as
3 wide reaching, all encompassing and it is indeed
4 a pretty vast net that captures all of that
5 illegal conduct, just as if Mr. Petters would be
6 convicted in the first instance, so their attempt
7 at minimizing the role of PGW in the fraudulent
8 scheme here I would submit is rather
9 disingenuous.

10 Now, let's look at the potential for
11 forfeiture and the Court will notice that I took
12 some time to kind of layout kind of giving an
13 overview, if you will, of the world of criminal
14 forfeiture as opposed to civil forfeiture and I
15 note that the criminal forfeiture is an in
16 personam thing as against the individual
17 defendant or individual corporate defendant as

18 opposed to the civil which is an in rem, against
19 a thing kind of action.

20 The procedure is two-fold. Before a
21 conviction -- excuse me, before a forfeiture can
22 be had there has to be a conviction on that count
23 as to that defendant and the offense has to
24 provide for a criminal forfeiture. The jury has
25 to find a sufficient nexus between the individual

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1 defendant and the bad conduct, but that's not the
2 end of it.

3 The case law says that forfeiture is
4 mandatory upon conviction as to that defendant,
5 but that's not the end of the story. Third
6 parties who may claim an interest in that
7 particular asset or assets are not precluded from
8 coming into the second part of this process
9 called the ancillary proceeding and the ancillary
10 proceeding is governed by the procedures that
11 were initially contemplated by the Uniform
12 Controlled Substances Act found under Title 21
13 and the references to Section 853 of Title 21 and
14 how that goes about.

15 Interestingly enough before an individual

16 or an entity can come in and even assert standing
17 they have to assert some kind of interest or lien
18 in the specific property. If they don't have
19 that, they take on the status of a general
20 unsecured creditor and under 18 853 they don't
21 have a standing, but they can still come in
22 because that's not yet the end of it because
23 under Part 9 of the CFR, Title 28, the United
24 States Attorney General is vested with the
25 ability to provide some remedies in the form of a

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1 petition or mitigation of the forfeited proceeds.
2 So in either event, if the forfeiture
3 comes about -- and I might make reference here
4 that it's not up to Mr. Kelley. I understand
5 that the language in Paragraph 6 of the
6 receivership order says that he has to
7 coordinate. I would submit that means gathering
8 together and making sure that they are there in
9 pot or one kiddy, but that's the end of it and
10 much like his duty is to this Court before he can
11 seek a distrubution, he's powerless to do
12 anything with that absent the action of the
13 United States Attorney to go after those assets

14 in a forfeiture proceeding and the Court to find
15 that forfeiture is appropriate given those
16 circumstances. The United States Attorney calls
17 the shots, not Mr. Kelley.

18 Let's turn now to what the Court in it's
19 colloquy with Counsel suggests is the internal
20 conflict and I guess I found it rather
21 interesting that in the appointed Trustee's
22 response found at Docket Entry No. 132 here that
23 in the prior State Court action in Cook County
24 that Ritchie sought and was granted apparently by
25 the Cook County Circuit Court the appointment of

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1 an individual as receiver for the operations of
2 both PGW and PCI. Apparently at that time they
3 didn't seem to have the concern they raise here
4 today with regard to competing interests or
5 divided loyalties with regard to the receiver
6 that they sought and was granted approval by the
7 Cook County Circuit Court.

8 There are many cases out there that have
9 been cited both in my documents as well as the
10 committee's documents showing that the
11 appointment of a common trustee over several

12 associated entities, affiliated subsidiaries and
13 the like is not in and of itself or per se
14 renders a conflict of interest, rather there must
15 be some actual prejudice shown to the creditors
16 of the different estates before there should be
17 the appointment of a separate trustee.

18 With regard to the status of Ritchie as
19 creditor they could indeed be a creditor.
20 However, right now the schedules that have been
21 filed show them as disputed. That's ultimately
22 up for resolution by this Court as to whether or
23 not they have a legitimate claim in these
24 bankruptcy proceedings.

25 What it comes down to is Mr. Kelley has

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1 been on board now as the receiver having got up
2 to speed, I would think in a very, very limited
3 and very short period of time with this complex
4 corporate world of Mr. Petters and all of the
5 complexities that go with it, he's been on board
6 now approximately 120 or so days, has been doing
7 his work as a trust -- excuse me, as a receiver
8 on the district court side and now he's being
9 called upon to do it here in this court as a

10 Trustee keeping in mind, I will say this again,
11 that the roles that he's playing in both receiver
12 over here for non-bankrupt entities and Trustee
13 here for bankruptcy entities is co-extensive.
14 There are no divided loyalties. There are no
15 conflicts of interest that would render him
16 disinterested as the bankrupt code requires.

17 Ritchie has not shown the requisite
18 prejudice that would attach to them. All of the
19 remedies would be available to them at the
20 conclusion of Mr. Kelley's efforts, pooling these
21 resources to come in and subject to this Court's
22 approval seek the approval for the distribution
23 scheme for those various assets and at some point
24 if things change and Ritchie, or for that matter
25 any other creditor of these ten bankruptcy

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1 estates, would feel agreed that there would be a
2 conflict they are now precluded from coming
3 before this Court to demonstrate that prejudice
4 to either get him kicked off or to have a
5 separate Trustee appointed.

6 And there's also the concern, and I think
7 it bears saying, and I think the Committee again

8 has put it very well, it's necessary to avoid
9 duplicative administrative costs to protect these
10 estates from inefficient competition among the
11 various entities and to avoid inconsistent
12 results.

13 I don't think anybody here, and
14 Mr. Jorissen had indicated before, that their
15 position was not personal as to his professional
16 abilities. It would seem to me that if Judge
17 Montgomery had the full faith and confidence of
18 Mr. Kelley to do his thing as a receiver, I think
19 it also bears noting that he fully understands
20 his fiduciary responsibilities as to these
21 estates if this Court were to approve him. He
22 knows what's going on. He has exhibited a
23 professionalism at going about his duties as set
24 forth in the reports he's filed with the District
25 Court to date and with the position that he has

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1 taken here before this court. We would
2 respectfully ask that the Court deny Ritchie's
3 objection as to all things and to appoint
4 Mr. Kelley as Trustee so we can get him bonded
5 and he can get about with the business in which

6 he's charged.

7 Thank you, Your Honor.

8 THE COURT: Thank you. All right.

9 We will hear from the Committee next then.

10 Mr. Runck.

11 MR. RUNCK: Thank you very much, Your
12 Honor.

13 Your Honor, as stated in the Committee's
14 papers, we support the United States Trustee's
15 appointment of Mr. Kelley in these cases.

16 Mr. Kelley, in our view, he satisfies the
17 disinterestedness standard under Section 10114.

18 Your Honor, we have listened to Ritchie's
19 objection regarding Mr. Kelley's status as a
20 receiver in the District Court, Your Honor, and
21 we agree with the United States Trustee's
22 position that Mr. Kelley's status as receiver for
23 these bankruptcy debtors terminated upon the
24 filing of the bankruptcy petition and upon his
25 appointment as Trustee.

