

**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

**NOTICE OF EMERGENCY HEARING AND MOTION
FOR IMMEDIATE APPOINTMENT OF
AN UNSECURED CREDITORS' COMMITTEE**

TO: The Debtors and the other entities listed in Local Rule 9013-3.

1. ArrowHead Capital Partners II, L.P. ("ArrowHead"), Ark Royal Capital, LLC and Ark Discovery II, L.P. (collectively "Ark Royal"),¹ hereby move the Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this motion at 2:00 p.m. on Tuesday, November 18, 2008, in Courtroom No. 2A at the United States Bankruptcy Court for the District of

¹ ArrowHead and Ark Royal are referred to herein as the "Unofficial Committee."

Minnesota, Warren E. Burger Federal Building and U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101, or as soon thereafter as counsel may be heard.

3. Because the Unofficial Committee has requested expedited relief, any response to this motion must be filed and delivered prior to the time set for the hearing.

4. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petitions commencing the Chapter 11 cases of Petters Company, Inc. (“PCI”) and Petters Group Worldwide, LLC (“PGW”) were filed on October 11, 2008. The petitions commencing the Chapter 11 cases of PC Funding, LLC (“PC Funding”), Thousand Lakes, LLC (“Thousand Lakes”), SPF Funding, LLC (“SPF Funding”), PL Ltd., Inc. (“PL Ltd.”), Edge One, LLC (“Edge One”) and MGC Finance, Inc. (“MGC Finance”) were filed on October 17, 2008. The petitions commencing the Chapter 11 cases of PAC Funding, LLC (“PAC Funding”) and Palm Beach Finance Holdings, Inc. (“Palm Beach”) were filed on October 17, 2008 and October 19, 2008, respectively. These cases are now pending in this Court.

5. This motion arises under 11 U.S.C. §§ 105 and 1102 and Fed. R. Bankr. P. 2020. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1, 9013-2, and 9017-1. With this motion, the Unofficial Committee seeks an order from the Court requiring the U.S. Trustee to immediately appoint an official committee of unsecured creditors under § 1102 of the Bankruptcy Code.

FACTS

6. On or around September 24, 2008, the Federal Bureau of Investigation (“FBI”), the Internal Revenue Service – Criminal Investigation Division (“IRS”) and the United States Postal Inspection Service (“USPI”), publicly announced that they were conducting a criminal fraud investigation into PCI, PCI’s sole owner, Thomas J. Petters (“Petters”), and other

employees allegedly involved in a fraudulent Ponzi scheme. On October 2, 2008, after obtaining search warrants for the Debtors' corporate headquarters, a federal criminal complaint was filed against Petters charging him with conspiracy, mail and wire fraud, money laundering, and obstruction of justice in violation of 18 U.S.C. §§ 371, 1341, 1343, 1956, 1957, and 1512. Other Petters executives implicated in this scheme have also been arrested on various charges and have pled guilty to certain crimes. According to the government, more than 20 lenders and investors have been defrauded out of more than \$3 billion as a result of this alleged scheme.

7. On October 6, 2008, pursuant to 18 U.S.C. § 1345(a)(2), the United States District Court for the District of Minnesota appointed Douglas A. Kelley, Esq., as a Receiver for PCI, PGW, and all of their affiliates and subsidiaries except for MN Airlines, LLC dba Sun Country Airlines (the "Receiver"). On October 11, 2008, October 17, 2008, and October 19, 2008, respectively, the Receiver filed bankruptcy petitions for the Debtors in these cases under Chapter 11 of the Bankruptcy Code in this Court.

8. According to the Debtors' pleadings, the Debtors sought relief under Chapter 11 "to reorganize and/or preserve their operations, sell assets and preserve potential avoidance [actions] and claims." Upon information and belief, the Receiver is currently: (i) operating the Debtors' businesses, (ii) administering the Debtors' assets, and (iii) acting as a debtor-in-possession under §§ 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors' cases.

9. An initial meeting of creditors under § 341 of the Bankruptcy Code has been scheduled for November 25, 2008. To date, however, no unsecured creditors' committee has been appointed under § 1102 of the Bankruptcy Code.

