

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No. 08-5348 (ADM/JSM)

UNITED STATES OF AMERICA, )  
Plaintiff, )  
 )  
v. )  
 )  
1. THOMAS JOSEPH PETTERS; )  
PETTERS COMPANY, INC., aka )  
PCI; PETTERS GROUP WORLDWIDE, LLC; )  
2. DEANNA COLEMAN, aka DEANNA MUNSON; )  
3. ROBERT WHITE; )  
4. JAMES WEHMHOFF; )  
5. LARRY REYNOLDS, dba )  
NATIONWIDE INTERNATIONAL RESOURCES )  
aka NIR; )  
6. MICHAEL CATAIN, dba )  
ENCHANTED FAMILY BUYING COMPANY; )  
7. FRANK E. VENNES JR., dba )  
METRO GEM FINANCE, )  
METRO GEM INC., )  
GRACE OFFERINGS OF FLORIDA LLC, )  
METRO PROPERTY FINANCING, LLC, )  
38 E. ROBINSON, LLC, )  
55 E. PINE, LLC, )  
ORLANDO RENTAL POOL, LLC, )  
100 PINE STREET PROPERTY, LLC, )  
ORANGE STREET TOWNER, LLC, )  
CORNERSTONE RENTAL POOL, LLC, )  
2 SOUTH ORANGE AVENUE, LLC, )  
HOPE COMMONS, LLC, )  
METRO GOLD, INC.; )  
Defendants. )

THIRD REPORT OF RECEIVER

Douglas A. Kelley, the undersigned Receiver for all defendants except Frank E. Vennes, Jr. and his entities, submits this report summarizing major activities undertaken since his last Report.

**A. Individual Defendants**

**1. Tom Petters**

**Receivership Account**

Balance on February 13, 2009	\$	32,054.52
Deposits during period		154,185.07
Expenses paid during period		<u>(186,185.50)</u>
Balance on April 17, 2009	\$	54.09

**Receivership Activity**

Personal bank account balances have been transferred to the Receiver's Account, except where Petters pledged the accounts as collateral for loans. The Receiver continues to investigate the "setoff" of some bank account balances against loans.

Preservation-of-assets expenses such as insurance, utilities expense and maintenance expense are being paid. There still is not sufficient money in the Receiver Account to service mortgages or pay taxes on the real property owned by Tom Petters.

Child support authorized by the Court was paid to Tracy Mixon in December, 2008. Payments have not been paid since December because Ms. Mixon was earlier paid \$7,500 from funds diverted out of the Tam O'Shanter operating account. The \$7,500 is being treated as an advance of the Court-approved monthly child support of \$1,637. Child support payments will resume when the \$7,500 advance is exhausted. Nanny compensation and child care expenses are being paid.

The residence in Keystone, CO was sold for \$1.51 million. The net proceeds of the sale have been placed into an escrow account until resolution of the government's proceedings to contest the validity and/or enforceability of a lender's Deed of Trust that was recorded against the property on September 29, 2008.

Two other parcels of land in Summit County, CO are also listed for sale, one with a

listing price of \$17 million and the other for \$2.2 million.

The Manalapan, FL and Wayzata, MN residences have been listed for sale, with offering prices of \$10.9 million and \$8.25 million, respectively. The current Manalapan offering price of \$10.9 million is a reduction from the original listing price of \$11.9 million to reflect the declining real estate market conditions in Florida. Market appraisals have also been obtained for the Plymouth, MN and Winter Park, FL residences, but those properties have not as yet been listed for sale.

A purchase offer has been received for the Tam O'Shanter Lodge and Convention Center. Court approval for the sale is in the process of being requested.

Four offers have been received to purchase the fleet of Petters' luxury automobiles. Court approval for the sale to the highest bidder is in the process of being requested.

An Order filed April 13, 2009 approved the sale of the 2004 Tiara 2900 Coronet boat for \$110,000, less a selling commission of \$11,000. Net proceeds of \$99,000 will be received at the time title is transferred to the buyer.

The 2000 Tiara 3700 boat is listed for sale with an asking price of \$149,900. The boat was entered in the Suncoast Sarasota Boat Show, which runs during the period April 17-20, 2009. A purchase offer has been accepted subject to Court approval.

The unused portion of a NetJets card for private jet flight hours is being refunded. Proceeds of approximately \$82,000 are expected to be received before the end of April 2009. Even though the contract did not require reimbursement for unused flight time, at the urging of the Receiver, NetJets agreed to do so.

Action is being taken with Stearns County to finalize the Big Watab Lake property plat. The property had been sold on contract for deed pre-receivership. The approved plat is a condition of sale.

