

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 HEARING AND MOTION FOR APPOINTMENT OF CHAPTER 11
TRUSTEE IN THE BANKRUPTCY CASE OF PETTERS WORLDWIDE, LLC**

1. 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, L.L.C. (together "**Ritchie**") respectfully move this Court for appointment of a Trustee in the Chapter 11 bankruptcy proceeding of Petters Group Worldwide, LLC ("**PGW**").¹ This motion further requests that the Trustee for PGW, if appointed, be separate and distinct from any Trustee appointed for Petters Company, Inc. ("**PCI**") or any of its subsidiaries.

¹ This motion is submitted simultaneously with the motion requesting withdrawal of the reference to the Bankruptcy Court with respect to appointment of a Trustee. As stated in the motion to withdraw, if the Court decides not to withdraw the reference, Movants request permission to present this motion to the Bankruptcy Court.

2. The Court will hold a hearing on this motion at 2:00 o'clock p.m. on December 16, 2008, before the Honorable Gregory F. Kishel, in Courtroom 2A, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101, or as soon thereafter as counsel can be heard.

3. Any response to this Motion must be filed and served by delivery no later than December 11, 2008 which is three (3) days before the time and date set for the hearing (excluding Saturday, Sunday and holidays) or mailed and filed by December 5, 2008 which is seven (7) days before the time set for hearing (excluding Saturday, Sunday and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. The Court has jurisdiction over this matter under 28 U.S.C. §§157, 1334, and other statutes supplementary thereto.

5. This motion is based upon the Memorandum of Law filed herewith, and all of the files and proceedings in this case.

6. This motion is further based upon the following undisputed facts:

- (a) Douglas Kelly, who is acting as the debtor-in-possession based upon his appointment by the District Court as Receiver, had an irreconcilable conflict of interest and cannot function, or properly discharge his duties, as a fiduciary in the PGW Chapter 11 case.
- (b) Mr. Kelly has filed a motion in the United States District Court to amend that Court's Receivership Order to the effect that Mr. Kelly would no longer have authority to serve as the debtor-in-possession in the PGW Chapter 11 case.

- (c) On October 2, 2008, the United States commenced an action under 28 U.S.C. §1345, Case No. 08-5348 (ADM/JSM) (the “U.S. Case”) in the District Court for the District of Minnesota, seeking permanent injunctive and other relief. Shortly thereafter, on motions of the Government, the District Court entered Orders under Section 1345 freezing the assets of the defendants and appointing Douglas Kelley receiver (“Kelley” or “Receiver”) of assets owned by all defendants (except entities associated with Thomas Vennes). The core allegation in the Section 1345 action is that for a long period of time, Petters has engaged in a Ponzi scheme involving certain of his businesses, primarily Petters Company, Inc. (“PCI”). The District Court’s Order of October 22, 2008 in the U. S. Case, discussed more fully below, amended prior orders appointing Kelley as receiver and states: “Douglas A. Kelly is appointed Receiver for the Defendants with the full power of an equity Receiver.”
- (d) Ritchie asserts a claim of over \$250 million by PGW, and no one has contested this allegation. . Nor has anyone submitted any evidence that PGW’s operating subsidiaries, in contrast to the shell financing entities that are subsidiaries of PCI, are anything other than legitimate businesses.
- (e) Petters, who was the head of PGW, was arrested in connection with the investigation into his alleged fraudulent actions, and he relinquishes his role at PGW. Soon after, other executives and managers of PGW resigned.

- (f) On October 11, 2008, Kelley, as Receiver, caused PGW and PCI, along with certain other Petters related companies, to seek bankruptcy protection in this Court.
- (g) Recently, Kelley sought to amend further the District Court's Amended Receivership Order in the U.S. Case to eliminate language making reference to Kelley serving as debtor-in-possession.

7. The Chapter 11 Trustee appointed in the PGW case must be separate and distinct from any Trustee appointed in the PCI bankruptcy case. The assets and creditors in this case, and the assets and creditors in the PCI case, are separate and distinct. Each separate creditor constituencies may make claims upon common assets of both PGW and PCI.