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1 Your Honor, we think the case law
2 interpreting Section 543 is clear that says that
3 he is no longer acting as receiver for the

4 debtors in these cases. He's only acting as
5 receiver for non-bankruptcy debtors.

6 And as a case in point, Your Honor, that
7 I would bring the Court's attention to is a case
8 by the Bankruptcy Court in the District of
9 Columbia. It's a 2004 decision called In Re:
10 Stratesec, S-T-R-A-T-E-S-E-C, and in that case,
11 Your Honor, the bankruptcy court was presented
12 with a similar situation as the Court is here
13 today whereby a pre-bankruptcy receiver had been
14 appointed by another court. The receiver had
15 filed a petition in bankruptcy and then that
16 receiver was later in bankruptcy appointed as the
17 trustee for the bankruptcy debtor.

18 In that case, Your Honor, the Court --
19 the Bankruptcy Court said that the court should
20 treat the receivership as suspended under
21 Section 543 and the receiver's role placed in
22 limbo with the receiver no longer playing a role
23 as receiver. The Court then went on to say, Your
24 Honor, that -- first of all, the Court noted that
25 in the Supreme Court decision of Commodity

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1 Futures Trading Commission vs. Weintraub that

2 there was a similar situation whereby there was a
3 pre-bankruptcy receiver that was later appointed
4 as a Trustee and the Bankruptcy Court in
5 Stratesec said that apparently there was no
6 problem in that case with that situation and they
7 went on to say that this Court is unaware of any
8 reason why such an appointment ought not to be
9 approved by this Court.

10 Your Honor, as shown by that case and as
11 the other cases under Section 543, Your Honor,
12 the Committee believes that it is clear that the
13 receivership over the bankruptcy debtors is no
14 longer in effect, Your Honor, and that
15 Mr. Kelley's status as a former receiver for
16 these bankruptcy debtors does not create a
17 conflict of interest and it does not cause any
18 problems under Section 10114.

19 Your Honor, as I stated previously --

20 THE COURT: Let me ask you a
21 question.

22 MR. RUNCK: Sure.

23 THE COURT: If his status as receiver
24 terminated automatically by operation of law as
25 of the commencement of the case then from then at

1 least until the U.S. Trustee's active appointment
2 on December 24th, who was vested with legal
3 responsibility for the assets of these bankruptcy
4 estates?

5 MR. RUNCK: Sure, Your Honor.

6 THE COURT: There was no Trustee.
7 There was a debtor in possession, but the
8 management of these companies have largely fled
9 or were -- suffered the infirmity of being barred
10 from being involved in management as a result of
11 the criminal case, so who was minding the store
12 legally speaking?

13 MR. RUNCK: Clearly Mr. Kelley was.
14 We're not --

15 THE COURT: De facto, yes.

16 MR. RUNCK: Yes, yes. On a
17 practical basis, there's no question. I am
18 definitely not asserting that. As the U.S.
19 Trustee appointed in their pleadings, however,
20 there were substantial questions that were -- had
21 arisen with respect to his proper legal authority
22 to do so under Section 543. That issue has now
23 been resolved with the United States Trustee's
24 appointment of Mr. Kelley as a Trustee and now
25 Mr. Kelley as the appointed Trustee clearly has

1 the authority to act as such in bankruptcy.

2 In the cases I have read under
3 Section 543 indicate that upon the appointment of
4 being a Trustee and in bankruptcy Mr. Kelley no
5 longer has the authority to act as receiver in
6 these cases and so Ritchie's arguments that
7 somehow he is subject to a dual duty or to
8 conflicting strains, I think Mr. Jorissen
9 indicated, I just don't see how that can be the
10 case, Your Honor.

11 Your Honor, with respect to the specific
12 arguments of a conflict that have been raised,
13 and I am not going to repeat all of them in
14 detail, but as we said in our papers, Your Honor,
15 Ritchie has raised a number of alleged conflicts
16 and we don't believe that any of them are valid
17 under the current record before the Court.

18 Your Honor, we believe, and as I stated
19 previously before this Court, we believe that the
20 conflict of interest must be based on fact and it
21 can't be based on merely speculation and in this
22 case, Your Honor, a number of, if not actually
23 all of Ritchie's alleged conflicts fail that
24 test.

25 The first one, of course, is they have

1 alleged that the fact that there inter-company
2 claims between PCI and PGW that somehow creates a
3 disqualifying conflict of interest, Your Honor,
4 that assertion has been clearly refuted by the
5 case -- the case law, including International Oil
6 which was referenced in our -- in our papers
7 which is by the Second Circuit. They have raised
8 the possibility of a future dispute over
9 substantive consolidation, Your Honor, and the
10 Ben Franklin case in Illinois clearly resolves
11 that and says that is no conflict. The
12 appointment of a common Trustee does not
13 prejudice party's ability to either support or
14 oppose substantive consolidation at a later time
15 and it does not create a conflict of interest.

16 Your Honor, as the U.S. Trustee pointed
17 out, the allegations that Mr. Petters' fraud was
18 committed solely through PCI and that PGW and
19 it's subsidiaries are completely innocent, the
20 facts to support that allegation just simply
21 don't exist at this point in time, Your Honor, so
22 there's no basis to declare a conflict based on
23 facts that we don't have at this time.

24 The Federal Grand Jury's investigation

25 said quite to the contrary. It made specific

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1 allegations of criminal conduct against both PCI
2 and PGW.

3 Your Honor, on that point, I would also
4 call the Court's attention to Page 11 of the
5 criminal indictment, Your Honor, and that is the
6 money laundering count and in describing the
7 money laundering account, they clearly mention
8 that there was a wire transfer from PGW to
9 Mr. Petters' personal account, so there's a
10 specific mention of PGW there in addition to all
11 the other references to PGW, but then in
12 Counts 14 and 16, Your Honor, I would note that
13 there's also wire transfer that are alleged from
14 PCI.

15 Count 14 is an allegation of a wire
16 transfer in the amount of two and a half million
17 from PCI to an entity called U Bid, Inc. which is
18 a PGW subsidiary.

19 Count 16 alleges a wire transfer from PCI
20 to an entity called Innovative Campus which is
21 also a PGW subsidiary, so the assertion that PGW
22 is innocent and PCI was the sole vehicle for the

23 fraud in this case, the facts before the Court
24 just don't bear that out and there's no
25 justification to appoint a separate Trustee based

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1 on that type of assertion.

2 Your Honor, with respect to the
3 allegation that PCI and PGW have completely
4 separate and distinct creditors and that PCI's
5 creditors are fraud victims and PGW's creditors
6 are not victims, that's another area that's just
7 not born out by the facts, Your Honor. First of
8 all, the proof of claim deadline hasn't been
9 established yet in these cases and so we don't
10 know which creditors are going to assert claims
11 against which debtors and it seems likely, Your
12 Honor, that many creditors out there are going to
13 assert multiple claims against multiple debtors
14 based on both contract theories and tort theories
15 and in Ritchie's papers they seem to be focusing
16 purely on contract claims, but a tort claim is
17 also a claim in bankruptcy.

