

**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

**UNITED STATES TRUSTEE’S OBJECTION TO MOTION BY RITCHIE SPECIAL
CREDIT INVESTMENTS, LTD., RHONE HOLDINGS II, LTD., YORKVILLE
INVESTMENTS I, L.L.C., RITCHIE CAPITAL STRUCTURE ARBITRAGE TRADING,
LTD., AND RITCHIE CAPITAL MANAGEMENT, L.L.C. FOR APPOINTMENT OF
CHAPTER 11 TRUSTEE IN PETTERS WORLDWIDE, LLC**

COMES NOW the United States Trustee, through his undersigned attorney, and objects to the Motion of Ritchie Special Credit Investments, Ltd., Rhone Holdings II, Ltd., Yorkville Investments I, L.L.C., Ritchie Capital Structure Arbitrage Trading, Ltd., and Ritchie Capital Management, L.L.C. (collectively “Ritchie”) for appointment of Chapter 11 Trustee in Petters Group Worldwide, LLC (“Motion”). In support of his objection, he states the following:

1. A hearing has been scheduled in this matter on December 16, 2008, at 2:00 p.m., in Courtroom 2A, United States Courthouse, 316 North Robert Street, St. Paul, MN 55101, before the Honorable Gregory F. Kishel, United States Bankruptcy Judge for the District of Minnesota.

2. The United States Trustee has standing to file this objection pursuant to 11 U.S.C. § 307 and 28 U.S.C. § 586(3)(A).

3. The petitions commencing the Chapter 11 cases of Petters Company, Inc. and Petters Group Worldwide, LLC (“PGW”) were filed on October 11, 2008. The petitions commencing the Chapter 11 cases of PC Funding, LLC; Thousand Lakes, LLC; SPF Funding, LLC; PL Ltd., Inc.; Edge One, LLC and MGC Finance, Inc. were filed on October 17, 2008. The petitions commencing the Chapter 11 cases of PAC Funding, LLC and Palm Beach Finance Holdings, Inc. were filed on October 17, 2008 and October 19, 2008, respectively. An order for joint administration of the above-entitled cases was entered on October 22, 2008.

4. On December 1, 2008, Thomas Joseph Petters; Petters Company, Inc.; and Petters Group Worldwide, LLC, were indicted on federal criminal charges which included mail fraud, wire fraud, money laundering, and conspiracy to commit those offenses. The indictment alleges that the two companies were actively involved with each other and with their principal, Thomas Joseph Petters, in devising and perpetuating the scheme and artifice to defraud.

5. On December 2, 2008, the United States Trustee filed his motion seeking an order directing the appointment of a chapter 11 trustee.

APPOINTMENT OF CHAPTER 11 TRUSTEE

6. The United States Trustee agrees that the appointment of a chapter 11 trustee is necessary for the proper administration of these jointly administered cases. However, as

discussed below, Ritchie’s Motion, insofar as it seeks the appointment of a separate chapter 11 trustee in Petters Group Worldwide, LLC, must be denied.

RITCHIE’S MOTION IS PREMATURE

7. Ritchie ignores the procedures established by the Federal Rules of Bankruptcy Procedure for the appointment of a trustee in jointly administered cases. Fed. R. Bankr. P.2009 (c)(2) states: “[i]f the appointment of a trustee is ordered, the United States Trustee may appoint one or more trustees for the estates jointly administered . . .” Fed. R. Bankr. P. 2009(c)(2).

Rule 2009 (c)(2) grants to the United States Trustee the sole discretion to appoint a single trustee or multiple trustees in jointly administered cases. In the event this Court grants the United States Trustee’s motion for the appointment of a Chapter 11 trustee, the United States Trustee must then comply with the duties imposed upon him by Fed. R. Bankr. P. 2007.1(c) including the duty to consult with parties in interest regarding the appointment.

8. Ritchie’s Motion to appoint a separate trustee for PGW ignores the language of 11 U.S.C. § 1104(a) providing for “the appointment of *a trustee* ---”upon a showing of cause enumerated in subsections (1), (2) or (3) of that section of the Bankruptcy Code. (emphasis added). In addition, Ritchie’s motion fails to consider the process by which multiple trustees may be appointed in jointly administered cases¹. Fed. R. Bankr. P. 2009 (d) states: “[o]n a

¹ Ritchie argues that the Court should order the appointment of separate trustees for the two companies because of a conflict of interest between the two estates. Ritchie’s reliance upon *In re BH&P Inc.*, 949 F.2d 1300 (3rd Cir. 1991), is misplaced. The court in *BH&P* rejected the notion that a trustee who, in a jointly administered case, asserts a claim on behalf of one estate against another, becomes a “creditor” as defined under 11 U.S.C. § 101(14)(A). The court held that section 101(14) should not be read to disqualify a trustee because of actions taken by the trustee in his representative capacity. Any trustee that is appointed under section 1104 must be “disinterested” as defined under 11 U.C. C. § 101(14)(A). The appointment of a separate trustee requires a showing that creditors will suffer actual prejudice by conflicts held by a common

showing that creditors . . . of the different estates will be prejudiced by conflicts of interest of a common trustee **who has been . . . appointed**, the court shall order the selection of separate trustees for estates being jointly administered.” (emphasis added). Fed. R. Bankr. P. 2009(d). The process outlined by Fed. R. Bankr. P. 2009(d) can only be invoked after the United States Trustee makes his initial appointment. If the appointment is that of a single trustee, a party in interest may challenge such appointment upon a showing of prejudice to creditors arising from conflicts of interest of a common trustee. *Id.* For the forgoing reasons, the Motion seeking the appointment of a separate trustee for PGW should be denied.

WHEREFORE, the United States Trustee hereby requests that the Court enter an order denying Ritchie’s Motion for Appointment of a Chapter 11 Trustee in the Bankruptcy Case of Petters Group Worldwide, LLC, and for such other relief as may be just and equitable.

Dated: December 11, 2008

HABBO G. FOKKENA
United States Trustee
Region 12

By: /s/ Robert B. Raschke
Robert B. Raschke
Assistant U.S. Trustee, 161081
Michael E. Ridgway
Trial Attorney, SD Atty. No. 1456
Office of the U.S. Trustee
U.S. Courthouse, Suite 1015
300 South Fourth Street
Minneapolis, MN 55415
TELE: (612) 664-5500

trustee.

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UNSWORN CERTIFICATE OF SERVICE

I, Audrey Williams, declare under penalty of perjury that on December 11, 2008, I served copies of the U.S. Trustee's Objection to Motion by Ritchie Special Credit Investments, Ltd., et al., for Appointment of Chapter 11 Trustee in Petters Worldwide, LLC, electronically by Notice of Electronic Filing, and upon all parties who have requested service in these cases by filing the same via ECF with the Bankruptcy Court in the District of Minnesota, and upon the following by first class mail postage pre-paid:

James A. Lodoen
Lindquist & Vennum PLLP
4200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

ArrowHead Capital Management LLC
c/o James N. Fry
601 Carlson Pkwy, Suite 1250
Minnetonka, MN 55305

Executed on: December 11, 2008

Ronald R. Peterson
Jenner & Block, LLP
330 North Wabash Avenue
Chicago, IL 60611-7603

Taunton Ventures LP
c/o Paul Taunton
990 Deerbrook Drive
Chanhassen, MN 55317

/e/Audrey Williams
Audrey Williams
Office of the United States Trustee