

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Court File No. 08-45257

Petters Group Worldwide, LLC,

Debtor.

Chapter 11 Case

Bankruptcy Judge Gregory F. Kishel

**REPLY MEMORANDUM IN FURTHER SUPPORT OF MOTION TO APPOINT A
CHAPTER 11 TRUSTEE FOR PETTERS GROUP WORLDWIDE, L.L.C. AND
RESPONSE TO MOTION OF U.S. TRUSTEE FOR APPOINTMENT OF CHAPTER 11
TRUSTEE**

Ritchie Special Credit Investments, Ltd., Rhone Holdings II. Ltd., Yorkville Investment I, L.L.C., Ritchie Capital Structure Arbitrage Trading, Ltd., and Ritchie Capital Management, Ltd. (together, "Ritchie") respectfully submit this Reply in further support of their Motion to Appoint a Chapter 11 Trustee for Petters Group Worldwide, L.L.C., which also serves as a Response to the motion of the U.S. Trustee for the appointment of a Chapter 11 Trustee.

INTRODUCTION

The U.S. Trustee ("UST"), the Debtors and the Unsecured Creditors Committee ("UCC") all agree that a Trustee should be appointed for Petters Group Worldwide, L.L.C. ("PGW"). Those groups oppose, however, Ritchie's request for the appointment of a separate and truly disinterested Trustee for PGW who is different from the Trustee appointed for Petters Company, Inc. ("PCI") and the other Debtors in this proceeding. The Debtors, the UCC and the Office of the US Trustee, moreover, now propose that Douglas Kelley ("Kelley") is qualified to serve as Trustee for PGW. Their positions should be rejected. For the reasons set forth in Ritchie's

initial motion and below, a separate Trustee should be appointed for PGW, and that Trustee should not be Kelley.

Material conflicts of interest demand that a separate Trustee be appointed for PGW. Similar conflicts preclude Kelley, who serves as Receiver for all of the Petters entities, from serving as Trustee for PGW. Anyone serving as Trustee for PCI would have disabling conflicts with respect to serving as Trustee for PGW. PCI has no hard assets, and likely had no legitimate businesses. PCI was nothing more than a conduit for Petters's fraud. PCI's only assets now are potential claims against other entities, including PGW. In contrast, PGW has legitimate operating businesses, such as Polaroid and Fingerhut, and a wholly different set of creditors. The issue of whether or not PCI and PCI's creditors have allowable claims against PGW is a critical matter and cannot be prejudged.

A fiduciary charged with responsibility for pursuing claims in the name of PCI to maximize recovery for PCI's creditors cannot also be the fiduciary charged with responsibility for protecting the interests of PGW's creditors, which responsibilities will principally include vigorously opposing efforts by the PCI Trustee to access PGW's assets. The Trustee must be qualified to dispassionately review and determine allowability of all creditor claims asserted against PGW, as well as to manage PGW's assets without prejudice or bias toward one group of creditors or the other.

In resisting the appointment of separate trustees, Kelley *qua* Debtor casts as inevitable the prospect that PGW will forfeit its assets to the United States and that a substantive consolidation of the underlying bankruptcy cases will consequently occur. Kelley also seeks to attack the merits of Ritchie's claims. The mere fact that Kelley has raised such arguments only

underscores the conflicts of interest he would continue to labor under as Receiver and Trustee for PGW.

Kelley presently purports to represent the Debtors in these proceedings, and he is also Receiver. In the guise of a Debtor filing, Kelley has attacked the merits of Ritchie's claim and asserted that the affairs of PCI and PGW are closely intertwined. Both positions clearly further his duty and interest as a Receiver in obtaining maximum recovery for all fraud victims. At the same time, those positions clearly work against the interest of a Trustee who must protect the rights of PGW's creditors, many of which, including Ritchie, extended credit in return for PGW committing to repay Ritchie on the basis that PGW had very few creditors. This demonstrates that Kelley, working as Receiver for all fraud victims, prejudiced himself on the crucial issue which a disinterested Trustee must address in the PGW case – whether PGW's assets are available to the victims of Petters' fraud who had no contractual relationship with that company.

