UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: **Jointly Administered under Case No. 08-4527**

Petters Company, Inc., et al. Court File No. 08-45257

OBJECTION TO APPLICATION OF DOUGLAS A. KELLEY, AS APPOINTED CHAPTER 11 TRUSTEE, FOR AN ORDER AUTHORIZING THE EMPLOYMENT OF THE LAW FIRM OF LINDQUIST & VENNEUM, P.L.L.P

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. (collectively "Ritchie") respectfully submit this Objection to Application of Douglas A. Kelley, as Appointed Chapter 11 Trustee, For an Order Authorizing the Employment of the Law Firm of Lindquist & Vennum, P.L.L.P. (the "Application").

INTRODUCTION

Through his application, chapter 11 trustee Douglas A. Kelley ("Kelley") seeks authorization to employ Lindquist & Vennum, P.L.L.P. ("L&V") as counsel in the above-captioned jointly administered cases. However, Kelley, as Receiver, is accountable to the United States and is bound to recover and preserve assets for the benefit of the United States. Kelley is therefore a creditor in these proceedings, because the interest of the United States he is protecting as Receiver represents a claim in these bankruptcy proceedings against the assets of the Debtors. Kelley, in his capacity as Trustee for twenty separate entities in these and the pending Polaroid cases, inevitably occupies the status of *both* creditor and trustee. As Kelley's lawyer in the receivership action and, currently, in all twenty of the bankruptcy cases, L&V represents

interests adverse to the bankruptcy estates and would, if the Application is approved, labor under an actual conflict of interest. In accordance with 11 U.S.C. §§ 327(a) and (c), this Court should deny the Application to employ L&V.

BACKGROUND

I. THE RECEIVERSHIP

On October 6, 2008, the United States District Court for the District of Minnesota entered an Order for Preliminary Injunction, Order Appointing a Receiver, and Other Equitable Relief in *United State of America v. Thomas J. Petters, et al.*, Case No. Civ. 08-5348 (ADM/JSM) (the "Receivership Action"). The Order, as thereafter amended, among other things appointed Kelley receiver for Petters Company, Inc. ("PCI"), Petters Group Worldwide, LLC ("PGW"), and "any affiliates, subsidiaries, divisions, successors, or assigns owned 100% or controlled" by either PCI or PGW. *See Second Amended Order for Entry of Preliminary Injunction, Appointment of Receiver, and Other Equitable Relief* (hereafter the "Receivership Order") at 4. The ten debtors in these jointly administered cases are either Defendants or "affiliates" within the meaning of the Receivership Order.

The Receivership Order designates Kelley "solely the agent of . . . the [District] Court" and he is clothed with "judicial immunity." *See* Receivership Order at 13, ¶ 2. The Receivership Order directs Kelley to "coordinate" with the United States Attorney to "ensure that any assets subject to the terms of this Order are available for criminal restitution, forfeiture, or other legal remedies in proceedings commenced by or on behalf of the United States." *Id.* at 16-17, ¶¶ 6. Kelley thus has a direct obligation to assist the federal government in the pursuit and preservation of assets so they may be forfeited to the United States. *Id.* As receiver, Kelley thus

represents the interests of a major creditor in these jointly administered chapter 11 cases, namely the United States.

The Receivership Order also imbued Kelley with authority to "employ attorneys . . . as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Preliminary Injunction and Order[.]" *Id.* at 15-16 ¶ 2. Before these jointly-administered cases were filed, Kelley exercised his authority and retained L&V as his counsel in the pending Receivership Action. In such capacity, L&V, like Kelley, represents the interests of a major creditor in these cases, the United States, and is obliged to assist Kelley in the fulfillment of his obligation to ensure the availability of assets for forfeiture and similar remedies. *Id.* This duty – to preserve assets for the benefit of the United States – quite clearly conflicts with the duty of L&V, in its capacity as counsel to the debtors, to maximize the assets available for distribution to all of the creditors in the bankruptcy cases.

II. THE BANKRUPTCY CASES

Kelley also currently serves as trustee for each of the ten debtors in these jointly administered proceedings, including the PGW and PCI cases.[1] As trustee, he owes fiduciary obligations to the separate creditors of PGW and PCI to attempt to maximize the assets available to their respective bankruptcy estates.