8. At any hearing on this Motion, the moving party may call Douglas Kelly, and/or employees of the moving party, to testify and offer evidence.

WHEREFORE, Ritchie respectfully requests that the Court issue an Order for the appointment of a Chapter 11 Trustee in the PGW bankruptcy case, and further ordering that any Chapter 11 Trustee that may be appointed in the PCI bankruptcy case case be separate and distinct from the PGW Chapter 11 Trustee, and for other and further relief as is just and necessary.

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

/e/ James M. Jorissen

Dated: December 2, 2008

By _____

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391721

VERIFICATION

Thane Ritchie, a principle of the moving parties, states under penalty of perjury that the information contained in this Motion is true and correct to the best of his knowledge.

Dated: December 2, 2008

Thane Ritchie

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Petters Company, Inc., et al.,

Debtors.

(includes:

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Thousand Lakes, LLC;

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08-45371 (GFK)

08-45392 (GFK)

Chapter 11 Cases
Judge Gregory F. Kishel

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR APPOINTMENT OF A
CHAPTER 11 TRUSTEE FOR PETTERS GROUP WORLDWIDE, L.L.C.**

INTRODUCTION

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 move this Court to appoint a Trustee in the Chapter 11 bankruptcy proceeding of Petters Group Worldwide, LLC ("PGW"). To avoid a patent conflict of interest, this motion further requests that the Trustee for PGW be separate and distinct from any Trustee appointed for Petters Company, Inc. ("PCI") or any of its subsidiaries.

As an initial matter, appointing a Trustee for PGW is required because PGW is the subject of a pending chapter 11 bankruptcy case, and the Bankruptcy Code requires that a

Trustee be appointed to act as a fiduciary for PGW's creditors. PGW's subsidiaries, which are operating business, such as Polaroid Corporation and Fingerhut, have never been implicated in the massive fraud that Thomas J. Petters ("Petters") orchestrated. Nevertheless, PGW's key managers have resigned in the wake of the investigation. Douglas Kelley ("Kelley"), whom the District Court appointed as equity Receiver to oversee PGW in the absence of its management, cannot serve as PGW's fiduciary in bankruptcy. The duties Kelley owes to victims of Petters's fraud as Receiver for PCI and other entities conflict with the duties he would owe to PGW's creditors as their fiduciary in bankruptcy. Moreover, bankruptcy law does not permit a pre-bankruptcy receiver such as Kelley to serve as debtor in possession during bankruptcy.

Ritchie has raised with Kelley the conflicts and provisions of the Bankruptcy Code that prevent him from serving as the fiduciary for PGW in bankruptcy. Kelley has indicated that appointment of a Trustee is appropriate. In fact, in the draft order ("Draft Order") Kelley recently submitted with his motion to amend the District Court's Preliminary Injunction Orders in Civ. No. 08-5348, Kelley contemplates that a Trustee will be appointed – the Draft Order would eliminate the language in the prior order potentially suggesting that Kelley had the power to serve as debtor in possession. (*See* Draft Order, Case No. 08-5348, Docket Entry 91.) The District Court will hear Kelley's motion to amend on Thursday, December 4, 2008. Assuming the District Court enters the Draft Order, there should be no ambiguity regarding this Court's ability to appoint a Trustee for PGW.¹

The PGW Trustee cannot be the same person that might be appointed Trustee for PCI or its subsidiaries. A Trustee must be "disinterested" – *i.e.*, free from any conflicts – and conflicts are inherent between a fiduciary for PGW and a fiduciary for PCI. Although both PGW and PCI

¹ If the Draft Order, or a substantially similar Order regarding the Trustee issue, is not entered by the District Court on Kelley's motion, Petitioners plan to raise the issue of this Court's ability to appoint a Trustee for PGW directly with the District Court.

are wholly-owned by Petters, the similarities end there. The two companies are distinct legal entities with drastically different business operations and distinct creditor constituencies. It appears that PCI, a holding company, and its subsidiaries are merely shell companies that served as the principal conduits for the fraudulent transactions, have little or no legitimate business and, consequently, have little or no remaining valuable assets.

