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 Files No.'s:
(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

DOUGLAS A KELLEY'S MEMORANDUM OF LAW IN OPPOSITION TO THE RITCHIE GROUP'S MOTION FOR EXPEDITED DISCOVERY

Douglas A. Kelley ("Mr. Kelley") submits this response to the Motion for Expedited Discovery in Advance of Hearing on Objection to Appointment of Mr. Kelley as Trustee for All Debtors and/or Postponement of the Hearing until Discovery is Complete, brought by 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. ("Ritchie Motion") (the moving entities making the Ritchie Motion will collectively be referred to hereafter as the "Ritchie Group").

The Ritchie Group's discovery requests were served in conjunction with its motion objecting to the appointment of Mr. Kelley as trustee, and for the sole purpose of objecting to his

"fitness to serve as a Trustee." (Ritchie Memorandum at p. 1) The requests seek information primarily relating to the actions of Mr. Kelley as the duly appointed Receiver of Petters Company, Inc. ("PCI") and Petters Group Worldwide, LLC ("PGW"). The discovery sought is not contemplated by the applicable rules, is unnecessary and unduly burdensome. Information regarding Mr. Kelley's actions as Receiver has already been made public. Any further discovery at this stage would be detrimental to all creditors, as it would diminish estate assets and delay the complex process of marshalling the assets.

I. BACKGROUND[1]

Prior to the filing of the present motion, Thomas J. Petters, PCI and PGW were indicted for mail fraud, wire fraud, conspiracy to commit mail and wire fraud, and money laundering conspiracy. *United States v. Thomas J. Petters, Petters Company, Inc., and Petters Group Worldwide, LLC* (08-CR-364 (RHK/AJB). The indictment states that PCI and PGW "did knowingly devise and participate in a scheme and artifice to defraud and to obtain billions of dollars in money and property by means of materially false and fraudulent pretenses, representations, and promises." Criminal Indictment at ¶ 4. The indictment also states that "PGW and its agents made numerous false statements, false representations and material omissions to fraudulently induce investors to provide defendants PCI and PGW with billions of dollars." *Id*. at ¶ 5 (emphasis added).

The Debtor Entities have filed their bankruptcy schedules in these cases. Upon reviewing the schedules, it becomes immediately obvious that the Debtor Entities, along with the dozens of other subsidiary entities of these Debtor Entities, and affiliates of other entities owned by Thomas J. Petters, have accrued inter-company obligations, engaged in extensive transferring of

[1] Incorporated by reference, as if fully set-forth herein, is Appointed Trustee's Response to Objection to Appointment of Douglas A. Kelley as Trustee for all of the Debtors in these Jointly Administered Proceedings, filed January 21, 2009.

funds between PCI, PGW and subsidiary entities of both and incurred inter-company obligations on behalf of other entities at the hundreds of million dollar levels and, depending on how one counts, the billion dollar level. This is one of the reasons that Mr. Kelley was initially appointed a receiver over PCI and PGW and their various subsidiary entities and that separate receivers were not appointed under the Receivership Order. The records of affiliates of the Debtor Entities who have not filed bankruptcy will only expand the inter-relatedness of the financial web of transactions flowing across the Petters' empire.

II. ARGUMENT

The Ritchie Group seeks discovery relating to the actions Mr. Kelley has taken as Receiver, including documents and information related to Mr. Kelley's investigation, analyses, considerations, compensation, and recovery of assets. The Ritchie Group also seeks the identity and description of all communications, and copies of related documents of such communications, between Mr. Kelley and the United States Attorney's Office, the United States Trustee's Office, Thomas Petters, and the executives and representatives of PCI, PGW and their subsidiaries. These discovery requests are not contemplated by the rules, are unnecessary, and are unduly burdensome. They also seek privilege communications and work product. The Ritchie Group's motion to compel Mr. Kelley to respond to the discovery requests, and to do so on an expedited basis, should be denied in its entirety.

A. Neither The Court Nor The Rules Contemplate Discovery In This Context.

The Ritchie Group's request for expedited discovery ignores the context of the Rule governing this proceeding and the Court's order outlining the procedure for hearing the Ritchie Group's objection. This Court specifically required the Ritchie Group to re-file its conflict objections once the US Trustee made its appointment, and set deadlines for a response and hearing consistent with the provisions of Rule 2009. The Court did not give the parties notice

that the hearing on any objection would be an evidentiary hearing and the Ritchie Group did not make a request for such a hearing or for discovery.

Instead, the Ritchie Group argues that it is entitled to discovery in this proceeding under Bankruptcy Rule 9014(c), which allows for the application, in certain proceedings, of Bankruptcy Rules 7030, 7033, and 7034, which incorporate certain discovery rules of the Federal Rules of Civil Procedure. Rule 9014 makes clear that it only applies to "contested matters not otherwise governed by these rules." Fed. R. Bankr. P. 9014(a). Because the appointment of trustees for jointly administered estates is governed by Rule 2009, this is not a matter "not otherwise governed" by the rules. *Id.* As such, the Ritchie Group's reliance on Rule 9014 for its discovery requests without considering the context in which it is making these requests, is misplaced.