18 So the bottom line is at this point in
19 time we don't know whether or not PCI and PGW
20 have separate -- completely separate and distinct

21 creditors as was alleged and again there's no
22 basis to disqualify Mr. Kelley as a Trustee based
23 on that assertion.

24 And finally, Your Honor, as the U.S.
25 Trustee pointed out, the committee believes that

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1 Mr. Kelley's duty as receiver for the
2 non-bankruptcy entities and his duty as Trustee
3 for the debtors in bankruptcy is completely
4 aligned. We think that his duty under both of
5 those authorities is to identify and maximize the
6 value of assets wherever, if possible.

7 We do agree that he has a fiduciary duty
8 to all of the creditors in the bankruptcy cases.
9 There's no doubt about that. We just don't
10 believe that's a conflict because we think that
11 that interest is perfectly aligned with his duty
12 as receiver for the non-bankruptcy entities.

13 So, Your Honor, in conclusion, when we
14 look at the actual evidence that's available at
15 this time, there's no evidence of a conflict of
16 interest here. There's no basis to find that
17 separate Trustees are required in this case.
18 There's no basis to disqualify Mr. Kelley as

19 having a conflict of interest and again as the
20 Second Circuit Court of Appeals stated in the
21 International Oil case, any type of judgment with
22 respect to a conflict of interest has to be based
23 on actual evidence. It can't be based on just
24 speculation and in this case, Your Honor, it's
25 completely appropriate for the U.S. Trustee to

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1 appoint Mr. Kelley as the common Trustee for all
2 of the debtors.

3 As this Court is well aware, bankruptcy
4 is a zero sum game, so the more we double or
5 triple the costs of the bankruptcy case the more
6 professionals we bring into this, every single
7 dollar that we spend on that infrastructure, that
8 administrative infrastructure, that is taken away
9 from the net recovery to creditors in this case.

10 In addition, Your Honor, the appointment
11 of a separate Trustee would be disruptive.
12 Disqualifying Mr. Kelley and his professionals
13 would be extremely disruptive and what Ritchie is
14 asking for in this case would basically cause the
15 creditors to lose both time and money in this
16 case and we just simply can't afford to do that.

17 Thank you, Your Honor.

18 THE COURT: All right. Thank you.

19 All right. Let's see, Mr. Lodoen, I know you put
20 in a response on behalf of Mr. Kelley, but just
21 identify certain historical aspects of it because
22 if I remember the response correctly Mr. Kelley
23 didn't think that it would be appropriate to take
24 a substantive position per se, but I will turn
25 the floor over to you for whatever you want to

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1 outline here.

2 MR. LODOEN: Thank you, Your Honor.
3 Your characterization of our response is correct.
4 It was meant to basically provide a factual
5 background for the Court and the other parties
6 because, of course, Mr. Kelley has the best
7 understanding of the factual background of these
8 entities at this time.

9 My comments today will likewise be
10 focused on some of the factual issues that were
11 raised before the Court.

12 First, Your Honor, you inquired about
13 judge -- or you have inquired about who was
14 essentially minding the shop, if you will, early

15 on in these cases and Mr. Kelley was acting
16 essentially as debtor in possession during that
17 period of time because Judge Montgomery's order,
18 first receiver order, said that he was entitled
19 to do that and that he should take that position
20 with respect to the bankruptcy cases that he
21 elected to put in bankruptcy proceedings.

22 That, in fact, is what triggered the
23 issues with the U.S. Trustee's Office saying
24 that, well, regardless of what the order says
25 that isn't -- that is inconsistent with how the

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1 Bankruptcy Code works.

2 Similar factual situation in the Bayou
3 you case that was also cited. The order in that
4 case said that the receiver could continue on as
5 a debtor in possession in the Chapter 11 cases.
6 In that particular case there wasn't a voluntary
7 resolution. It's now on appeal to the Second
8 Circuit. We deemed it appropriate to have some
9 type of a resolution of that issue here so that
10 the issues weren't -- weren't appealed and all
11 the money spent on both parties pursuing that up
12 to the Eighth Circuit with a continued period

13 of -- of wondering who really is entitled to mind
14 the store.

15 Once the court order in front of Judge
16 Montgomery was amended, mind you, Your Honor,
17 with the input of the United States Trustee's
18 Office who wanted to make sure that the
19 Bankruptcy Code governed and with the input of
20 the United States Attorney's Office who just said
21 whatever forfeiture rights there are aren't being
22 affected by this, they continue in effect
23 whatever they are, the status quo is maintained
24 on those as well, that amended order was -- was
25 submitted and signed by Judge Montgomery.

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1 I think the real period of question is
2 probably from the date that this Court entered
3 the order appointing or authorizing the United
4 States Trustee to appoint Trustees in these cases
5 until the present moment period of authority is
6 somewhat in question.

7 The Court also inquired about whether
8 there's estates in the receivership proceedings.
9 We don't view there as being estates in those
10 proceedings. In fact, Mr. Kelley as the receiver

11 for various entities for various individuals, his
12 money is brought in with respect to those various
13 entities, money is put in accounts that are setup
14 and established for those particular entities and
15 the same thing is happening with respect to the
16 individuals.

17 How those funds ultimately get allocated
18 at the end remains to be seen. I will submit to
19 the Court or tell the Court that as I mentioned
20 in our response that in one of the cases as the
21 funds were brought in for a smaller entity and
22 the entity was wound down, those funds were
23 distributed to those creditors on a prorata basis
24 in that particular proceeding and we -- we have
25 no reason to believe that the United States

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1 Attorney's Office won't allow that as we go
2 forward.

3 When I say allow that, I mean bring
4 forfeiture proceedings with respect to various
5 entities. Ultimately it's up to Judge Montgomery
6 in the receivership matters to decide how the
7 receivership entities are handled, but there's
8 no -- Mr. Kelley has no knowledge today whether

9 there will be a forfeiture issue or not with
10 respect to the various cases, either in the
11 receivership or the cases in bankruptcy
12 proceedings, whether that be Polaroid or whether
13 it be these cases where he is -- where his
14 appointment for Trustee is up for consideration.

15 Your Honor, I can also represent to the
16 Court that there is no game plan. There is no
17 agenda by Mr. Kelley or anyone else at this time
18 as far as -- as far as he is -- as far as he is
19 aware.

20 His job in the receivership proceedings
21 is to find and preserve assets so that they can
22 ultimately be distributed for various creditors
23 and parties who may have been harmed or who are
24 owed money by the various Petter entities.

25 His role as a Trustee, if he is appointed

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1 as a Trustee in these cases, will be the same.
2 It will be to pull together assets. It will be
3 to analyze and pursue claims and will ultimately
4 be with the input of the various parties around
5 this courtroom today figure out how should these
6 assets be distributed, what's a fair and just and

7 proper way to distribute assets to the various
8 creditors and parties who are claimed to be owed
9 money in these proceedings.