In sum, there must be an independent and separate Trustee for PGW. Kelley is not disinterested and cannot be that Trustee.

ARGUMENT

There is no dispute among Ritchie, the UST, the UCC and the Debtors that appointing a Trustee for PGW is proper. The only issues are: (1) whether a separate Trustee should be appointed for PGW; and (2) whether Kelley can properly serve as Trustee for PGW. Similar disabling conflicts require a separate Trustee for PGW, and prevent Kelley from serving as Trustee.

I. The Trustee Appointed For PGW Must Be Different From The Trustee Appointed For PCI And Any Other Debtor.

Section 1104(b) of the Bankruptcy Code requires that a person appointed Trustee in a Chapter 11 bankruptcy be “disinterested.” 11 U.S.C. § 1104(b); *see also* 11 U.S.C. §1104(d). “Disinterested” means, among other things, free from any “material adverse interest” with respect to “any class of creditors.”¹ 11 U.S.C. § 101(14)(E). Section 1104(d) is “broad enough to include anyone who in the slightest degree might have some interest or relationship that would even faintly color the independent and impartial attitude required by the Code.” *In re Criello*, 134 F.3d 831, 836 (7th Cir. 1998).

Anyone acting as Trustee for PCI has an inherent, and insuperable, conflict of interest with respect to serving in the same role for PGW – the interests of the creditors of each entity are at odds. Thus, the same person cannot be Trustee for PGW and for PCI.

A. The Constituents of PGW and PCI Have Conflicting Interests

PCI and PGW are separate legal entities with distinct creditor constituencies and very different financial situations. PCI has little or no assets of value, and appears primarily to have

¹ “Adverse interest,” although not defined in the Code, has been held in the context of Section 327 to mean, with respect “to two or more entities (1) *to possess or assert mutually exclusive claims to the same economic interest*, thus creating either an actual or potential dispute between the rival claimants as to which, if any, of them the disputed right or title to the interest in question attaches under valid and applicable law; or (2) to possess a predisposition or interest under circumstances that render such a *bias in favor of or against one of the entities.*” *In re Roberts*, 46 B.R. 815, 826-27 (Bankr. D. Utah 1985) (emphasis added), *aff’d in part, rev’d and remanded on other grounds*, 75 B.R. 402 (D. Utah 1987).

been a vehicle for fraud. PGW, on the other hand, has substantial operating assets, such as Polaroid and Fingerhut, which are legitimate businesses with potentially considerable value. Furthermore, and reflecting the very different nature and purpose of the two entities, it appears that very few creditors who have a contractual relationship with PCI also have a contractual relationship with PGW. PGW has a distinct set of creditors. *Compare* PGW Schedules in Case No. 08-45258 *with* PCI Schedules in Case No. 08-45257.

The different creditor constituencies of PCI and PGW, with their different and conflicting interests, prevent a single Trustee from acting in the best interests of both entities. Because PCI has few, if any, hard assets, its only potentially significant assets are possible claims that it has against other entities, such as PGW. Thus, the principal task of the Trustee for PCI will be to assert claims against third parties, including PGW.

On behalf of PGW's separate set of creditors, whose interests lie in preserving and maximizing PGW's assets for their benefit, a Trustee must resist any effort to gain access to PGW's assets for the benefit of PCI's creditors. Given the disparity between PCI and PGW's assets and the fact that PCI has many more creditors and claims against it than does PGW, this concern is real and immediate.²

The need for separate Trustees when conflicts of interest exist is widely acknowledged in the caselaw. *See, e.g., In re United Church of the Ministers of God*, 74 B.R. 271, 279 (E.D. Pa. 1987) (potential conflicts of interest among estates of debtor church and its founder led court to "appoint separate Trustees in each case"). The court in *In re BH & P, Inc.*, 103 B.R. 556 (Bankr.