By contrast, PGW is a holding company for many legitimate businesses with substantial value, such as Polaroid Corporation and Fingerhut, which have not been implicated in the fraud. Furthermore, and importantly, it appears that few creditors of PCI are also creditors of PGW, and that Ritchie is the only significant creditor of PGW. Therefore, while it would be in the best interests for PCI's creditors to pool the assets of PCI and PGW for the benefit of all creditors and victims of Petters's fraud, it is plainly in the best interests of PGW's creditors to maintain the clear distinction between the two companies and to preserve PGW's assets for the benefit of PGW's creditors.

Furthermore, given the dramatic differences between PGW's and PCI's businesses, the needs of those two entities in bankruptcy will also be dramatically different. PGW will need a Trustee to oversee and to provide financial and operational support for its continuing operating businesses. PCI, by contrast, will need a Trustee to focus on investigating the books and records to identify victims and to determine the extent of the fraud. One such effort cannot be neglected for the sake of the other. Accordingly, the same person or entity cannot simultaneously serve as Trustee for PGW and Trustee for PCI (or any PCI subsidiary).²

² Because Ritchie understands that it is the only major outside creditor of PGW, Ritchie is primarily interested in appointment of a Trustee for PGW. Ritchie does not object to appointment of a Trustee for PCI or its subsidiaries. However, as explained herein, if Trustees are appointed for PGW and PCI (and its subsidiaries), Ritchie requests that the Trustee appointed for PGW be different than the Trustee appointed for PCI or any of its subsidiaries.

Thus, Ritchie respectfully requests that this Court order the appointment of a Trustee for PGW, and specify that the same person cannot serve as both Trustee for PGW and for PCI.

BACKGROUND

Ritchie appears to be PGW's only substantial outside creditor. PGW owes Ritchie over \$250 million. PGW is a holding company and 100% owned by Petters. PGW's subsidiaries are operating businesses that include well-known businesses of potentially considerable value, including Polaroid Corporation and Fingerhut.

The other substantial Petters-related entity in bankruptcy is PCI. PCI is also a holding company and 100% owned by Petters. Unlike PGW, however, PCI's subsidiaries (many of which are also in bankruptcy) are largely shell companies that were used for financing transactions, many of them illegal. PCI and its subsidiaries – but *not* PGW's subsidiaries – have been implicated in the Petters fraud investigation. Indeed, PCI might not include any legitimate businesses.

In late September of 2008, the Federal Bureau of Investigation (“FBI”) and other federal agencies raided the residence of Petters and the headquarters of PCI. According to the FBI affidavit submitted in connection with the search warrants, the investigation centers on allegations that Petters and PCI, but not PGW, engaged in a massive “Ponzi scheme” that induced investors to finance sales of merchandise to major retailers, when in fact those sales did not exist. PGW was not mentioned in the affidavit. Soon after the raid, Petters resigned from his positions at PCI and PGW and was later arrested and charged with serious crimes. Other executives of PGW subsequently resigned as well. Several of Petters' associates at PCI have now pleaded guilty to felony wrongdoing.

On October 6, 2008, the District Court entered a preliminary injunction in a case brought by the United States under 18 U.S.C. § 1345, Civ. No. 08-5348 (ADM/JSM), appointing Kelley as equity Receiver for both PGW and PCI, and has since appointed Kelley equity Receiver for all Defendants in the United States' case, except entities related to Frank E. Vennes. The injunction was entered to halt Petters's fraud and the Receiver was appointed to administer the injunction and, ultimately, to seek recovery on behalf of the victims. Incident to that purpose, Kelley was empowered to "perform all acts necessary or advisable to preserve the value of the [Defendants'] assets in order to prevent any irreparable loss."³ Those powers included the ability to file bankruptcy petitions.⁴ On October 11, 2008, Kelley filed voluntary Chapter 11 bankruptcy petitions for PGW and PCI, as well as for a number of subsidiaries of PCI.