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Chapter 11 Cases
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**MEMORANDUM OF LAW IN SUPPORT OF
EMERGENCY MOTION FOR THE IMMEDIATE
APPOINTMENT OF AN UNSECURED CREDITORS' COMMITTEE**

ArrowHead Capital Partners II, L.P. ("ArrowHead"), Ark Royal Capital, LLC and Ark Discovery II, L.P. (collectively "Ark Royal"),¹ submit this memorandum in support of their Motion for the Immediate Appointment of an Unsecured Creditors' Committee under § 1102 of the Bankruptcy Code.

¹ ArrowHead and Ark Royal are referred to herein as the "Unofficial Committee."

ARGUMENT

I. THE IMMEDIATE APPOINTMENT OF A CREDITORS' COMMITTEE IS NECESSARY TO PROTECT THE UNSECURED CREDITORS

In Chapter 11 cases, Section 1102 of the Bankruptcy Code requires the U.S. Trustee to appoint an unsecured creditors' committee to monitor the debtor and represent the unsecured creditors' interests. Section 1102 of the Code provides:

[A]s soon as practicable after the order for relief under chapter 11 of this title, the United States trustee **shall** appoint a committee of creditors holding unsecured claims and may appoint additional committees of creditors or equity security holders as the United States trustee deems appropriate. . . .

11 U.S.C. § 1102(a) (emphasis added). The primary function of a creditor's committee is to monitor the debtor's actions and protect the unsecured creditors' interests in the bankruptcy case. The appointment of a committee protects unsecured creditors by serving as a "watchdog" on their behalf with respect to the debtor's actions in the case. *Loop Corp. v. United States Trustee*, 379 F.3d 511, 519 (8th Cir. 2004) (citing *Matter of Advisory Comm. of Major Funding Corp.*, 109 F.3d 219, 224 (5th Cir. 1997)). Except in small business cases, the appointment of a creditors' committee in Chapter 11 cases is mandatory. 11 U.S.C. § 1102(a)(1); *In re Texaco, Inc.*, 79 B.R. 560, 566 (Bankr. S.D.N.Y. 1987) ("The appointment of one committee of creditors holding unsecured claims against a Chapter 11 debtor is mandated under 11 U.S.C. § 1102(a)(1) if there are creditors willing to serve."); H.R. Rep. No. 95-595, at 235 (1977), *reprinted in* 1978 U.S.C.A.A.N. 5787, 6195 ("Because unsecured creditors are normally the largest body of creditors and most in need of representation, the [Bankruptcy Code] requires that there be a committee of unsecured creditors.").

For unsecured creditors, the appointment of a creditors' committee is a critical component of a Chapter 11 bankruptcy case. As stated by Judge Owens in *In re Daig Corporation*:

The creditors' committee is not merely a conduit through whom the debtor speaks to and negotiates with the creditors generally. *On the contrary, it is purposely intended to represent the necessarily different interests and concerns of the creditors it represents. . . . There is simply no other entity established by the Code to guard those interests.*

In re Daig Corporation, 17 B.R. 41, 43 (Bankr. D. Minn. 1981) (emphasis added). A creditors' committee, therefore, is not simply a formality established by the Bankruptcy Code, but is instead a "vital and integral part" of the Chapter 11 process. *In re Mako, Inc.*, 120 B.R. 203, 212 (Bankr. E.D. Okl. 1990). For this reason, an unsecured creditors' committee is necessary to protect the creditors' interests and should be immediately appointed.