PCI is a major creditor in the PGW case. PGW owns several legitimate operating entities, including Polaroid. PCI has a scheduled secured claim in all of PGW's assets for more than $216 million. The claim is listed on PGW's schedules as "disputed." As PCI trustee,

[1] Kelley initiated these proceedings as the putative debtor in possession of PGW, PCI and PCI's affiliates. His authority to serve as debtor in possession was later revoked – at his request – by the District Court, and the United States Trustee's Office moved for and obtained authorization from this Court to appoint a chapter 11 trustee. The United States Trustee thereafter appointed Kelley as chapter 11 trustee for all ten of the debtors in these proceedings. Ritchie has objected to the appointment of Kelley as trustee in these cases, and a hearing on the objection has been set for January 27, 2009. Ritchie notes that, in addition to being a creditor of PGW, it is also a victim of Petters' fraud entitled to share in any sums collected by the Receiver for the benefit of victims.

Kelley undoubtedly has an obligation to pursue this claim for the benefit of PCI. Indeed, given the more than $3 billion in claims and few assets reflected in PCI's schedules, Kelley, as PCI trustee, has an obligation to seek to pierce PGW's corporate veil so as to maximize the assets available for distribution to PCI creditors. And he just as surely has an obligation as PGW's trustee to resist claims of the PCI trustee on behalf of PGW's separate creditors. As trustee for PCI, Kelley is a major creditor relative to a disputed obligation in the PGW bankruptcy. His lawyers, L&V, thus concurrently represent PGW's trustee as well as a PGW creditor – the PCI trustee – whose interests are in actual conflict.

Kelley also serves as *de facto*, as well as *de jure*, debtor in possession for Polaroid Corporation and nine of its affiliates (collectively "Polaroid") who are debtors in jointly administered proceedings under the caption *In re Polaroid Corporation, et al.*, Bky. 08-46617 (GFK). The Receivership Order placed Polaroid into Kelley's possession.[2] PGW owns all of the stock of Polaroid Holding Company ("PHC"), which in turn owns all of the stock of Polaroid Corporation. As trustee for PGW, Kelley owes a fiduciary obligation to PGW's separate creditors to attempt to retain the value of Polaroid for the PGW estate. According to Schedule B of PCI's Bankruptcy Schedule, PCI holds notes payable from various Polaroid affiliates aggregating in excess of $42 million. As trustee for PCI, Kelley owes a fiduciary obligation to PCI's creditors to pursue collection of the Polaroid notes. As the functional debtor in possession for Polaroid, Kelley's owes fiduciary obligations to Polaroid as well. The competing interests of PGW, PCI and Polaroid raise unsolvable conflicts of interest which preclude Kelley from acting

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[2] Pursuant to the terms of the Receivership Order, the District Court ordered Kelley to immediately assume control over the assets, management and operations of Polaroid. *See* Receivership Order at 14, ¶¶ 2(a)-(c). Thus, although Polaroid purports to be operating as debtor in possession, Doug Kelley, by virtue of the Receivership Order, is in possession of Polaroid. Because he cannot, as a receiver and hence a "custodian" under the Bankruptcy Code, take any further action in the administration of property of the debtor or property of the estate in these cases, *see* 11 U.S.C. § 543(a), Ritchie has separately moved for the appointment of a trustee other than Kelley in the Polaroid cases.

as fiduciary for all twenty of the debtors. If employed as the lawyers for the trustee in the *PGW* and *PCI* cases and as counsel for the debtors (or trustee, if one is appointed) in *Polaroid*, L&V will once again be representing conflicting interests.

Section 327(a) of the Bankruptcy Code permits a trustee in bankruptcy to employ attorneys "that do not hold or represent an interest adverse to the estate, and that are disinterested persons . . . ." 11 U.S.C. § 327(a). Section 327(c), in turn, mandates disqualification of an attorney in all circumstances in which an "actual conflict of interest" exists. In this case, L&V cannot simultaneously serve as (1) counsel for the receiver; (2) counsel for the PGW trustee; (3) counsel for the PCI trustee; and (4) counsel for the Polaroid debtor in possession. The interests of these entities, and their separate creditor constituencies, are quite obviously in conflict. Because L&V already represents interests adverse to the estate, and L&V labors under irreconcilable conflicts of interest, this Court can and should deny the Application.