10 Early on when we were first before the
11 Court I told Your Honor that PWC was in the
12 process of being retained to do the forensic
13 work. They were going to be doing that for all
14 the entities when a report is ultimately
15 prepared, that will be shared with all the
16 parties.

17 Mr. Kelley doesn't have an agenda. His
18 objective is to pull together the information to
19 see where did the money go, where did it
20 originate, who has claims, who don't have claims,
21 who does he have claims against, who doesn't he
22 have claims against. Whether that's with respect
23 to the various receiver entities or if he's
24 appointed Trustee in these cases with respect to
25 these various entities.

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1 This isn't someone who's the owner of the
2 businesses who's out trying to preserve his
3 own -- his own equity interest. Mr. Kelley is
4 not someone who wants to reorganize and keep all

5 these businesses going forward into the future so
6 that he has a future for the next 20 years
7 running these entities like a lot of debtors do.

8 THE COURT: He may already be
9 looking forward to getting out of this business.

10 MR. LODOEN: Your Honor, there are
11 several days there I think that is -- that is the
12 case.

13 So the order with Judge Montgomery was
14 clearly revised in a way that tried to
15 accommodate everybody and I think if you ask the
16 parties around the courtroom today you will find
17 that they would say that there's a sense of
18 cooperation and accommodation and transparency
19 with Mr. Kelley and the various roles that he has
20 assumed today and, Your Honor, he clearly
21 understands that if he is appointed the Trustee
22 in these two cases he's answering to this Court
23 and the creditors in this case and not to Judge
24 Montgomery with respect to these proceedings.

25 He understands his role is different. He

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1 is -- he has studied various materials with
2 respect to the obligations of Trustees that have

3 been provided to him. He has asked questions on
4 the role of the Trustee and we have explained to
5 him what the role of the Trustee is. He
6 understands in that role that he's a fiduciary of
7 this Court and to this particular estate and
8 takes that role seriously.

9 There's also a suggestion, Your Honor,
10 that his objective would be to pull money out of
11 these entities and send it to the receivership.
12 Your Honor, to date actually the receivership
13 entities have been funding on a weekly or every
14 other week basis payroll and other expenses of
15 PGW because PGW has no liquid assets. That seems
16 to be contrary to the suggestion of how he'd be
17 operating as a -- as a receiver if you were just
18 focusing on the receivership entities.

19 Your Honor, I think it's also important
20 to understand or just take a look at the org
21 chart that was attached, I believe, as Exhibit G
22 or F to the response and I will just point out to
23 the Court, what this org chart does is shows the
24 first tier entities and also the entities that
25 are in bankruptcy proceedings and I think it's

1 interesting to note that if you look at PGW right
2 at the top and you count under there, there are
3 approximately 22 first tier entities that are not
4 in bankruptcy proceedings today. Those are
5 entities that are subject to the receivership.

6 If a separate Trustee were appointed over
7 PGW, you would have a Trustee at the PGW level
8 that really doesn't have any assets other than
9 ownership, membership, LLC interest, stock
10 interest.

11 THE COURT: The equity.

12 MR. LODOEN: The equity in these
13 various subsidiary entities that are not
14 presently in bankruptcy proceedings, so you would
15 end up in a, it seems to me, somewhat of an
16 awkward scenario where you have got a receiver
17 who's controlling the subsidiary entities. You
18 have got a Trustee of PGW and then as it is
19 expected that one or more, but very likely not
20 all of those subsidiary entities will find their
21 ways into bankruptcy proceedings. What do you do
22 with those cases? Do you give them to Trustee
23 No. 3, Trustee No. 4 and Trustee No. 5 because
24 some of those entities have very, very
25 substantial cross claims across the whole

1 enterprise, up and down and sideways, in
2 particular Petters Capital, LLC and virtually all
3 of the entities have some inter-company
4 obligations.

5 So, Your Honor, I think in one sense this
6 is a real legal issue. In another sense it boils
7 down to a very practical and economical issue.
8 One cannot over emphasize the complexity of the
9 years of transactions, inter-company exchanges,
10 documentation that is -- quite frankly it's very
11 hard to find a deal that seems to have done --
12 been done straight up in a way that everything --
13 it's all got bells and whistles connected to it
14 and to try to understand, dig through all of that
15 and then figure out what to make of it, what
16 claims to pursue is a very expensive proposition.
17 It's already been very expensive to unwind
18 multiple -- ten billion dollars, whatever the
19 number of -- I don't know the number of
20 transactions that have gone back and forth over
21 the years, but at least the number that's been --
22 that's documented on the books is claims in the
23 three to three and a half billion dollar range.
24 To unwind all of that and try to figure out how
25 to make sense of that is a very, very expensive

1 proposition no matter how you slice it. To add
2 additional layers of Trustees who would want
3 their additional layers of professionals because
4 if there's a reason for separate Trustees,
5 there's probably a reason for separate
6 professionals, it would continue to exacerbate
7 the whole -- the whole prospect that a good chunk
8 of money recovered in these cases doesn't get
9 back to creditors and parties who have been
10 harmed, but instead just goes to more and more of
11 the professionals and we think that there are
12 obviously legal consideration, the economics
13 conditions are important as well.

14 Your Honor, just to conclude, I can
15 pledge that Mr. Kelley will, in whatever role the
16 Court places him, continue to cooperate with the
17 parties, to work with the parties in the various
18 interests, the various entities, the creditors,
19 the investors, et cetera, in as a cooperative way
20 as he can to share his information as it becomes
21 available, to seek consensus and ultimately to
22 try to bring parties to the table and if at some
23 point he gets to a position of an irreconcilable
24 conflict that he cannot -- that he cannot resolve

25 or that he cannot pursue, then we'll be back in

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1 front of this Court with the United States
2 Trustee and the other parties seeking a
3 resolution as to how to deal with that particular
4 conflict at that point in time, but until that
5 point in time Mr. Kelley believes that he could
6 fulfill his obligations as a Trustee over these
7 entities in a way that is not in conflict with
8 his obligations as a receiver over the entities
9 that are presently administered by Judge
10 Montgomery.

11 THE COURT: So would I be accurate in
12 concluding then that if I were to approve the
13 appointment of Mr. Kelley as Trustee, he would go
14 forward as a Trustee in a Chapter 11 case,
15 collect assets and, for instance, if no
16 forfeiture proceedings entailing these companies
17 or their assets were prosecuted by the
18 Government, then he's just going to follow
19 through as a Chapter 11 Trustee and propose
20 distribution by some means in accordance with the
21 priorities and the claims allowance process of
22 bankruptcy?

23 MR. LODOEN: Precisely. And in --
24 the first order of business is collecting the
25 assets, then looking at various avoidance actions

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1 against third parties. Those actions would be
2 pursued. Then if you get to the point of trying
3 to figure out whether there's avoidance actions
4 or what do you do with inter-company claims that
5 could be the point where he's got to come back
6 and say, okay, if there's something there that
7 has to be dealt with we may need somebody else to
8 step in for a limited purpose of handling that or
9 what may well be the case, Your Honor, is that a
10 motion for some consolidation is brought at some
11 point in time and if that is ultimately granted,
12 then a lot of that inter-company stuff really
13 disappears and we'll have to ultimately see what
14 the PWC final report looks like, analyze that
15 information and then decide whether a motion for
16 substantive consolidation in this case makes
17 sense or not and, of course, the Court is the
18 final decider of that point.