² Indeed, Acorn Capital Group ("Acorn"), a significant creditor of PCI, has recently asserted claims against the assets, inventory and accounts of Polaroid – which has no connection to the fraud – that could total over \$275 million, even though Acorn acknowledges that, at most, Polaroid has a contractual obligation to pay Acorn only \$25 million. (Memorandum of Law of Acorn Capital Group, Civ. No. 08-5348, Docket Entry No. 104.) Further such efforts by PCI creditors are inevitable.

D.N.J. 1989), concluded that the Trustee for three separate estates was not disinterested, and thus should not have been appointed as common Trustee. The Trustee had the “right and duty to pursue the claims” of one debtor against a second debtor, and “unless all creditors are paid in full, such claims are materially adverse to” the claims of the unsecured creditors of the second debtor. *Id.* at 561.³ Here, the conflict is even more significant and apparent. PGW is the only entity that has assets, and creditors of all other Debtors – the bulk of whom are *not* also PGW creditors – will assert claims against PGW to recoup their losses.

Furthermore, Kelley has taken the position that the affairs of PGW and PCI are intertwined, and he has indicated, in his instant pleadings and otherwise, that he believes PGW’s corporate veil should be pierced. In those scenarios, courts *presume* appointment of separate Trustees and other fiduciaries is necessary. As explained in *In re Lee*, 94 B.R. 172, (C.D. Cal. 1989):

This Court adopts a presumption for two or more related cases, that it is improper to appoint (1) a single trustee . . . in any of the following circumstances:

...

(c) Where the affairs of the respective debtors (as reflected in inter-debtor accounts, jointly owned assets, guarantees, subordination agreements, or shared officers, directors or owners) appear to be substantially entangled;

(d) Where assets have been transferred from one debtor to another in transactions that are not at arms length;

³ On appeal in *BH & P, Inc.*, the Third Circuit disagreed with the bankruptcy court’s conclusion that *any* inter-debtor claim would *automatically* require separate Trustees. *In Re BH & P, Inc.*, 949 F.2d 1300, 1311-12 (3d Cir. 1990). But contrary to the claims of the UST, the Third Circuit did not find that only “personal” conflicts, as opposed to conflicts that arise from the Trustee’s fiduciary positions, such as inter-debtor claims, could disqualify a Trustee. Rather, although questioning whether the “disinterested” requirement of Section 101(14)(E) directly applied in that scenario, the court adopted a flexible, case-by-case approach to Trustee conflicts of interest that considers all relevant facts, including inter-debtor claims, and permits disqualification where the potential, or mere appearance, of conflict alone can disqualify a Trustee. *Id.* at 1312-13. Using that standard, the Third Circuit let stand the bankruptcy court’s decision to appoint separate Trustees. *Id.* at 1313.

(e) Where piercing of the corporate veil of one of the debtors is necessary or advisable to protect the rights of creditors of another debtor.

Id. at 180.

B. Efficiency Must Yield to Disinterestedness

The UCC argues that concern for efficiency of administration demands that a single Trustee administer all of the Petters estates. Cost and efficiency are of course important considerations, but they must yield to the legal requirement that a Trustee be disinterested. Thus, “to the extent that there is any tension between disinterestedness on the one hand and efficiency and economy on the other, disinterestedness must prevail” because “[i]ntegrity is no less necessary because it may be inconvenient or expensive.” *In re BH & P, Inc.*, 103 B.R. at 572.

It is also important to note that the UCC consists entirely of PCI creditors who have no contractual claims against PGW. The UST declined to create a separate Committee for PGW, or even to appoint creditors who have contract claims against PGW to the existing, supposedly joint committee. Appointing a separate Trustee for PGW is all the more imperative because the UCC at present contains no representatives of these PGW constituencies.