ARGUMENT

Section 327 of the Bankruptcy Code governs the employment of attorneys in a bankruptcy case. The statute provides in pertinent part as follows:

> (a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.
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> * * *
>
> (b) In a case under chapter 7, 12 or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.

11 U.S.C. § 327(a), (c). Courts construing Section 327 strictly construe the statute "in order to maintain the integrity of the bankruptcy process." *Sturgeon State Bank v. Perkey (In re Perkey),*

194 B.R. 846, 851 (Bankr. W.D. Mo. 1996) (quoting *Temp-Way Corp. v. Continental Bank (In re Temp-Way Corp.)*, 95 B.R. 343, 346 (E.D. Pa. 1989), *aff'd*, 981 F.2d 1248 (3rd Cir. 1992).

As discussed more fully below, L&V should be disqualified from serving as counsel for the trustee in these cases. By virtue of its representation of Kelley *qua* receiver, L&V currently represents an agent of the United States and an interest adverse to the interests of the debtors' estates in these proceedings. If permitted to represent Kelley as trustee in all ten of these cases, L&V would also serve as a lawyer to multiple estates who have disputed claims in the various cases and whose interests conflict.

I. L&V Is Disqualified From Serving as Trustee's Counsel Under Section 327(a)

A chapter 11 trustee acts in a fiduciary capacity to creditors of the estate. Thus, the chapter 11 trustee has an obligation not to act in a manner which threatens to harm the estate. *In re Flight Transp. Corp. SEC Litig.*, 874 F.2d 576, 581 (8th Cir. 1989); *In re Marvel Entertainment Group*, 140 F.3d 463, 471 (3rd Cir. 1998). As one court has noted, this "fiduciary obligation extends to the selection of counsel to represent the debtor in possession" or trustee. *In re J & M Development of Cass County*, Bky. No. 04-41065, 2004 WL 1146451 *2 (Banrk. W.D. Mo. May 19, 2004). In recognition of these fiduciary obligations, Congress enacted 11 U.S.C. §327 to ensure that lawyers a chapter 11 trustee seeks to employ are unencumbered by competing loyalties.

Section 327(a) requires satisfaction of a two part test: the attorney must not hold or represent an interest adverse to the estate, and the attorney must be disinterested. *Pierce v. Aetna Life Ins. Co. (In re Pierce)*, 809 F.2d 1356, 1362 (8th Cir. 1987) ("Although framed conjunctively, the conditions are applied disjunctively; a failure to meet either will result in disqualification.") (citations omitted). As this Court has noted, the following formulation is

often applied in determining whether an attorney or law firm holds or represents an interest adverse to the bankruptcy estate:

> To "hold an interest adverse to the estate" means (1) to possess or assert any economic interest that would tend to lessen the value of the bankruptcy estate or that would create either an actual or potential dispute in which the estate is a rival claimant; or (2) to possess a predisposition under circumstances that render such a bias against the estate.
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> To "represent an adverse interest" means to serve as agent or attorney for any individual or entity holding such an adverse interest.

Southern Kitchens, Inc. v. TransAmerica Investment Corp. (In re Southern Kitchens, Inc.), 216 B.R. 819, 826 (Bankr. D. Minn. 1998) (Kishel, J.) (quoting *In re Roberts*, 46 B.R. 815, 927 (Bankr. D. Utah 1985)).

An attorney is "disinterested" if he or she "does not have an interest materially adverse to the interest of the estate or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor . . . ." 11 U.S.C. §101(14)(E); *see also In re Pierce*, 809 F.2d at 1362. That provision, "commonly referred to as the 'catch-all clause,' is broad enough to exclude an attorney with some interest or relationship that "would even faintly color the independence and impartial attitude required by the Code and the Rules." *In re Benjamin's Arnolds, Inc.*, Bky. No. 4-90-6127, 1997 WL 86463 * 4 (Bankr. D. Minn. Feb. 28, 1997) (quoting *In re BH&P, Inc.*, 949 F.2d 1300, 1309 (3rd Cir. 1991); *In re Black Hills Greyhound Racing Ass'n.*, 154 B.R. 285, 292 (Bankr. D.S.D. 1993).