On October 31, 2008, Ritchie notified Kelley that he had a conflict of interest that prevented him from serving as the debtor-in-possession for PGW, where his duty is to protect the assets of PGW's operating companies for the benefit of its creditors, and simultaneously serving as Receiver, where his duty is to collect and preserve assets of the Petters entities for the benefit of the larger group of individuals and entities that Petters allegedly defrauded. As a result of this conflict, Ritchie asked that Kelley agree to join Ritchie in seeking appointment of a Trustee to oversee the PGW bankruptcy. After a number of follow-up efforts, including sending a draft brief explaining that clear, irreconcilable conflicts of interest and the Bankruptcy Code did not permit him to serve as debtor in possession for PGW (or any of the Petters-related entities), Kelley indicated that he would not oppose the appointment of a Trustee. This assent is borne out by the Draft Order, which eliminates the language in the prior order suggesting that Kelley could

³ (Receivership Orders p. 11.)

⁴ (*Id.* p. 12.)

serve as debtor in possession and, if entered, would remove any issue concerning the appointment of a Trustee. (Draft Order, Civ. No. 08-5348, Docket Entry No. 91.)

On December 1, 2008, an indictment issued charging Petters, PCI and PGW with mail fraud, wire fraud and money laundering. Aside from being named a defendant, PGW is mentioned in a single allegation – a wire transaction from a PGW account to a personal account of Petters, who is the 100% owner of PGW. No PGW subsidiary is mentioned, nor is PGW alleged to have engaged in the fraudulent merchandise financing transactions that lie at the heart of the fraud.

ARGUMENT

I. A Trustee Must Be Appointed For PGW.

A. Standard For Appointment Of Trustee.

Section 1104 of the Bankruptcy Code governs the appointment of a Trustee in a Chapter 11 case.⁵ Section 1104(a) provides that a Trustee can be appointed for “cause,” and provides an illustrative list of conduct that warrants appointment of a Trustee. *See* 11 U.S.C. § 1104(a). However, a court need not find any of the enumerated wrongs listed in Section 1104(a) to find cause to appoint a Trustee. *In re Okalahoma Refining Co.*, 838 F.2d 1133, 1136 (10th Cir.

⁵ Section 1104 states, in pertinent part, as follows:

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee-

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor....

11 U.S.C. § 1104(a)(1)-(2).

1988). Cause can exist for a variety of reasons, including inability to exercise fiduciary duties and control the reorganization process, and acrimony between management and other parties-in-interest. *See, e.g., In re Colorado-Ute Elec. Assoc., Inc.*, 120 B.R. 164, 176 (Bankr. D. Colo. 1990); *In re Bellevue Place Assocs.*, 171 B.R. 615, 623 (Bankr. N.D. Ill. 1994). Once “cause” is shown, no discretion exists to appoint a Trustee; rather, one must be appointed. *In re Colorado-UTE*, 120 B.R. at 174; *In re Okalahoma Refining Co.*, 838 F.2d at 1136.

A party can also request appointment of a Trustee under Section 1104(a)(2) by establishing that such an appointment is “in the interests of creditors.” *In re V. Savino Oil & Heating Co., Inc.*, 99 B.R. 518, 525 (E.D.N.Y. 1989). Courts use their broad equity powers to analyze the propriety of appointing a Trustee to benefit the interests of creditors.⁶ *In re Hotel Assoc., Inc.*, 3 B.R. 343, 345 (E.D. Pa. 1980).

B. A Trustee For PGW Must Be Appointed Because Kelley’s Duties As Receiver For All Petters’s Entities Are In Direct Conflict With The Duties Of A Trustee Or Debtor In Possession In Bankruptcy For PGW.

Kelley’s duties as Receiver for all of the victims of Petters’ fraud are irreconcilably at odds with the duties that a fiduciary in bankruptcy, whether a debtor in possession or a Trustee, owes to PGW’s creditors. Consequently, Kelley cannot serve both roles.