II. Kelley, Who Is Receiver For All Of The Petters Entities, Cannot Also Serve As Trustee For PGW.

As the UST correctly notes, under the express provisions of the Bankruptcy Code, Kelley cannot serve as debtor in possession for PGW (or any other Debtor) in bankruptcy, and therefore a Trustee must be appointed.⁴ But Kelley cannot serve as PGW’s fiduciary in bankruptcy for an

⁴ A court is forbidden to appoint a receiver in bankruptcy, and a pre-petition receiver is deemed a “custodian,” 11 U.S.C. § 101(11)(A), (C), who upon filing becomes obligated to turn over any property under its control to the estate, 11 U.S.C. § 543(b). Nothing in the Bankruptcy Code permits Kelley to serve as debtor in possession upon the bankruptcy filing. In accord with these clear statutory directives, the applicable case law provides that a receiver appointed prior to a bankruptcy petition cannot act as debtor in possession **after a company comes under** bankruptcy court protection. *See, e.g., In re 400 Madison Avenue Ltd. Partnership*, 213 B.R. 888, 894 (S.D.N.Y. 1997); *In re Stratasec, Inc.*, 324 B.R. 156, 157 (D.D.C. 2004); *Matter of Plantation Inn Partners*, 142 B.R. 561, 565 (S.D. Ga. 1992) (stating that “[c]learly the Code contemplates that the long-term administration of a Chapter 11 case

additional reason – his duties as Receiver for all of the victims of Petters’ fraud are directly at odds with the first duty that every fiduciary in bankruptcy, whether a debtor in possession or a Trustee, owes to the creditors: to maximize the assets available to satisfy the claims of creditors of the bankruptcy estate. This conflict resembles the conflict facing a person serving as Trustee for both PGW and PCI, and likewise stems from the fact that PGW has a substantially different set of creditors and is in a dramatically different financial position than the other Debtors.

In his capacity as Receiver, Kelley must seek the greatest possible recovery for *all* victims of Petters’ fraud, including those that never had any contractual dealings with PGW. Indeed, many of the victims of the fraud dealt with, and have contractual relationships with, PCI and *not* with PGW. Simply put, they are not contract creditors of PGW. The issue of whether or not they have tort claims against PGW is one that cannot yet be determined without a close open review of all the relevant facts and circumstances by an unbiased Trustee, and ultimately a future determination by this Court. Similarly, whether or not PCI and its subsidiaries may have claims against PGW and the priority of any such claims are critical issues that a disinterested Trustee, and ultimately this Court, must address.

As Receiver, Kelley is obliged to pursue every avenue of recovery for victims. To that end, he has indicated his desire, and may well have a duty, to seek access to the assets of PGW as a source for the payment of restitution to victims of Petters’s fraud who have no direct relationship to PGW. Conversely, it is in the interest of PGW’s creditors – who again are largely distinct from PCI’s creditors and many of Petters’s other victims – to preserve PGW’s assets solely for their benefit. Given these conflicting interests, the same person cannot act as both PGW’s fiduciary in bankruptcy and as the court-appointed equity Receiver. *See, e.g., In re Kalil Fresh Marketing, Inc.*, 2008 WL 2928562, *2 (S.D. Tex. July 22, 2008) (noting that “this Court will be managed by a Trustee or debtor-in-possession, not a hybrid created by judicial fiat”).

sees substantial potential conflicts if the trustee were to try to perform the function of federal court receiver for PACA Claimants and concurrently try to fulfill the duties and responsibilities set out in the Bankruptcy Code in favor of general unsecured creditors of an estate”).

The Debtors’ Response underscores this conflict and illustrates how it negatively impacts creditors of PGW. The Debtors assert that “it is in the best interests of all parties involved in these bankruptcy proceedings to focus on locating assets, investigating transactions, liabilities and potential claims, and pursuing claims.” (Debtor Response p. 3, ¶ 4.). While this approach to managing the Petters entities comports with Kelley’s role as Receiver, it plainly works to the detriment of the creditors who must be the sole concern of a disinterested Trustee.