When any of the tests for disinterestedness is violated, a professional person is *per se* disqualified from representing the estate. *In re Pierce,* 809 F.2d at 1362. As Chief Judge Dreher has observed:

> 'The purpose of § 327 is to prevent even the appearance of a conflict of interest, irrespective of the integrity of the person or firm under consideration." *In re Nat'l Distributors Warehouse Co.,Inc.*, 148 B.R. 558, 561 (Bankr. E. D. Ark. 1992). The requirements of § 327 'serve the important policy of ensuring that all professionals approved pursuant to section 327(a) tender undivided loyalty and provide untainted

> advice and assistance in furtherance of their fiduciary responsibilities.' *Rome v. Braunstein*, 19 F.3d 54, 57 (1st Cir. 1994), *quoted in In re Guard Force Management, Inc.*, 185 B.R. 656, 661 (Bankr. D. Mass. 1995).

In re Benjamin's Arnolds, Inc., 1997 WL 84643 at * 4.

A. L&V Represents Multiple Interests Adverse to the Estates

1. L&V Cannot Concurrently Represent the Receiver and the Trustee

As noted above, L&V currently represents Kelley in his capacity as receiver in the Receivership Action. Under the Receivership Order, Kelley is obliged to "ensure that any assets" of the debtors in these jointly administered proceedings "are available for criminal restitution, forfeiture, or other legal remedies in proceedings commenced by or on behalf of the United States[.]" *See* Receivership Order at 16-17, ¶ 6. Kelley is solely the "agent" of the District Court. *Id.* at 13. He is "accountable directly to" the District Court. *Id.*

Insofar as Kelley's charge is to maximize the assets available to the United State in the Receivership Action, Kelley has and is asserting an "economic interest" as receiver "that would tend to lessen the value of the bankruptcy estate . . . ." *In re Southern Kitchens*, 216 B.R. at 826. Kelley's efforts to fulfill his obligation to the United States to make assets available for forfeiture will be in derogation of his fiduciary duty to maximize the value of assets available to the creditors in these bankruptcy cases. The Receivership Order authorized Kelley to retain L&V so they could assist him "in the performance of duties and responsibilities under the authority granted" by the order. *See* Receivership Order at 15-16, ¶ 2. As Kelley's counsel in the Receivership Action, charged with assisting Kelley in ensuring all assets of PGW, PCI and Polaroid are available to the United States for forfeiture and other remedies, L&V quite clearly represents an "interest adverse to the estate" in the PGW and PCI bankruptcy cases.

2. L&V Cannot Concurrently Represent Kelley as PCI and PGW Trustee

In his Application, Kelley seeks to have L&V employed as counsel for the trustee in all ten of these jointly administered cases. Notably, Kelley currently serves as trustee for PCI and as trustee for PGW. PGW is a distinct legal entity with a creditor constituency that is separate and distinct from the creditor constituency of PCI and the other Petters debtors. PGW has substantial operating assets, such as Polaroid and Fingerhut, which are legitimate businesses with potentially considerable value.

In contrast, PCI and its subsidiaries have little or no value, and appear primarily to have been vehicles for fraud. Indeed, PCI's only assets may well prove to be potential claims against other entities with assets, such as PGW. As trustee for PCI, Kelley has an obligation to PCI's creditors to seek to maximize the assets available to PCI's creditors and to pursue PCI's claims against PGW. Indeed, PGW's schedules reflect that PCI is the holder of a "disputed" secured claim in the PGW bankruptcy for over $216 million.

A case on point is *In re Big Mac Marine, Inc.*, 326 B.R. 150 (8th Cir. BAP 2005). In *Big Marine*, the debtor filed an application to employ an William Needler and his law firm as counsel for the chapter 11 debtor. The bankruptcy court denied the application because Needler had previously been appointed to represent the Big Marine's owners, the Schmidts, in their chapter 11 case. The schedules filed in the *Big Mac Marine* bankruptcy reflected that the Schmidts were the largest creditor in the case. The United States Trustee and one of Big Marine's creditors, Pinnacle Bank of Ogallala, objected to the application on the grounds that Needler, as counsel to the debtor in the Schmidts' chapter 11 case, represented an interest adverse to the *Big Marine* estate and was not disinterested.