As Receiver, Kelley must seek the greatest possible recovery for all victims of Petters’s fraud. Many of the victims of the fraud dealt only with PCI, not with PGW, and thus they are not creditors of PGW. It might nevertheless be in the interests of those victims to seek access to the assets of PGW for restitution – and as Receiver Kelley is obligated to pursue every avenue of recovery for the victims. PGW, however, has not been linked to Petters’s fraud. It is in the interest of PGW’s creditors – who are largely distinct from PCI’s creditors and many of Petters’s

⁶ Once appointed, the Trustee assumes control over all assets and property of the debtor. *See* 11 U.S.C. § 323(a); *In re Rimsat, Ltd.*, 98 F.3d 956, 960 (7th Cir. 1996). The assets of the bankruptcy estate include the stock of subsidiary corporations. *See, e.g., Twin Development Corp. v. Smith*, 120 B.R. 45, 49 (W.D. Va. 1988).

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 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”).

C. Cause Exists To Appoint A Trustee For PGW Because No Fiduciary Is In Place To Guide PGW In Bankruptcy; As A Pre-Bankruptcy Petition Receiver, Kelley Cannot Serve As Debtor In Possession.

Bankruptcy law requires a fiduciary to oversee the assets of a Chapter 11 bankruptcy estate. Typically, upon filing, existing management of the debtor bankruptcy assumes that fiduciary role as “debtor in possession.” *In re V. Savino Oil and Heating Co., Inc.*, 99 B.R. at 524. Here, however, PGW’s management had largely resigned prior to filing, leaving no one to serve the role of debtor in possession. Bankruptcy law clearly states that Kelley, as an equity Receiver for PGW appointed prior to the bankruptcy filing, cannot serve as debtor in possession. Rather, upon filing the bankruptcy petition for PGW, Kelley’s receivership ended and he became a custodian obligated to turn over the assets under his charge to the bankruptcy estate.

The Bankruptcy Code provides that any “receiver . . . of the property of the debtor” appointed in a non-Chapter 11 case, or any “receiver” appointed for “the purpose of general administration of such property for the benefit of the debtors’ creditors,” is deemed a “custodian” of the property. 11 U.S.C. § 101(11)(A), (C). Kelley, as equity Receiver appointed in an action under 18 U.S.C. § 1345 with powers that include administration and preservation of PGW’s assets, became a custodian pursuant to both Section 101(11)(A) and Section 101(11)(C) of the Code when PGW entered bankruptcy. As a custodian, Kelley is obligated to “deliver to the

trustee any property of the debtor held by or transferred to such custodian,” and to “file an accounting of any property of the debtor . . . that, at any time, came into the possession custody or control of such custodian.” 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 Stratesec, 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 will be managed by a Trustee or debtor-in-possession, not a hybrid created by judicial fiat”). Accordingly, a Trustee must be appointed for PGW.

II. Separate Trustees Must Be Appointed For PGW and PCI.

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.” 11 U.S.C. § 101(14)(E); *Arkansas Communities, Inc. v. Mitchell*, 46 B.R. 403, 404 (W.D. Ark. 1983). That provision 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 BH & P Inc.*, 949 F.2d 1300, 1308 (3d Cir. 1990). Moreover, Rule 2009(e) of the Federal Rules of Bankruptcy Procedure expressly states that “[o]n a showing that creditors . . . of the different estates will be prejudiced by conflicts of interest of a common trustee . . ., the court shall order the selection of separate trustees for estates being jointly administered.” Fed. R. Bankr. P.

2009(e). Any person serving as a bankruptcy Trustee for PCI or its subsidiaries 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. Accordingly, the same person cannot serve both roles.

The conflict of interest between a Trustee for PCI and a Trustee for PGW is substantially similar to the one described above with respect to the Receiver and a fiduciary in bankruptcy for PGW. Thus, while Kelley's assent to appointment of a Trustee for PGW eliminates the conflict with the Receivership, the same conflict problems will arise again if the same Trustee is appointed for PGW and PCI. To avoid unnecessarily perpetuating these conflicts, a separate Trustee for PGW is needed.