19 THE COURT: What position does
20 Mr. Kelley take then if approved as Trustee if

21 the Government pushes forward on forfeiture
22 proceedings as to the assets of these debtors?

23 MR. LODOEN: Your Honor --

24 THE COURT: I would assume as Trustee
25 he's going to not want to see that happening

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1 because he's supposed to act in accordance with
2 bankruptcy law, but what happens if the
3 Department of Justice, U.S. Attorney's Office
4 goes ahead with it?

5 MR. LODOEN: I think his obligation
6 as a Trustee would be to -- he would try to keep
7 those assets in the bankruptcy estate.

8 Now, the U.S. Trustee's Office has just
9 suggested and conversing that there may be an
10 issue as to whether any Trustee in a bankruptcy
11 case has standing to resist forfeiture or not,
12 whether that's an issue that the particular
13 creditors of that case have to address. I don't
14 know the answer to that question. We'd have to
15 look at that at that point in time, but I can
16 tell you the first approach of Mr. Kelley would
17 be to try to bring the parties together and come
18 to some type of a consensual resolution of those

19 issues.

20 I know of at least one case before this
21 District where the forfeiture card was pursued
22 and ultimately that case had -- the other parties
23 reached consensus on that particular -- that
24 particular case. Now, it might have been after
25 some briefing, but ultimately the parties came to

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1 a resolution, so we'll have to -- we'll have to
2 deal with that as it comes, but certainly because
3 a Trustee of the bankruptcy case, if he's got the
4 ability under the law and the authority to resist
5 it, he would do that as a Trustee. If he doesn't
6 have the authority to resist it then we'd have to
7 figure out with the other creditors how that --
8 how that would be fought or objected to, but he's
9 certainly not going to be there waiving a banner
10 and saying, okay, let's forfeit these assets.
11 That's not his role. That's the U.S. Attorney's
12 role.

13 THE COURT: All right. I don't think
14 I have any other questions. Thank you.

15 MR. LODOEN: All right. Thank you.

16 THE COURT: All right.

17 MR. RYAN: Your Honor, may I be heard
18 on this? I am actually here for the Polaroid
19 that is to go at 3:00, but I think Polaroid has
20 come up a number of times.

21 THE COURT: All right. Why don't you
22 come forward and note your appearance. I'm not
23 really sure why I am doing this, but go ahead. I
24 will recognize Mr. Dennis Ryan. Now tell me who
25 you are here for.

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1 MR. RYAN: Yes, as has been
2 mentioned Polaroid is wholly owned by PGW and is
3 it itself in a Chapter 11 case and the Polaroid
4 creditors -- official Creditor's Committee which
5 is appointed by the U.S. Trustee's Office has
6 recently decide to retain the law firm of Paul
7 Hastings as General Committee Counsel and the law
8 firm of Faegre & Benson as local counsel in
9 connection with the Polaroid case.

10 We just have been engaged and we're in
11 the process of speaking with Mr. Ridgway and
12 filing our applications, but given the
13 inter-relationships of Polaroid as has been
14 mentioned by many people here and the impact of

15 the ruling today on Polaroid in the Polaroid
16 case, I think particularly from the Committee
17 perspective addressing the conflict issues that
18 Mr. Lodoen just mentioned and have interchange
19 with the Court would be appropriate for us to
20 comment and I will note having indicated that law
21 firms have been retained contrary to the
22 representation, no other professionals have been
23 retained by the Committee and Polaroid at this
24 point, no financial professionals or anyone else.

25 But if I may, Your Honor, I have with me

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1 from the law firm of Paul Hastings Rick Chesley
2 who's a partner in the Paul Hastings law firm.
3 He's an '85 graduate of the University of
4 Cincinnati College of Law. He's admitted in Ohio
5 and Illinois, in the Northern District of
6 Illinois, Northern and Southern Districts of
7 Ohio, all of the Circuit Courts except the First
8 in D.C. and I asked him to explain to me sometime
9 why he missed those two, as well as the U.S.
10 Supreme Court and I will be filing a pro hac vice
11 application for him in the Polaroid case, but I
12 ask that he be admitted today just to speak to

13 this issue on Polaroid.

14 THE COURT: I don't really have the
15 to power under the local -- District Court's
16 Local Rule to admit him per se. I will let him
17 preserve some remarks for the record.

18 MR. CHESLEY: Thank you, Your Honor.

19 THE COURT: For whatever anomalous
20 effect that has, I am willing to do it.

21 MR. CHESLEY: Thank you, Your Honor.
22 I appreciate your courtesy. I will be extremely
23 brief.

24 THE COURT: Go ahead.

25 MR. CHESLEY: The only points we

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1 wanted to raise, Your Honor, were first of all,
2 with respect to the Polaroid committee's
3 retention of financial advisors, we have not
4 retained one nor at this point do we envision
5 filing an application to do so working with the
6 debtors and their financial advisors in an
7 attempt to be as efficient as we can in the
8 Polaroid cases and that's what I wanted to speak
9 to today.

10 I took from the remarks previously -- the

11 U.S. Trustee's comments with respect to no
12 evidence of prejudice as it relates to Mr. Kelley
13 in his various roles here. Obviously with
14 respect to Polaroid and the unsecured creditors
15 in that case, Your Honor, rest assured we will be
16 ever vigilant in protecting those interests and,
17 in fact, I may not be advancing those interests
18 particularly well today because we may, in fact,
19 find ourselves at logger heads with Mr. Kelley as
20 these cases proceed in parallel with the Polaroid
21 cases, but what was important for us to mention
22 today, obviously is efficiencies and we have
23 heard this from all the stakeholders here today.

24 There's much to do in the Polaroid cases
25 and certainly in the Petters cases and there are

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1 limited resources within which to do it. We are
2 obviously starting as quickly as we can to move
3 down our paths and with no evidence of prejudice
4 as it relates to Mr. Kelley, we think at this
5 point there's no reason at all to disturb the
6 decisions that are made by the United States
7 Trustee and we will continue along our path with
8 Mr. Kelley in these cases.

9 We may come back to the Court if issues
10 come up in the future, but this point there's a
11 lot to be done and little time and resource
12 within which to do it.

13 I appreciate Your Honor's courtesy.
14 Thank you.

15 THE COURT: Okay. So noted. All
16 right. Mr. Peterson.

17 MR. PETERSON: I am reluctant to do
18 this considering lateness of the hour, Your
19 Honor. I am the Trustee of Lancelot and Colossus
20 that is five hedge fund estates pending in the
21 United States Bankruptcy Court for the Northern
22 District of Illinois.

