

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

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

Petters Company, Inc., et al.,

Court File No. 08-45257

Debtors.

Court File Nos.:

(includes:

Petters Group Worldwide, LLC;

08-45258 (GFK)

PC Funding, LLC;

08-45326 (GFK)

Thousand Lakes, LLC;

08-45327 (GFK)

SPF Funding, LLC;

08-45328 (GFK)

PL Ltd., Inc.;

08-45329 (GFK)

Edge One, LLC;

08-45330 (GFK)

MGC Finance, Inc.;

08-45331 (GFK)

PAC Funding, LLC;

08-45371 (GFK)

Palm Beach Finance Holdings, Inc.)

08-45392 (GFK)

Chapter 11 Cases
Judge Gregory F. Kishel

**OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO MOTION FOR RELIEF FROM STAY FILED BY GREENWICH
INSURANCE COMPANY AND XL SPECIALTY INSURANCE COMPANY**

The Official Committee of Unsecured Creditors of Petters Company, Inc. *et al.*, (“Committee”) hereby files this objection to the Motion for Relief From Stay filed by Greenwich Insurance Company and XL Specialty Insurance Company [Doc. Nos. 167 and 180].

In their motion, Greenwich Insurance Company and XL Specialty Insurance Company (collectively, “Movants”) seek relief from the automatic stay: (1) to allow payment of certain claims for defense costs made under two director and officer (D&O) liability insurance policies issued by the Movants in favor of Debtors Petters Company, Inc. (“PCI”) and Petters Group Worldwide, LLC (“PGW”); and (2) to allow the Movants to assert counterclaims against PCI

and PGW in a coverage lawsuit that is pending in the U.S. District Court for the District of Minnesota relating to the policies.

In their motion, the Movants assert that it is unclear whether the proceeds from the insurance policies constitute property of the Debtors' estate under 11 U.S.C. § 541. In response to the Movants' motion, the Trustee for PCI and PGW also asserts that it is unclear whether the proceeds from the policies constitute property of the estate.

From a review of the terms of the policies, however, it appears that both PCI and PGW are named insureds under the policies and have rights to payment under the policies. Accordingly, under § 541, the proceeds from the Movants' policies constitute property of the Debtors' bankruptcy estates. *See In re Metropolitan Mortgage & Securities Co.*, 325 B.R. 851, 857 (Bankr. E.D. Wash. 2005); *see also In re World Health Alternatives, Inc.*, 369 B.R. 805, 810 (Bankr. D. Del. 2007) ("When a policy covers the debtor and its directors and officers, and there is risk that payment of proceeds to the directors and officers will result in insufficient coverage of the debtor, then the proceeds are property of the estate and any attempts to obtain the proceeds are prohibited under the automatic stay."). As stated by the court in *Metropolitan Mortgage*:

The debtors and all other insureds have undivided, unliquidated interests in the identical asset, *i.e.*, the policy proceeds. Continued diminution of those proceeds affects the debtors' interests in and rights to recover the proceeds. The stay prevents any action which affects the debtors' interests in the proceeds. This is consistent with and necessary to promote the fundamental bankruptcy principles of preserving estate property and ensuring ratable distribution to creditors.

* * *

Therefore, this Court concludes that the debtors hold legal interests in the insurance proceeds of the four policies described above which interests are of value to the estate. The proceeds are property of the debtors' estates and are subject to the protections afforded by 11 U.S.C. § 362(a)(3).

Id. at 857. Accordingly, because the Debtors hold legal interests in the insurance proceeds under the Movants' policies, the proceeds constitute property of the Debtors' estate and the automatic stay therefore applies.

Similarly, like the policies in *Metropolitan Mortgage*, the policies at issue appear to be "wasting" or "burning candle" policies, meaning that as any claims for defense costs are paid, the proceeds available for the Debtors (and their creditors) under the policies will be reduced, or exhausted, by the costs of defending the litigation. *See* Movants' Motion, at 7 (stating that the PGW Policy provides a maximum \$10,000,000 aggregate limit of liability, inclusive of Defense Expenses), *id.* at 8 (stating that the PCI Policy provides a maximum \$5,000,000 aggregate limit of liability, inclusive of Defense Expenses). To the extent that any non-debtor entities are seeking payment of defense costs under the Movants' insurance policies, such payments would permanently reduce the amount of proceeds available to the Debtors' estates, and would be a violation of the automatic stay under 11 U.S.C. § 362(a)(3). Accordingly, to the extent the Movants seek relief from the automatic stay to make payments under the policies to non-debtor entities, the Committee objects to their motion unless the Movants can show that the Debtors' interest in the proceeds is adequately protected.

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UNSWORN CERTIFICATE OF SERVICE

I, Aong Moua, declare under penalty of perjury that on April 6, 2009, I caused the following documents:

Objection of Official Committee of Unsecured Creditors to Motion for Relief from Stay
Filed by Greenwich Insurance Company and XL Specialty Insurance Company

to be served electronically with the Clerk of Court through ECF, and ECF will send an e-notice of the electronic filing to the following:

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Dated: April 6, 2009

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