Notably, the Debtors say nothing whatsoever about preserving and maximizing the value of PGW’s assets – which again include operating businesses such as Polaroid and Fingerhut – for the benefit of PGW’s creditors. These businesses do not benefit in any way from the investigation and litigation efforts that Kelley says are most important. Rather, the businesses must be prudently managed or properly sold at their highest value. Protecting and maximizing the value of PGW’s assets is the highest duty of the PGW Trustee. Through his filings on behalf of the Debtors, Mr. Kelley most certainly implies that he would be unable to fulfill his foremost fiduciary obligation to PGW’s creditors and instead believes it is his responsibility to create a common pool of all assets for the benefit of all of the victims for whom he works as Receiver.

Further demonstrating that he cannot properly be Trustee for PGW, Kelley appears to have prejudged not only Ritchie’s claims on PGW’s assets,⁵ but also the crucial issue in the

⁵ For instance, Kelley questions Ritchie’s status as a creditor of PGW because Kelley claims that Ritchie’s funds were transferred to a PCI account. Kelley does not deny, however, that Ritchie has valid promissory notes with only PGW and Petters as parties and that, for many reasons, the fact that PGW may have directed that its loan proceeds be remitted to PCI for reasons that have not yet been fully investigated or reviewed is not in any manner determinative of the validity of Ritchie’s claim. Resolving this issue is not before the court at this juncture, and indeed cannot be without providing all parties, including Ritchie, an opportunity to fully investigate and review the applicable facts and circumstances. Kelley, however, appears in a rush to summarily disregard Ritchie’s claim in

PGW bankruptcy, *i.e.*, whether or not victims of Petters' fraud who are not creditors of PGW should have access to PGW's assets to satisfy their claims. The Opposition filed by the Debtors contends that the affairs of PCI and PGW are closely intertwined, and questions the bona fides of Ritchie's claims regarding PGW. Those issues go to the merits of the claims, and thus their resolution is for another day. But by raising them at this time, Kelley reveals that he is already aggressively asserting himself in his role of Receiver in ways that may harm PGW's creditors.

Kelley points to the criminal indictment of Petters, PCI and PGW in *U.S. v. Thomas J. Petters, et al.*, 08 CR-364 (RHK/AJB) as support for his position regarding PGW's involvement in the fraud. The indictment belies, however, any suggestion that PGW played a significant role in the fraud. PGW is mentioned in only one of the 20 specific counts set forth in the indictment (the rest concern PCI only). And, that one count concerned money laundering – not the fraud that lies at the heart of the scheme – and does not provide a basis for PCI or the victims of the fraud to assert tort claims against PGW.⁶ (Indictment, 08-CR-364, p. 11, ¶ 23 (Count 20).)

A Trustee for PGW, who again must look out for the interests of PGW's creditors, must hire independent counsel for PGW in order to respond to and, where appropriate, deny, the charges against it. Given the positions staked out in the Debtors' response, it seems fairly apparent that Kelley will not undertake such an effort, further demonstrating that the conflicts under which he labors as Receiver preclude him from serving as PGW's Trustee.

In sum, although the issues Kelley raises concern the merits of Ritchie's claims, and should not be addressed at this time, they reveal a bias in favor of the other victims of Petters's fraud he serves as Receiver. For the issue presently before the Court, the focus must remain on

the PGW case, a result that favors the common pool of assets Kelley seeks to create as Receiver. This vividly demonstrates the conflicts he would possess as a Trustee for PGW.

⁶ A demonstrative exhibit summarizing all references to PGW in warrants, affidavits and civil and criminal complaints is attached as Exhibit A.

ensuring that bankruptcy process is fair and that the interests of all parties are fully and properly represented. Due to the conflicts described herein, those goals cannot be achieved with Kelley as Trustee for PGW.