23 I unfortunately am the largest creditor
24 of these estates at 1.3 billion dollars, about
25 five times the size of the Ritchie claims.

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1 I have read the well written briefs of
2 Ritchie and have listened to the thoughtful
3 remarks of their Counsel, but nevertheless I
4 object to their objection.

5 Three reasons I wish to raise that have
6 not been raised before. Counsel for Ritchie has

7 suggested that a custodian cannot become a
8 Trustee under our Bankruptcy Code citing the
9 Section 543.

10 On the other hand, Your Honor,
11 Section 321(a) of the Bankruptcy Code states that
12 the only person on earth who cannot be a Trustee
13 is the examiner appointed in the case.

14 Now, if Congress meant to exclude
15 custodians from being Trustees, it clearly knew
16 how to do that in Section 321(a) and I would ask
17 the Court to adopt the principal of legislative
18 construction. I will do the latin, it will be
19 awful, *inclusio unius est exclusio alterius*, to
20 state that clearly a custodian by this exclusion
21 in 321(a) is qualified to become a Trustee.

22 No. 2, the Committee raised in it's
23 brief, Your Honor, the decision of the United
24 States Supreme Court in *New Hampshire vs. Maine*,
25 532 U.S. 742 2001, dealing with the principals of

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1 judicial estoppel. Basically when a party
2 appears before the first court articulating a
3 position and obtains relief from that Court, it
4 cannot come to a second court and argue the

5 opposite position just because it's tactical
6 position perhaps changed and that is certainly
7 true in the case at bar with respect to their
8 arguments about an internal conflict.

9 They in the brief filed in this Court
10 take the position that there is, in essence, a
11 good Petters and a bad Petters, that when
12 Mr. Petters ran Petters Worldwide he was the
13 prince of light and when he ran PCI he was the
14 prince of darkness.

15 They then go on to state that there are
16 two types of creditors in this estate, victims
17 and non-victims. He then argues that the money
18 in this case is at the PGW level while all the
19 creditors who are victims are at the PCI level,
20 leaving only Ritchie as a creditor of PGW.

21 That's what their pleadings say in
22 essence, but when they went to the Circuit Court
23 in October of 2008, they told quite a different
24 story. Attached to the pleadings that were filed
25 by Mr. Kelley as Exhibit C1 and C2 are their

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1 Complaint and their Motion for a Temporary
2 Restraining Order. In their Complaint they argue

3 that they are the victim of a fraud, fraud in the
4 inducement. By their own admissions they too are
5 a victim.

6 No. 2, in their motion, in the very first
7 paragraph, the paragraph used for primacy, they
8 make two interesting observations. No. 1,
9 Mr. Petters was the head of an empire and the
10 Petters empire used in that motion is in a very
11 pejorative context.

12 And then No. 2, they state most telling
13 of all Petters Worldwide was part of that empire.
14 In the pleadings at bar this is the good Petters
15 and PCI is the bad Petters, completely different
16 position.

17 They then go on to ask the Circuit Court,
18 the Honorable Alexander White presiding, to
19 appoint one receiver, Mr. Procida, for both
20 Petters Worldwide and PCI and, in fact, they
21 procure an order where that receiver is
22 appointed.

23 It is my position, Your Honor, as the
24 estates largest creditor that they cannot have
25 their cake and eat it too. They cannot go to the

1 Circuit Court of Cook County and say there is no
2 internal conflict and then come to this Court and
3 say, oh yes, there is because we don't
4 particularly like this receiver, but we love
5 Mr. Procida.

6 My next argument, Your Honor, deals with
7 prejudice and policy. Here I am sitting here as
8 a credit of 1.3 billion dollars. In fact,
9 Ritchie is one of the creditors of my estate and
10 I am trying to get his dividend increased along
11 with everyone else's. If we have the appointment
12 of a Trustee and if you accept their external
13 argument that Mr. Kelley cannot be the receiver
14 and the Trustee, then, Your Honor, I think is
15 forced to appoint two Trustees, one for PCI and
16 one for Petters Worldwide.

17 What does that mean? First of all, in
18 terms of costs, we have Trustees drawing fees.
19 We have Trustees hiring lawyers. We have
20 Trustees hiring financial advisors and God knows
21 who else that they will hire. We may even have
22 separate Creditor's Committees now with them
23 hiring separate lawyers and separate financial
24 advisors. Although the parties earlier talked
25 about costs, they did not talk about the other

1 ramifications of such an order.

2 First of all, are we going to have a
3 problem with races to the courthouse between the
4 receiver and the two other Trustees? Are we
5 going to have a danger of inconsistent results?
6 Are we going to have the inefficient use of
7 judicial economy? And most telling are we now
8 going to create tension where one presently does
9 not exist between the U.S. Attorney's Office and
10 the Forfeiture Court versus the Bankruptcy Court.
11 At least once in my career in the last two years
12 and twice in Ms. Steege's career, my partner, we
13 have worked with the U.S. Attorney in terms of
14 forfeitures where they allow the Trustee to
15 disperse the money that has been forfeited. Why
16 do we want to pick a fight by disqualifying the
17 very able Mr. Kelley when we could have an
18 opportunity here to have cooperation with the
19 U.S. Attorney's Office and if there is any
20 forfeited money to be turned over to the Trustee
21 for administration, that to me, Your Honor, seems
22 to be the real prejudice if this motion is
23 granted prematurely.

24 Now these issues came up in Chicago now,
25 and I appreciate that what happens in Chicago is

1 not binding on Minnesota particularly after what
2 has happened to our Governor, but nevertheless we
3 sat down with this problem and my U.S. Trustee
4 suggested to me that my role in the beginning of
5 this case was to reduce this case to cash, have a
6 pile of money over which to fight and if at that
7 point in time there was so much money and the
8 parties could not agree on how to divide that
9 money, then the U.S. Trustee would consider
10 either appointing special counsel or additional
11 Trustees to sort out who is the proper owner of
12 that money.

13 It is my recommendation to this Court
14 that the primary function of Mr. Kelley at this
15 point in these proceedings is to reduce this
16 estate to cash, to have something over which
17 Mr. Krakauer and I can legitimately fight. That
18 is what he should be doing.

19 Mr. Kelley made a statement that the
20 dividend could be anywhere from zero to 20 cents
21 and I made a comment to my Court that if
22 Mr. Kelley could get a dividend of twenty cents
23 on the dollar I would personally carry him around
24 this courthouse on my shoulders, an honor that he
25 may not wish to accept.

1 Nevertheless, Your Honor, if there comes
2 a time in this estate where we have that pile of
3 money sitting on the floor and there's a time
4 when we have to divide that money up between the
5 computing interests, then and only then under
6 Rule 2009(d) should we consider the appointment
7 of either special counsel or additional Trustees
8 to protect those parochial interests, but right
9 now, Your Honor, it is my sense that our goal
10 should be to have one Trustee acting in a unitary
11 manner to reduce this estate to cash so that we
12 have something to fight over.