## **2. Deanna Coleman**

### **Receivership Account**

Balance on February 7, 2009	\$3,363,230.92
Deposits during period	4,938.38
Expenses paid during period	<u>(61,666.75)</u>
Balance on April 17, 2009	\$3,306,502.55

### **Receivership Activity**

The occupancy agreement between the Receiver and Deanna Coleman was finalized and her Plymouth home listed with a broker and placed on the market. Marketing brochures have been prepared and a few showings have resulted.

Deanna Coleman owns real estate in Costa Rica. The process to sell property in Costa Rica is being researched. We have contacted the attorney who previously worked with Coleman on issues relating to her condominium to determine the procedures required for sale under Costa Rica laws. We have hired a consultant to view the property, speak with the management company and the owner's association and attempt to determine a reasonable price for the property.

We continue to disburse funds for the payment of preservation of assets. The Receiver refused to pay the car insurance on her leased car, since there is no equity in the leased car. As a result, Ms. Coleman, with the Receiver's approval, returned the car to the leaseholder and canceled insurance on the vehicle.

We were contacted by an attorney representing one of the individuals who received payments from PCI in 2007 and 2008, which were actually Deanna Coleman's bonus payments. We are negotiating an agreement for the return of the proceeds or purchases made with those tainted payments.

The Receiver was required to respond to a motion filed by Deanna Coleman's ex-husband, Allen Munson, seeking funds liquidated by the Receiver in a joint investment account. A stipulated Order was entered and the disputed funds have been deposited into a Registry Account with the Clerk of Court pending further adjudication of ownership.

Attorneys for Deanna Coleman were informed that the Receiver is required to file

2008 tax returns. Ms. Coleman's cooperation is necessary in preparing the returns. A meeting was held with her attorneys outlining the cooperation needed and the procedures that would be followed.

**3. Robert White:**

**Receivership Account**

Balance on February 7, 2009	\$3,004,886.36
Deposits during period	795.00
Expenses paid during period	<u>(235,857.95)</u>
Balance on April 17, 2009	\$2,769,823.41

**Receivership Activity**

A marine survey was required by the insurance company for Robert White's 65 foot Kanter sailboat. The process required coordination with the insurance company, the surveyor, the caretaker of the boat, the marina where the survey was being conducted and other such entities. Following the survey, some repairs were required. The Receiver entered a listing agreement with a broker for the sale of the boat. Offers have been made but none have been deemed acceptable.

A second appraisal on the homestead was obtained. Both appraisals indicate that liens against the property leave little or no equity in the home. A meeting was held with Robert White's attorney regarding the no equity issue and the method for avoiding the use of additional Receiver funds on the property. Payments to the lienholders have been stopped.

The Porsche has been put on the market and is in the possession of the Receiver. Detailing and other minor maintenance was conducted. An offer for the automobile has been accepted subject to Court approval.

**4. Jim Wehmhoff:**

**Receivership Account**

Balance on February 7, 2009	\$1,273,028.96
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Deposits during period	591,374.82
Expenses paid during period	<u>(157,191.39)</u>
Balance on April 17, 2009	\$1,707,212.39

### **Receivership Activity**

Detailed inventories of the Wehmhoff home and cabin's contents were completed.

The Receiver has requested that all of Wehmhoff's investment and retirement accounts be liquidated. Additional requirements were requested by some account holders. All the requirements have been met and the funds liquidated except for one account.

The Receiver team has interviewed real estate brokers for the two residential properties of Wehmhoff's company, Intrepid Investments, LLC. Broker selection and listing price recommendations have been made to the Receiver. A meeting was conducted with Wehmhoff's attorney regarding the proposed listing and sale of the Intrepid properties.

#### **5. Michael Catain:**

#### **Receivership Account**

Balance on February 7, 2009	\$ 33,151.63
Deposits during period	917,137.94
Expenses paid during period	<u>(314,166.27)</u>
Balance on April 17, 2009	\$ 636,123.30

### **Receivership Activity**

Mr. Catain's car wash was sold on February 26, 2009. The net proceeds of \$646,044.24 were deposited into Mr. Catain's receivership account.

Water damage to Mr. Catain's house on Enchanted Point was repaired. Insurance covered the entire repair work. The house is listed for sale by Coldwell Banker. Zoning deficiencies are being corrected to permit the sale of the property.

Mr. Catain's 2008 Mercedes vehicle and his 29 foot boat are being offered for sale.

We are obtaining information from Costa Rica attorneys regarding the proposed sale of Mr. Catain's home in Costa Rica. It appears that the realty industry in Costa Rica is

basically unregulated. We presently have an offer for the property and are working with individuals in Costa Rica to determine appropriate disposition of the property.

We are in the process of determining the value and rights of Mr. Catain's record companies.

**6. Larry Reynolds:**

**Receivership Account**

Balance on February 7, 2009	\$ 1,320,538.90
Deposits during period	196,932.64
Expenses during period	<u>78,535.37</u>
Balance on April 17, 2009	\$ 1,438,936.17

**Receivership Activity**

Mr. Reynolds' Las Vegas home has been listed for sale. An inventory of the personal property was conducted.