III. Ritchie's Motion Is Not Premature

As a final matter, the UST asserts that Ritchie's motion is premature. That contention is baseless. The UST and the UCC have made clear their desire that Kelley be considered for appointment as a single Trustee for PGW, PCI, and PCI's affiliated entities. The UST cites no case to support its position that it is premature to consider these issues. Indeed, nothing should stand in the way of a court acting immediately to address patent conflicts of interest that threaten the integrity of the bankruptcy process and the interests of creditors and other interested parties.

The UST cites Federal Bankruptcy Rule 2009(d) and claims that separate Trustees can be appointed if creditors will be prejudiced by the conflicts of interest of a common trustee "who has been . . . appointed," emphasizing the use of the past tense to suggest that the UST must act first to appoint a Trustee before Ritchie can move for appointment of separate Trustees. Rule 1015(b), however, states that "*prior* to entering an order [for joint administration,] the court shall give consideration to protecting creditors of different estates against potential conflicts of interest." Fed. Bankr. R. 1015(b) (emphasis added). Such protections must include appointment of separate Trustees, and indeed Rule 2009(c), which concerns orders for appointment of a Trustee, says nothing that would preclude a bankruptcy court from ordering separate Trustees at the outset.

Any other result would be wholly inefficient because it would require the bankruptcy court to entertain two separate proceedings – the first to order appointment of a Trustee and the second to order appointment of separate Trustees due to conflicts – when the conflict is apparent

now and both issues can be addressed simultaneously. It also would be potentially harmful to appoint a single Trustee, and then address the conflicts at a later date.. While the second proceeding for appointment of a separate Trustee is pending, the conflicted Trustee for PGW must immediately address issues regarding, for example, its subsidiary Polaroid, which will likely have a pronounced effect on ultimate recovery and possible prejudice to PGW's creditors and other interested parties. Also looming is the pending criminal case against PGW, the disposition of which may effect a forfeiture of some or all of PGW's assets, to the obvious detriment of PGW's creditors. The determination of whether and how to defend against such charges must be made by a disinterested PGW trustee. Thus, the issue of having an independent and disinterested PGW Trustee appointed is far from being premature – it is a matter of immediate and paramount importance.

CONCLUSION

For the foregoing reasons, Ritchie respectfully requests that the Court, in appointing Trustees for the Debtors in these proceedings, direct that the Trustee appointed for PGW be different than any Trustee appointed for PCI and its subsidiaries, find that Douglas Kelley cannot be appointed Trustee for PGW, and grant Ritchie such further relief as is just and equitable.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

/e/ James M. Jorissen

Dated: December 15, 2008

By _____

James M. Jorissen, #262833

Brian F. Leonard, #62236

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AND RITCHIE CAPITAL MANAGEMENT, LTD.

392598

EXHIBIT A

REFERENCES TO PGW IN PETTERS CRIMINAL AND CIVIL ACTION

A. Petters Search & Seizure Warrants

(No Search or Seizure Warrant has ever been sought for PGW or its subsidiaries)

Date	Action	Items to be Seized
09/19/2008	Application and Affidavit for Search Warrant (FBI Agent Bisswurm) ¹	Documents and items of PCI and subsidiaries, along with individual defendants (No specific reference to PGW)
09/24/2008	Application and Affidavit for Search Warrant (FBI Agent McGrath)	Documents and items of PCI, and subsidiaries, along with individual defendants (No specific reference to PGW)
09/25/2008	Application and Affidavit for Seizure Warrant (IRS Agent Ingram) ²	Funds and records held by M&I Bank in account of PCI (No specific reference to PGW)
09/29/2008	Application and Affidavit for Seizure Warrant (FBI Agent Hovey)	Artwork or gold and other coins (No specific reference to PGW)

¹ Para 6, p.3: "The primary method of effectuating the fraud scheme involves Petters, his employees and his associates creating fictitious documents and then providing these documents to current and potential investors as evidence that PCI is buying and selling substantial goods and merchandise which PCI will then resell." The Bisswurm Affidavit is the most detailed factual assertion by the Government against Petters, and a summary is attached hereto.