13 Thank you, Judge.

14 THE COURT: All right. Well, one
15 more round. Mr. Jorissen.

16 MR. JORISSEN: Thank you, Your
17 Honor. I will be very brief. First of all, with
18 respect to Polaroid, I didn't think -- I had
19 suggested to the Court that Polaroid had retained
20 professionals. I was talking about the
21 Creditor's Committee in this case that had
22 retained professionals and to the extent I
23 created confusion I did not mean to say what

22 Mr. Ridgway, argued that he reads and, I'm sorry
23 I can't remember what the name of the case is, he
24 reads In Re: Madison Avenue Limited Partnership
25 as providing that once a bankruptcy case is

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1 commenced the receivership ceases to exist as a
2 matter of law.

3 I don't read Madison Avenue Limited
4 Partnership to say that. I think what that case
5 says is that a receiver takes on none of the
6 obligations of a debtor in possession or a
7 Trustee. I think what the law is under Section
8 543 is that what once a bankruptcy case is
9 commenced a receiver as a custodian can take no
10 further action in respect of the administration
11 of the assets of the debtor or of the bankruptcy
12 estate, so I don't think that this case says what
13 the U.S. Trustee's Office says it says.

14 I think what it basically says is that in
15 that case the receiver wasn't empowered to act
16 because of the turnover provision and the
17 restraints on the conduct of the receiver under
18 Section 543.

19 Mr. Runck suggested that this Court

20 should treat the receivership as suspended and I
21 am not sure how that would work. Judge
22 Montgomery hasn't terminated the receivership as
23 it relates to PGW or PCI or any of the other
24 Petters entities.

25 Does that mean that we can administer the

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1 assets of the bankruptcy estates without going to
2 the District Court? Could they sell -- for
3 instance, they have announced an intention that
4 it's possible that Polaroid will be subject to a
5 363 sale in the not too distant future. Does
6 that get done outside the purview of the
7 receivership? I don't know, but as I read the
8 receivership order, it certainly seems to me like
9 Mr. Kelley would have to go to the judge in the
10 District Court proceeding to -- to obtain
11 authority to consummate a sale of that nature.

12 If the --

13 THE COURT: Wait a minute now.

14 Polaroid is different though because Polaroid has
15 management in place. Mr. Kelley as receiver may
16 have stepped into the shoes of the shareholder,
17 but when you have got management in place they

18 really are the ones that are empowered to go
19 ahead as debtors in possession.

20 MR. JORISSEN: But I guess the
21 greater point, Your Honor, one, the receivership
22 order itself directs Mr. Kelley to take control
23 of the operations of Polaroid and the other
24 affiliated companies.

25 THE COURT: Well, in so far -- I

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1 guess I'd hesitate to really put a construction
2 on the receivership order quite yet. I may well
3 have to do that, but I mean the thought there
4 maybe he's taking that asset by virtue of
5 succeeding Tom Petters as shareholder or PGW as
6 shareholder and therefore the action is taken
7 through that vector, possibly.

8 I am sort of thinking outloud which is
9 always dangerous, particularly in a hotly
10 contested hearing, but I don't know that it
11 necessarily has to follow and flow the way you're
12 suggesting.

13 MR. JORISSEN: Well, I would just
14 note, Your Honor, that there have been motions
15 for relief from the automatic stay that have been

16 filed or for relief from stay in the District
17 Court proceeding. Acorn filed one. Zenith filed
18 one. There was another creditor whose name
19 escapes me at this point, but I sat through those
20 proceedings and Judge Montgomery clearly -- first
21 of all, the debtor or Mr. Kelley as receiver and
22 the United States Attorney both clearly staked
23 out the position in that case that Mr. Kelley was
24 directed to take possession and control of the
25 operations of Polaroid, so there's no -- and I

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1 think that Judge Montgomery herself recognized on
2 the record during that argument that it was her
3 intention, and it may have been in a subsequent
4 order, but I think on the record that it was her
5 intention to include Polaroid and those entities
6 within the ambit of the receivership order.

7 THE COURT: I am going to submit to
8 you though, the U.S. Trustee hasn't moved for the
9 appointment of a receiver in the Polaroid cases.

10 MR. JORISSEN: I understand that.

11 THE COURT: And I am sure that is
12 because in large part there is management there
13 with which counsel can at least confer.

14 Now, maybe the considerations behind the
15 ultimate strategic elections in the case may come
16 from elsewhere, but at the very least there is
17 management on board that's holding the company
18 together, continuing to run it on a day-to-day
19 basis.

20 MR. JORISSEN: No, no. I agree.

21 THE COURT: The longer term prospects
22 may well come from other sorts of considerations,
23 but it's not really a straight analogy with the
24 two holding companies, Petters General Worldwide
25 and Petters Company.

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1 MR. JORISSEN: No, no. I think the
2 point though, Your Honor, is that there is no
3 question but that under the terms of that
4 receivership order, at least as I read it and I
5 have been wrong before, but under the terms of
6 that order Mr. Kelley makes the call in the first
7 instance and he does so in consultation with
8 Judge Montgomery for any assets that are under
9 receivership but, you know, I think the more -- I
10 mean a lot of the issues come up now based on
11 what we have heard today. There's this notion

12 that the receivership ceased to exist when the
13 order authorizing the appointment of a receiver
14 was entered or alternatively I guess when the
15 U.S. Trustee made it's appointment.

16 And as to the interim status I am not
17 sure what the interim status was, but as that gap
18 period goes on, now you have got Price Waterhouse
19 Cooper out there doing analysis of transactions
20 which we have heard today will be reported out to
21 everyone and they have done so as engaged by
22 Mr. Kelley at his behest to do that and so they
23 are going to publish a report.

24 Now, is Mr. Kelley going to be able to
25 come back and surcharge the bankruptcy estates

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1 for the work that's done during this interim
2 period? Does that make him a creditor of these
3 Chapter 11 estates? We have heard today -- the
4 first time I heard it that affiliates that are
5 parties in the receivership action are funding
6 PGW's operations. Now, does that make them
7 creditors and does that make Mr. Kelley as the
8 receiver for those entities outside of
9 bankruptcy, if in fact the receiverships have

10 been terminated, does that make him a creditor on
11 behalf of those non-bankruptcy affiliates?

12 But I think as I read Section 543, what
13 it says is that a receiver quo custodian -- once
14 the bankruptcy cases are commenced, they have no
15 further authority to act and there's been nothing
16 to terminate Mr. Kelley's status as a receiver
17 and I would submit, Your Honor, and I haven't
18 looked into it directly, but I would submit that
19 in all probability in many instances after the
20 commencement of these cases and even after the
21 order that you issued authorizing the appointment
22 of a receiver, Mr. Kelley has acted under color
23 of his authority as receiver to do things
24 ostensibly for the benefit of PGW, PCI or the
25 other bankrupt debtors, so it --

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1 The law on this issue I don't think says
2 that simply because the bankruptcy cases are
3 commenced that the receivership ends or that his
4 status as receiver is terminated. I think that
5 543 says you can't act to administer the assets
6 of the estate and I think that that circumstance
7 prevents him from serving as Trustee in these

8 cases.