In this case, the need for the immediate appointment of an official committee is particularly strong. As the Court is aware, the unsecured creditors were victimized by an extensive fraud scheme perpetrated by Petters and were swindled out of literally billions of dollars. Now, the Debtors have filed for bankruptcy, but the clear victims of the fraud—the unsecured creditors—have received virtually no information as to how (or whether) the Debtors' assets are being administered for their benefit, and they have had no involvement or input in this process whatsoever. As required by the Bankruptcy Code, a committee is necessary to consult with the Receiver concerning the proper administration of these cases; to investigate the acts, conduct, assets, and liabilities of the Debtors; to participate in the formation of a Chapter 11 plan for the benefit of creditors; and to advise unsecured creditors of the committee's determinations regarding an appropriate course of action. *See* 11 U.S.C. § 1103(c). Further, a § 341 meeting of creditors in these cases has now been scheduled for November 25, 2008. It is important for a

committee to be organized prior to that date so representatives of the committee can attend the meeting and, if necessary, examine the Debtors. Based on these events, the Court should require the U.S. Trustee to immediately appoint a committee in these cases to represent the unsecured creditors' interests.²

II. THE COURT SHOULD REQUIRE THE U.S. TRUSTEE TO IMMEDIATELY APPOINT AN UNSECURED CREDITORS' COMMITTEE

Section 1102(a) provides that the U.S. Trustee should appoint a committee “[a]s soon as practicable after the order for relief under Chapter 11 of this title.” Here, 30 days have passed since the Debtors filed their bankruptcy petitions, but the U.S. Trustee has not yet appointed an unsecured creditors’ committee in these cases. This delay in appointing a committee is highly unusual,³ and it risks causing irreparable harm to the unsecured creditors.

² Under § 1102, the committee typically consists of “those persons, willing to serve, that hold the seven largest claims against the debtor.” 11 U.S.C. § 1102(b)(1). ArrowHead and Ark Royal each hold unsecured claims against the Debtors in excess of \$100 million, are non-insiders of the Debtors, and are willing to serve on the committee. As each of these creditors falls within the seven largest claims against the Debtors, ArrowHead and Ark Royal each request the U.S. Trustee to appoint them to the committee.

³ In both the District of Minnesota and elsewhere, the U.S. Trustee typically appoints unsecured creditors’ committees within a few days of the petition date, even in exceptionally large cases involving allegations of corporate fraud. *See, e.g., In re MN Airlines, LLC dba Sun Country Airlines*, Case No. 08-35197 (Bankr. D. Minn.) (creditors’ committee appointed in 3 days), *In re WorldCom, Inc.*, Case No. 02-B-13533 (Bankr. S.D.N.Y.) (creditors’ committee appointed in 8 days), *In re Enron Corp.*, Case No. 01-B-16034 (Bankr. S.D.N.Y.) (creditors’ committee appointed in 10 days). *See also* Kenneth N. Klee & K. John Shaffer, *Creditor’s Committees Under Chapter 11 of the Bankruptcy Code*, 44 S.C. L. Rev. 995, 1003-04 (1993) (“[I]t is important that the U.S. Trustee appoint a creditors’ committee without delay, preferably within the first few weeks after the filing of the petition. By doing so, the committee can promptly assume its proper role in the reorganization process. In this regard, Bankruptcy Code § 1102(a)(1) provides that the U.S. Trustee should appoint a committee ‘[a]s soon as practicable after the order for relief under Chapter 11 of this title.’ In voluntary Chapter 11 cases, this requirement often leads to appointment of committees within a week or two of the commencement of the case . . .”).

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Chapter 11 Cases
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**ORDER GRANTING MOTION TO APPOINT
UNSECURED CREDITORS' COMMITTEE**

The above matter came on for hearing before the undersigned on November 18, 2008, on a motion (the "Motion") brought by unsecured creditors ArrowHead Capital Partners II, L.P. (collectively, "ArrowHead"), Ark Royal Capital, LLC and Ark Discovery II, L.P. (collectively "Ark Royal"), to require the U.S. Trustee to appoint an unsecured creditors' committee in these jointly administered cases. Connie Lahn and David Runck appeared on behalf of the moving parties. Other appearances are noted in the record.

Based upon all the files, records and proceedings herein, as well as the arguments of counsel, IT IS HEREBY ORDERED:

1. The Motion is granted; and
2. Pursuant to 11 U.S.C. §§ 105, 1102 and Fed. R. Bankr. P. 2020, the U.S. Trustee is hereby ordered to appoint an unsecured creditors' committee in these cases by no later than Friday, November 21, 2008.

Dated: _____

The Honorable Gregory F. Kishel
United States Bankruptcy Judge