Mr. Reynolds home in Hollywood, California was also inventoried and the house and contents videotaped. The Receiver is selecting a realtor to list the property.

Many of Mr. Reynolds' other assets have been sold and his financial accounts liquidated. We recovered approximately \$180,000 from Mr. Reynolds' safe deposit box at the Bellagio Casino Hotel in Las Vegas. That money was deposited into Mr. Reynolds' personal receivership account.

**B. Tax Compliance**

The Receiver has retained the law firm of Bernick and Lifson, P.A. to advise the Receiver of his tax return filing obligations for the individual defendants and the business entities. The Receiver is responsible for the individual and business entity tax returns that become due after he was appointed Receiver for individuals entities that he controls.

The Receiver filed notices informing the IRS of his appointment as Receiver. Representatives of the Receiver met with officials of the IRS to discuss the Receiver's responsibilities to file returns and to share information. Price Waterhouse Coopers has been engaged to prepare the required tax returns. Applications for extensions to file tax returns

have been filed with the IRS.

A meeting was held between representatives of the Receiver and the counsel for each individual defendant to discuss the filing of individual returns and the gathering of information and documents to prepare the returns.

### **C. Activities of Professionals Retained by Receiver**

1. **Lindquist & Vennum** has been involved in the following activities since the last reporting.

- a. Sale of Polaroid Assets. Significant effort was directed during this reporting period toward selling Polaroid Corporation and certain of its subsidiaries. The Receiver, through outside counsel, successfully participated in an auction supervised by the bankruptcy court, which culminated in a purchase price of \$88,000,000. This amount was well above the \$42,000,000 stalking horse bid that was received prior to the auction.
- b. Zink Note Restructuring. The Receiver, again through outside counsel, restructured a convertible secured promissory note between PCI and Zink Imaging, Inc. The extension agreement pushed the note's initial maturity date back from June 30, 2009 until December 30, 2011. This will assist the major shareholder of Zink to attract new equity, which will benefit both the receivership and that company.
- c. Restructure of CAH Receivable. A major asset of the receivership is a promissory note held by Central American Holdings (CAH) that is secured by shares in a company that owns and operates the Jamaican lottery. The initial face amount of the note was \$16,500,000. The Receiver collected \$5,200,000 prior to February 2009. Faced with a dramatic decline in the value of CAH's collateral coupled with depreciation in the value of Jamaican currency, the Receiver sought and obtained Court approval to accept the discounted price of \$6,000,000 in payment for the remaining balance. \$2,750,000 of that



amount was received in the past 60 days and the balance is due by June 30, 2009.

- d. **D&O Coverage Litigation.** The Receiver recently commenced a declaratory judgment action against certain insurance carriers that provided directors and officers (D&O) coverage to PCI, PGW and Thomas Petters, Inc. The suit seeks a declaration that the insurers are legally obligated to reimburse defense costs paid by the Receiver to attorneys representing former Petters companies' officers and employees. Discussions with the insurers, through counsel, remain ongoing in an effort to resolve the claims.

**2. Petters Group Worldwide Team** continues to employ 11 individuals, several at reduced salary, who support the research and tasks on behalf of the Receiver, Price Waterhouse Coopers, FTI and Lindquist & Vennum P.L.L.P Services with institutional knowledge and project support.

- a. Services performed by the Petters Group Worldwide team include:
  1. Review and preparation of financial scenarios related to Aspen Walk, LLC while maintaining oversight and administration of the rental operations. Seeking capital sources to buyout the interest of individuals in order to refinance loan. Discovered and resolved approximately \$130,000 of lender interest overcharges; support for year end close and 2008 tax preparation.
  2. Coordination of the valuation listing, and purchase contract negotiations for the sale of real property owned by Thomas Petters.
- b. The Petters Read Estate Group and Worldwide Team also provided assistance to the Receiver in the discovery, maintenance and sale of Individual Defendant Assets including:
  1. Tasked to gain valuations and monitor sales of personal property assets of vehicles, boats, and real estate owned by the individual Defendants, except Vennes. Involves interviews for prospective realtors, appraisers, defendant's attorneys and lenders. Preparation and review of contractual documents and

financial analysis. Videotaping and cleaning, repairing of homes. Properties include defendant personal homes as well as property in Colorado, Minnesota, Wisconsin, Nevada, California and Costa Rica.