² Paragraph 7 states: "The investigation to date has indicated that the business of Petters Company, Inc. is largely if not entirely fraudulent . . ."

SUMMARY OF BISSWURM AFFIDAVIT

1. On September 29, 2008, the Court issued a search warrant of certain premises and vehicles related to Thomas Joseph Petters *et al.*, based on a fifteen-page Affidavit of FBI Special Agent Timothy Bisswurm (“Bisswurm”). Bisswurm reported that he was part of a federal investigation involving the IRS and U.S. Postal Inspection Service focused on Petters Company, Inc. (“PCI”), PCI affiliated entities and persons, Nationwide International Resources, Inc. (“NIR), and Enchanted Family Buying Company (“Enchanted”).³

2. Bisswurm stated that THOMAS JOSEPH PETERS, THE OWNER OF PCI; employees of PCI and other PETERS’ entities, and other businesses have created and are continuing to execute a scheme to fraudulently induce investors to provide funds for, and financing to, PCI.⁴ The fraud involved creating fictitious documents and then providing these documents to current and potential investors as evidence that PCI is buying and selling substantial goods and merchandise which PCI will then resell.⁵ Petters and other persons then fraudulently pledged the non-existent goods and merchandise as security for the investments.⁶

³ Paragraph 1.

⁴ P 4.

⁵ P 6

⁶ Id.

3. “PCI is the venture capital arm of numerous PETERS enterprises. The money raised by PETERS through PCI is used by PETERS for his other business ventures and to support his extravagant lifestyle.”⁷

4. PGW is not named anywhere in the Application and Affidavit for Search Warrant.

⁷ P 7a.

B. Petters Criminal Complaint and Indictment

<p>10/02/08</p>	<p>Criminal Complaint U.S. v. (1) Thomas Joseph Petters (2) Larry Reynolds (supported by FBI Agent Harris Affidavit)</p>	<p>THOMAS JOSEPH PETERS (the owner of PCI); LARRY REYNOLDS and employees of PCI and other PETERS' entities, and other businesses have created and are continuing to execute a scheme to fraudulently induce investors to provide funds for, and financing to, PCI.⁸ (No specific reference to PGW)</p>
<p>12/01/08</p>	<p>Indictment of</p> <ol style="list-style-type: none"> 1. Thomas Joseph Petters 2. Petters Company, Inc. 3. Petters Group Worldwide, LLC 	<p>Paragraph 5 of the Indictment states in a conclusory fashion that "Defendant Petters used defendants PCI and PGW" to execute an extensive fraud scheme but provides no details as to the alleged PGW involvement. Indictment contains 19 detailed counts against PCI.</p> <p>ONLY FACTUAL ASSERTION MENTIONING PGW is in a Money Laundering Count (20) not alleged against PGW, but against PETERS:</p> <p>June 4, 2008: Wire transfer for \$ 3,000,000.00 from PGW's Crown Bank account number xxx4074 to PETERS personal Northern Trust account</p>

⁸ Paragraph 5.

		xxxxxx6561.
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C. PGW in Civil Action

10/02/08	Complaint for Permanent Injunction and other Equitable Relief	PGW not named party and no specific reference to PGW; Supported by FBI Agent Rice Aff.
10/02/08	Ex Parte Memorandum in Support of ex parte Motion for TRO and Preliminary Injunction	PGW not named party and no specific reference to PGW; Supported by Rice Aff.
10/02/08	Declaration of United States' Counsel Pursuant to Fed. R. Civ. P. 65(b) and in Support of ex parte Motions	No specific reference to PGW
10/02/08	Affidavit of Eileen Rice (FBI Agent)	No allegation of wrongdoing by PGW Only reference to PGW in ¶ 37: Alleges PCI dissipated assets by making payments to certain employees of PGW, e.g. Mary Jeffries, in Dec. 2007.
10/03/08	Temporary Restraining Order	Court held that nothing in Order to be construed to restrain assets of Polaroid-related entities (major holding of PGW)
10/06/08	Second Amended Complaint	PGW named as a party Supported by previous Rice Aff. No new allegations re PGW No specific reference to PGW (except as party in caption)
10/06/08	Order for Entry of Preliminary Injunction, Appointing Receiver	Based on stipulation, order freezes assets of PGW, including Polaroid-related entities