The conflict stems from PCI's and PGW's status as separate legal entities with largely distinct creditor constituencies and very different financial situations. PCI has little or no assets of value. PGW, on the other hand, has significant assets, such as Polaroid and Fingerhut, with potentially considerable value. On behalf of the creditors of PCI, a Trustee must seek to bring the greatest possible amount of assets into the PCI bankruptcy estate – including asserting claims against the assets of PGW. On behalf of PGW's separate set of creditors, whose interests lie in preserving PGW's assets for their benefit, a Trustee must resist any effort to gain access to the assets of PGW 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. 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, it is owed only \$25 million by Polaroid. (Memorandum of Law of

Acorn Capital Group, Civ. No. 08-5348, Docket Entry No. 104.) Acorn's efforts are merely a taste of what will come from other PCI creditors who find that PCI's assets are insufficient to meet their claims. Thus, separate Trustees are plainly needed for PGW and PCI to ensure that the interests of each group of creditors are protected. *See, e.g., In re BH & P.*, 949 F.2d at 1312-14 (finding that bankruptcy court properly disqualified Trustee from serving for multiple debtors); *cf. In re Philadelphia Mortg. Trust*, 117 B.R. 820, 822 (Bankr. E.D. Pa. 1990) (noting that separate Trustees had properly been appointed for three related debtors).

Additionally, the focus of the efforts respecting PCI and PGW during the bankruptcy proceedings will be substantially different. PGW's significant operating businesses need financial and operational support in order to preserve their value as going concerns. In this regard, it is crucial that PGW's creditors be kept abreast of PGW's operations and any activity to liquidate its assets, and otherwise to receive the protections and be allowed to exercise their rights under the Bankruptcy Code. Separately, PCI and its subsidiaries are now defunct shell companies that have no ongoing operations. Therefore, during bankruptcy, the PCI entities must be investigated in order to determine the extent, and to identify all perpetrators and victims, of the fraud. Kelley explained the difference between the nature of the work required for PGW and PCI in a motion filed in the PGW bankruptcy proceedings:

Except for PGW, PIC [sic] and the remaining Debtors' operations will be, for the most part, limited to reconstructing accounting records and analyzing and pursuing potential claims. PGW will conduct these activities as well, *but will also be involved in the ongoing management, operations and sales (as the case may be) of its subsidiaries and their respective assets.*

(Joint Administration Motion ¶ 11 at p.4 (emphasis added).)

Appointing a Trustee for PGW that is different from the Trustee appointed for PCI or the other Debtors in this jointly administered proceeding is the only way to ensure that the interests

of PGW's creditors are fully protected and that PGW's administration in bankruptcy is aimed at maximizing its assets for the benefit of PGW's creditors.

CONCLUSION

For the foregoing reasons, Ritchie respectfully requests that the Court appoint a Trustee for PGW, and further that such Trustee be different than any Trustee appointed for PCI and its subsidiaries.

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

/e/ James M. Jorissen

Dated: December 2, 2008

By _____
James M. Jorissen, #262833
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ATTORNEYS FOR RITCHIE CAPITAL
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STRUCTURE ARBITRAGE TRADINGS, LTD.
AND RITCHIE CAPITAL MANAGEMENT, LTD.

391808

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Chapter 11 Cases
Judge Gregory F. Kishel

UNSWORN CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2008, I caused the following documents:

NOTICE OF HEARING AND MOTION FOR APPOINTMENT OF CHAPTER 11 TRUSTEE IN THE BANKRUPTCY CASE OF PETTERS WORLDWIDE, LLC, MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR APPOINTMENT OF A CHAPTER 11 TRUSTEE FOR PETTERS GROUP WORLDWIDE, LLC AND ORDER (PROPOSED)

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:

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Dated: December 2, 2008

/e/ Stephanie Wood

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Minneapolis, MN 55402
(612) 332-1030

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

ORDER

Based on the Motion filed by Ritchie Special Credit Investments, Ltd., and its affiliates, for the appointment of a Chapter 11 Trustee in the Petters Group Worldwide, LLC case, File No. 08-45258,

IT IS HEREBY ORDERED, that the United States Trustee shall appoint a Chapter 11 Trustee in the Petters Group Worldwide, LLC case, File No. 08-45258; and

IT IS FURTHER ORDERED, that any Chapter 11 Trustee appointed that may be appointed in the Petters Company, Inc. case, File No. 08-45257, shall be separate and distinct from the Trustee appointed pursuant to this Order.

Dated: _____, 2008

Gregory F. Kishel
U.S. Bankruptcy Court Judge