2. Coordinating the bids and repair needs for sales of large yachts, high end boats and exotic automobiles.

3. Review of documents, conferences and meetings regarding the valuation of property owned jointly by Tom Petters and others and formed recommendations of exit strategy from this joint property ownership. Assessment and data gathering on individual Tom Petters investment assets in several different partnerships, joint ventures and other entities.

c. The Petters Group Worldwide Business group also assisted the Receiver by contributing information in the following areas:

1. Provided financial information to assist the Receiver in providing information in the Polaroid bankruptcy proceeding.

2. Data gathering, conference calls, report generation for technology and intellectual property matters: Master Craft License, Symmorphix, Fidelica Microsystems, Cubic Light, Polaroid Labs, PGW domain names, Trademarks. Prepare data and recommendations with FTI.

3. Supported project tracking for Receiver on bill paying and decision-making related to PGW assets. Manage recommendation of vendor invoices and generate checks or wire transfers as needed.

4. Supported research and tracking related to D&O insurance claims from former and current PGW employees.

5. Processed bi-weekly payrolls and 2008 year end processing for multiple entities.

6. Maintained employee benefit programs including: employee personal time off accruals; pre-petition calculation and tracking; post-petition calculation and tracking; 401K program for active payroll companies; Medical, Dental,

Life, and disability plans owed to Polaroid; employee flexible spending “cafeteria” accounts – Medical/Daycare.

7. Provided legal records support in numerous receiver, Price Waterhouse Coopers, attorney requests on legal documents, legal entity structures, etc. Completing record retention storage for on-going litigation and discovery needs.

d. The Petters Group Worldwide Business group further assisted the Receiver in the sale of Polaroid Corporation:

1. Supported the people management of Polaroid through auction bid and potential outcome – exit plan, employee communications, bankruptcy support and reporting on employee claims.

2. Working in partnership with PwC, the Polaroid IT department ensured smooth transition and data capture of all future needs of Receiver, government, and others in e-discovery tools and storage. Manage tracking and asset valuation of PGW and Polaroid IT assets. Record Retention strategy aligned to PGW.

e. The Petters employees also provided assistance and support to Price Waterhouse Coopers including:

1. Provided financial data as available including PGW, Polaroid 2005 acquisition, Thomas Petters personal, Thomas Petters operating companies, John T Petters Foundation.

2. Provided support for 2008 year end 1099 filing.

3. Scheduled data retrieval of archived Petters Consumer Brands 2005 general ledger. Old data file was not updated to latest software version..

4. Provided historical payroll information for current and former employees.

5. Reviewed payor/payee lists for identification.

6. Supported Price Waterhouse Coopers on accounting data, invoices,

internal money transfers research from PGW accounting and PCI accounting.

C. **Price Waterhouse Coopers (PwC)** provided the following services to the Receiver during the period covered by this report:

1. **Tracing Sources and Uses of Funds.** PwC met with bank representatives to request supporting documentation for certain PCI and PGW bank accounts identified. PwC is continuing to analyze and categorize cash flows in and out of the bank account data received to date.

PwC is continuing to refine the inventory and timeline of notes payable that PCI and certain PGW entities entered into with investors. PwC is continuing to match investor note activity to the bank account transactional data. PwC will use these analyses to summarize the amount of principal and interest paid to each investor by year, and to determine each investor's outstanding principal and interest.

2. **Electronic Discovery.** PwC is continuing to work with PGW and Polaroid IT employees to preserve certain electronic data and hard copy documents and consolidate them into a centralized repository for review.

PwC is working with PGW and Polaroid IT employees to prepare for the sale of Polaroid and the effect it has on the IT infrastructure.

3. **Asset searches.** PwC performed investigative research to identify information specific to aircraft owned by PGW.

4. **Tax Compliance Services.** PwC met with management to determine the status of various returns and to assess reliability of company prepared information. PwC also met with representatives from the Receiver's office and legal counsel to discuss tax filing responsibilities and coordinate activity to avoid duplication of effort.

PwC compiled an inventory of historical income tax return filings for PGW, PCI and related Thomas J. Petters legal entities (collectively "the Petters Entities"). The inventory includes listings of delinquent filings as well as tax returns currently due for tax year 2008. PwC prepared appropriate 2008 Federal Forms 7004 for the Petters

Entities. The filings of such forms request six month extension to file income tax returns.

PwC prepared appropriate Federal Forms 56 for the Petters Entities. In addition Form 56 was prepared for receivership defendants Thomas Petters, Deanna Coleman, James Wehmhoff, Bob White, Michael Catain and Larry Reynolds. The filing of such forms provides notice to the Internal Revenue Service of the Receiver's fiduciary relationship with the defendants.

PwC also assisted the Receiver in filing appropriate 2008 Federal Forms 1096 and 1099 for the Petters Entities.

Respectfully submitted,

**Kelley & Wolter, P.A.**

Dated: April 20, 2009

s/Douglas A. Kelley  
Douglas A. Kelley, Receiver  
Atty. ID No. 54525  
Centre Villages Offices, Suite 2530  
431 South Seventh Street  
Minneapolis, MN 55415  
(612) 371-9090