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Court File No. 08-45257
Petters Group Worldwide, LLC,
Debtor. Chapter 11 Case
Bankruptcy Judge Gregory F. Kishel

AFFIDAVIT OF WILLIAM PROCIDA

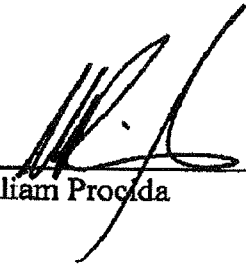
STATE OF NEW JERSEY)
) ss.
COUNTY OF BERGEN)

William Procida, being first duly sworn upon oath, deposes and states as follows:

1. I am an adult resident of the State of New Jersey. I am President of William Procida Incorporated. I make this Affidavit of my own personal knowledge.
2. On October 3, 2008, I was appointed receiver for Thomas J. Petters ("Petters"), Petters Group Worldwide, LLC ("PGW"), and Petters Company, Inc. ("PCI") pursuant to an Order of the Cook County, Illinois Circuit Court.
3. On October 6, 2008, the United States District Court for the District of Minnesota entered its Order appointing Douglas Kelley as receiver for Petters and the above referenced companies in *United States of America v. Thomas Joseph Petters, et al.*, Civ. No. 08-cv-5348.
4. Prior to our respective appointments as receiver, I met with Mr. Kelley several times during the week of September 29, 2008 through October 3, 2008.
5. During our conversations, Mr. Kelley informed me of his view that Petters, PGW and PCI were all part of a common scheme to defraud lenders and investors. Mr. Kelley further

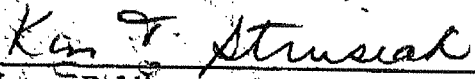
informed me of his view that all assets, including the assets of PGW, would be subject to forfeiture in favor of the United States.

FURTHER YOUR AFFIANT SAYETH NOT



William Procida

Subscribed and sworn unto before me
this 15th day of December, 2008.



Notary Public
KIM T. STRUSIAK
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Feb. 4, 2012
2012

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Petters Company, Inc., et al.,

Debtors.

(includes:

Petters Group Worldwide, LLC;
PC Funding, LLC;
Thousand Lakes, LLC;
SPF Funding, LLC;
PL Ltd., Inc.;
Edge One LLC;
MGC Finance, Inc.;
PAC Funding, LLC;
Palm Beach Finance Holdings, Inc.)

Jointly Administered under
Case No. 08-45257

Court File No. 08-45257

Court File Nos.:

08-45258 (GFK)
08-45326 (GFK)
08-45327 (GFK)
08-45328 (GFK)
08-45329 (GFK)
08-45330 (GFK)
08-45331 (GFK)
08-45371 (GFK)
08-45392 (GFK)

Chapter 11 Cases
Judge Gregory F. Kishel

UNSWORN CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2008, I caused the following documents:

REPLY MEMORANDUM IN FURTHER SUPPORT OF MOTION TO APPOINT A CHAPTER 11 TRUSTEE FOR PETTERS GROUP WORLDWIDE, L.L.C. AND RESPONSE TO MOTION OF U.S. TRUSTEE FOR APPOINTMENT OF CHAPTER 11 TRUSTEE AND AFFIDAVIT OF WILLIAM PROCIDA

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

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I further certify that I caused a copy of the foregoing documents to be mailed by first class mail, postage paid, to the following non-ECF participants:

N/A

Dated: December 15, 2008

/e/ Stephanie Wood

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