On appeal from the denial of the application, the BAP affirmed the bankruptcy court's ruling and held that Schmidt could not serve as counsel for the debtor in both cases. In her opinion on behalf of the panel, Judge Dreher noted:

> At the time he applied to represent Debtor in this case he represented an interest adverse to the estate. . . . At the same time that he proposed to represent this Debtor in this case he was representing the Schmidts who claimed to be the largest creditor in the case. . . The Schmidts were also the sole shareholder of Debtor. As their counsel in their Chapter 11, Needler owed a duty to pursue the Schmidts' legitimate claims. But, if employed as counsel for this Chapter 11 Debtor, he would also have an obligation to represent all Debtor's creditors and to objectively analyze the validity of the Schmidts' claim to secured status, or indeed to being a creditor at all.

Id. at 154-55.

Of similar accord is *In re J & M Development of Cass County*. There, the debtor in possession sought to retain Charles Weedman, Jr. as counsel. Weedman, however, was concurrently representing the Debtor's owners in state court litigation with one of the Debtor's creditors. The Debtor, moreover, had a potential $51,000 claim and a contingent contribution claim against the owner arising out of a judgment entered in state court. *Id.* * 2, Rejecting the application, the Bankruptcy Court held:

> In this matter, if Weedman's employment application were approved, Weedman will apparently be representing Michael and Bogar Farms, as well as the Debtor. Weedman did not advise the court that he has ceased representing those two parties. Thus, Weedman would be representing parties whose interests are adverse to that of the estate. Indeed, Weedman would have a fiduciary duty on behalf of the Debtor, as debtor in possession in this Chapter 11 case, to seek possible recoveries or contribution from the very clients he represents.

Id. * 3.

In this case, as in *Big Marine* and *J&M*, the Application seeks to employ L&V to concurrently represent the interests of parties whose interests are adverse: the trustee in the PGW case and the trustee in the PCI case. As counsel to PCI, L&V would owe PCI and its creditors a duty to pursue PCI's claims against PGW. As counsel for the PGW trustee, L&V "would also

have an obligation to represent all of Debtor's creditors and to objectively analyze the validity of" PCI's claims. *In re Big Marine,* 326 B.R. at 154-55. L&V would thus have a fiduciary duty to "seek possible recoveries from the very clients" L&V purports to represent in the *PGW* case. *In re J & M Development of Cass County*, 2004 WL 1146451 at *2. As in *Big Marine*, "multiple representation in these two cases . . . [is] out of the question." 326 B.R. at 155.

3. L&V Cannot Concurrently Represent the Trustee and Polaroid DIP

Among his many fiduciary roles, Kelley (or his designees) is currently serving as debtor in possession in the Polaroid cases. Given the $42 million claim PCI has against Polaroid, L&V – whose employment is also being sought by the debtors in Polaroid – would if permitted to serve as counsel to the trustee in these cases again be placed in the untenable position of holding fiduciary obligations to pursue claims on behalf of one client, the PCI trustee, against another client, Polaroid.

B. L&V Is Not "Disinterested"

It is equally clear that L&V is not "disinterested" within the meaning of 11 U.S.C. §§ 327(a) and 101(14). L&V, by reason of its representation of Kelley in the Receivership Action, has "an interest materially adverse to the interest of the estate" in these jointly administered cases. Again, Kelley's charge, and L&V's charge as his counsel pursuant to the Receivership Order, is to maximize the assets available for forfeiture to the United States or for restitution of victims of fraud. An inherent tension exists between the objective Kelley and his counsel must pursue in the Receivership and his statutory charge as chapter 11 trustee, which is to maximize the assets available for the separate creditors of the bankrupt debtors, some of whom may not be victims for purposes of criminal restitution. Section 327(a)'s disinterestedness requirement precludes L&V from representing Kelley in these conflicting capacities.

II. Actual Conflicts of Interest Exist Which Preclude Employment of L&V

The Application must also be denied because it proposes that L&V represent not only the trustee in these chapter 11 cases, but also a number of creditors with competing claims, and multiple, actual conflicts of interest exist which mandate denial of the Application. 11 U.S.C. § 327(c).

In ascertaining whether an actual conflict exists, this Court applies the principles set forth in the Minnesota Rules of Professional Conduct. *See In re Southern Kitchens, Inc.*, 216 B.R. at 830-31 (applying Minn. R. Prof. Cond. 1.9 to analysis of motion for disqualification of counsel based on asserted conflict with former client).[3] Rule 1.7 of the Minnesota Rules of Professional Conduct sets forth rules applicable to concurrent conflicts of interest such as exist here, and provides in pertinent part as follows:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.
>
> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
>
> * * *
>
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal

Minn. R. Prof. Cond. 1.7(a)-(b).