9 I think that's all I have, Your Honor.

10 Thank you.

11 THE COURT: All right. Mr. Ridgway,
12 was there anything else you wanted to note?

13 MR. RIDGWAY: One moment, Your
14 Honor.

15 THE COURT: Sure.

16 MR. RIDGWAY: Nothing further, Your
17 Honor.

18 THE COURT: Okay. Very good.

19 Mr. Runck, was there anything else you
20 wanted to note?

21 MR. RUNCK: No thank you, Your
22 Honor.

23 THE COURT: Okay. Mr. Lodoen?

24 MR. LODOEN: Your Honor,
25 Mr. Kelley's understanding, and quite frankly my

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1 understanding, is that the Trustee is different
2 from the debtor in possession where like such as
3 Polaroid his receivership is over that stock
4 interest that -- that equity interest.

5 In the instance of a Trustee being

6 appointed, that Trustee just like a normal
7 bankruptcy case has no obligation to the
8 shareholders, doesn't take any direction from the
9 shareholders. The Trustee comes in and it's
10 obligation is as a fiduciary to the Court and to
11 the creditors. If there's something Mr. Kelley
12 needs to do to clarify that, whether it's to seek
13 an order before Judge Montgomery clarifying it,
14 whether it's signing a piece of paper saying I am
15 only the Trustee, I am not -- I am -- my role
16 with respect to the receivership is over with
17 respect to those entities, that could be done. I
18 don't see that as a problem because it, in fact,
19 would just reflect what is everybody's
20 understanding I believe in this court, other than
21 perhaps the Ritchie Group.

22 So if that would help the Court suggest
23 what would appropriate and we could I suspect
24 obtain that.

25 THE COURT: All right. Thank you.

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1 Anybody else? All right. Very good.

2 Well, once again I will say I haven't
3 seen one like this before and I have been doing

4 my end of this work almost as long as or longer
5 than a lot of lawyers in this courtroom have.

6 I am going to take this under advisement,
7 Counsel. I feel compelled to put this into a
8 written order, which I am going to proceed with
9 all haste on. It's my hope to get that out by
10 the end of next week.

11 I can't absolutely guarantee that, but
12 that would be my hope because this issue does
13 have to be settled here as quickly as possible
14 and frankly given the dimensions of this being
15 both very abstract and abstruse, but also very
16 much down to the nitty-gritty, very practically
17 orientated, I think that it would best serve the
18 purposes of attaching integrity to my conclusion
19 to set that down in writing, so my staff and I
20 will get to work on that right away and as I say
21 it's my hope to be able to issue that order by
22 the end of next week.

23 So I will consider the record as closed
24 here and there was more than enough to argue on
25 as a matter of law, which as I ruled last week I

1 think in large part that's what this is based

2 upon the configuration of the parties and
3 particularly based upon Mr. Kelley's status and
4 charge and admission as receiver under Judge
5 Montgomery's order, so I think that should take
6 care of it, unless anybody else has something
7 else they want to note for the record in the
8 context of this case. All right. Good enough.
9 Mr. Runck?

10 MR. RUNCK: Your Honor, I just want
11 to mention, after -- there's one other motion
12 technically scheduled to be heard today.

13 THE COURT: Okay. I am glad you
14 remembered it. I almost forgot myself, so I
15 thought I should remind the Court.

16 THE COURT: There it is on the
17 calendar, yes. All right. Why don't you just go
18 ahead and speak to that real quickly.

19 MR. RUNCK: Okay. Your Honor, very
20 briefly, this is what was intended to be a very
21 routine motion. It's a motion to establish
22 confidentiality procedures for the committee. We
23 filed the motion approximately two weeks ago.

24 The purpose of the motion is to clarify
25 Section 1102(b)(3)(a) of the Bankruptcy Code and

1 to make it clear that the Committee is not
2 obligated to turn over confidential information
3 to third parties. We have a proposed order that
4 sets forth the procedures that we suggest for
5 dealing with confidential information that the
6 committee receives and the basis for that is set
7 forth in our motion papers.

8 We haven't received any objection to this
9 motion, but I just wanted to bring it to the
10 Court's attention.

11 THE COURT: Okay. Good enough.
12 Anybody have anything they want to note on that?
13 Mr. Ridgway?

14 MR. RIDGWAY: Your Honor, just a
15 technical point, because this is entered into
16 with Mr. Kelley in his role as, quote, Chapter 11
17 Trustee, obviously he hasn't yet been appointed,
18 so with that qualifications we certainly don't
19 have an objection to the content of it, merely
20 with regard to the in limbo status, if you will,
21 of Mr. Kelley and I don't know if that causes the
22 Court any concern. It certainly doesn't in terms
23 of the content and what this motion is all about
24 certainly.

25 THE COURT: Substantively the U.S.

1 Trustee's Office has no objection to that.

2 MR. RIDGWAY: That's correct.

3 THE COURT: All right. Well, that
4 really only affects, I guess, the standing of the
5 proponents of the measure and I don't think
6 that's really material given the fact that nobody
7 has any substantive objection to it, I am going
8 to go ahead and grant the motion regardless of
9 whether I would consider it as a product of a
10 stipulation or a joint motion or just as the
11 Committee coming forward.

12 And am I correct in remembering that this
13 sort of relief is basically necessitated by the
14 language that was enacted in the 2005 Amendments
15 Act?

16 MR. RUNCK: That's correct, Your
17 Honor. The language of the statute is very broad
18 and I would argue it implicitly acknowledges that
19 confidential information is not required to be
20 disclosed. However, better to be safe than sorry
21 so we figured we should bring this type of a
22 motion to make that very clear and to establish a
23 set procedure for dealing with that type of
24 information.

25 THE COURT: You can say an awful lot

1 of things about what we think Congress implicitly
2 meant in the 2005 legislation, but it's kept an
3 awful lot of us far more busy than we really
4 should have had to be, so good enough. I will
5 see that the order is entered. I am going to
6 grant the motion and that should take care of
7 that.

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1 STATE OF MINNESOTA)
) SS.
2 COUNTY OF DAKOTA)

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4 BE IT KNOWN, THAT I TRANSCRIBED THE
5 TAPE-RECORDED PROCEEDINGS HELD AT THE TIME AND PLACE
6 SET FORTH HEREIN ABOVE;

7

8 THAT THE PROCEEDINGS WERE RECORDED
9 ELECTRONICALLY AND STENOGRAPHICALLY TRANSCRIBED INTO
10 TYPEWRITING, THAT THE TRANSCRIPT IS A TRUE RECORD OF
11 THE PROCEEDINGS, TO THE BEST OF MY ABILITY;

12

13 THAT I AM NOT RELATED TO ANY OF THE
14 PARTIES HERETO NOR INTERESTED IN THE OUTCOME OF THE
15 ACTION;

16

17 WITNESS MY HAND AND SEAL:

18

19

20

S/ LESLIE PINGLEY

21

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LESLIE PINGLEY

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NOTARY PUBLIC

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