[3] As this Court noted in *In re Southern Kitchens*, the United States District Court for the District of Minnesota "has adopted the Minnesota Rules of Professional Conduct, as prescribed by the Supreme Court of Minnesota." *Id.* at 831 (citing D.Minn.L.R. 83.6(d).

In this case, it is clear that multiple, concurrent conflicts of interest exist. Given the disparate objectives of the Receivership Action and these bankruptcy cases, it is clear that L&V's representation of Kelley as receiver and of Kelly as chapter 11 trustee are directly adverse to one another. As receiver, Kelly has an obligation to maximize the assets available for forfeiture and other remedies in favor of the United States. This mandate is directly at odds with his fiduciary duty to maximize the assets available for distribution to the creditors of PGW and PCI. Indeed, at some point in these proceedings (or the receivership proceedings), this Court or the District Court will have to make a determination as to what assets are property of the bankruptcy estate, and what assets are property of the receivership estate. Given Kelley's conflicting obligations, his lawyers will be unable to advocate the position of the estates without running afoul of their own obligations as Kelley's counsel in the Receivership Action.

The same adversity exists with respect to L&V's prospective, concurrent representation of the PCI and PGW trustees. As noted above, PCI has a large, disputed claim in the PGW bankruptcy. The PCI trustee has a fiduciary obligation to pursue that claim, and to potentially pursue a claim to pierce the veil of PGW, on behalf of the PCI creditors. The PGW trustee, in turn, is duty bound to resist both claims on behalf of PGW's separate creditors. L&V would thus represent clients who are directly adverse. And because L&V will be duty bound to assert claims on behalf of PCI in the PGW case, the representation "will involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal." Minn. R. Prof. Cond. 1.7(b)(3).

Case law also supports the finding of an actual conflict in these cases. In *In re BH&P, Inc.*, 949 F.2d 1300 (3rd Cir. 1991), the Third Circuit Court of Appeals affirmed the Bankruptcy Court's decision to disqualify a law firm from concurrently serving as counsel for the trustee in

three jointly administered chapter 7 cases. The Court pinned its holding upon the Bankruptcy Court's findings that an actual conflict arose because the law firm had an obligation to "assert claims on behalf of Maggio, as trustee for BH&P, against Maggio as trustee of Herman and Berkow," the other bankrupt estates. *Id.* at 1315 (quoting *In re BH&P, Inc.* 103 B.R. 556, 565 (Bankr. D.N.J. 1989). The Court also rejected the argument of trustee's counsel that the conflict was merely "potential" due to an absence of certainty as to whether the Herman and Berkow estates would have sufficient assets to satisfy BH&P's claims, and noted that an actual conflict arose due to "the possibility that the parties would favor one estate over the other in their attempt to serve all of them." *Id.* (quoting *In re. BH&P, Inc.*, 119 B.R. 350 (D.N.J. 1990).

The conflicts that impair L&V exist now. The Receivership Order directs Kelley to exercise his duties in a fashion that will "ensure" the availability of these Debtors' assets in forfeiture proceedings – to the detriment of the Debtors' non-victim creditors. As Kelley's counsel in the Receivership Action, L&V is obliged to assist Kelley in fulfilling this obligation. Furthermore, given that PGW is the only Debtor with appreciable assets, efforts by creditors of other Debtors – most notably PCI – to gain access to PGW's assets for their claims is not merely a potential conflict, but an inevitable one. Under the circumstances, this Court can and should deny the Application.

CONCLUSION

For all of the foregoing reasons, Ritchie respectfully requests that the Application be denied.

LEONARD, O'BRIEN
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/e/ James M. Jorissen

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394048

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.	
(includes:	Court File Nos.:
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

UNSWORN CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2009, I caused the following documents:

Objection to Application of Douglas A. Kelley as Appointed Chapter 11 Trustee, for an Order Authorizing the Employment of the Law Firm of Lindquist & Vennum, P.L.L.P.

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

/e/ Stephanie Wood

Dated: January 20, 2009

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