Under Rule 2009, "[i]f the appointment of a trustee is ordered, the United States trustee may appoint one or more trustees for estates being jointly administered in chapter 11 cases." Fed. R. Bankr. P. 2009(c)(2). Only upon a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee, shall a court order the selection of separate trustees for the different estates.[2] Fed. R. Bankr. P. 2009(d) (emphasis added). Rule 2009 does not expressly incorporate the discovery rules of the Federal

[2] "It has long been recognized that joint administration, and the appointment of a common trustee, are favored means to save expense." *In re Ben Franklin Retail Stores, Inc.*, 214 B.R. 852, 858 (Bankr. N.D. Ill. 1997) (noting that the issue of election of a common trustee is not even reached until the court has determined, after considering the risk of conflicts of interest, that the estates should be administered jointly, and holding that appointment of common trustee for five jointly administered cases was proper), *citing In re International Oil Company*, 427 F.2d 186, 187 (2nd Cir. 1970) (appointing common trustee for four related companies, and noting that the existence of inter-company claims was insufficient "to saddle these estates with the expense of separate trustees and trustees' attorneys"); *see also In re H&S Tranport Co.*, Inc., 55 B.R. 786 (Bankr. M.D. Tenn. 1982) (holding that where resources of three related debtor corporations had been co-mingled, there was considerable confusion as to assets and liabilities of each individual corporation, and the appointment of a single trustee to unravel the financial status of each corporation was required; the fact that the appointed trustee had already been acting as a trustee for one of the debtor corporations was not sufficient to demonstrate the existence of any conflict of interest).

Rules of Civil Procedure, and does not contemplate an evidentiary hearing or discovery relating to a party's objection to the appointment of a trustee.

The Ritchie Group provides no support for the proposition that it is entitled to discovery in this context. It has not, and cannot, cite to any case law in which a bankruptcy court ordered a trustee to respond to interrogatories, produce documents, or submit to a deposition in response to a creditor's allegation that the trustee is not "disinterested" or that conflicts of interest exist to prevent the appointment of a trustee. Indeed, the Ritchie Group has not cited to any case in which a court ordered discovery of a Receiver or Trustee. Compare *In re Tri-State Ethanol Co.*, LLC, 369 B.R. 481, 495 (D. S.D. 2007) (affirming Bankruptcy Judge's denial of creditor's request to depose trustee where it would be "nothing but a source of more indigestion and bad blood between counsel") with *In re Discovery Zone*, No. 99-941, 2001 WL 1819994, at *1 (Bankr. D. Del., Sept. 14, 2001) (noting that it was an "unusual request" to examine a trustee who had a statutory duty to act as a fiduciary for the estates' creditors, including for the requesting party). The Ritchie Group has not demonstrated that this is an extraordinary case or that discovery is necessary for the Court to rule on the objection to the appointment of Mr. Kelley.

B. The Requested Discovery is Irrelevant, Duplicative, and Unduly Burdensome.

Even if the Ritchie Group could demonstrate the Court in this context should depart from the normal course in considering its objections, the Ritchie Group is not entitled to the discovery it seeks. Rule 26 provides that parties may obtain discovery regarding "any matter, not privileged, which is relevant to the claim or defense of any party. . . .Relevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). Although the discovery rules are broadly

construed, if discovery relates to matters which are irrelevant, courts will circumscribe such discovery. *Smith v. Dowson*, 158 F.R.D. 138, 142 (D. Minn. 1994) ("though the standard of relevancy for discovery purposes is a liberal one, the parties should not be permitted to roam in shadow zones of relevancy and to explore matter which does not presently appear germane"); *Sallis v. Univ. of Minn.*, 408 F.3d 470, 477(8th Cir. 2005) (noting that 2000 amendment to discovery rules intended to involve the court more actively in regulating the breadth of sweeping or contentious discovery); *Hofer v. Mack Trucks, Inc.,* 981 F.2d 377, 380 (8th Cir. 1993) (threshold showing of relevance must be made before parties are required to open wide the doors of discovery and to produce a variety of information which does not reasonably bear upon the issues in the case).

Additionally, under Rule 26(b)(2), a court may limit discovery if the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, or if the burden or expense of the proposed discovery outweighs the likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. Fed. R. Civ. P. 26 (b)(2). *See Onwuka v. Fed. Express Corp.*, 178 F.R.D. 508, 516 (D. Minn. 1997) (holding that "[e]ven when dealing with requests for relevant information, the Rules recognize that discovery may be limited when the benefits to be obtained are outweighed by the burdens and expenses involved"), *citing In re Convergent Tech. Sec. Litig.*, 108 F.R.D. 328, 331 (D. Cal. 1985) (holding that "[a]fter satisfying this threshold requirement [of relevancy] counsel must also make a common sense determination, taking into account all the circumstances, that the information sought is of sufficient potential significance to justify the burden the discovery probe would impose, that the discovery tool selected is the most

efficacious of the means that might be used to acquire the desired information (taking into account cost effectiveness and the nature of the information being sought), and that the timing of the probe is sensible, i.e., that there is no other juncture in the pretrial period when there would be a clearly happier balance between the benefit derived from and the burdens imposed by the particular discovery effort.")). Finally, courts may curtail discovery where "justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense," including orders that: "certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters." Fed. R. Civ. P. 26(c)(4). *See also Dowson*, 158 F.R.D. at 140 (prohibiting discovery of irrelevant information pursuant to Fed. R. Civ. P. 26(c)(4)). Here, the discovery sought by the Ritchie Group is not relevant to the claim or defense of any party, and is not reasonably calculated to lead to the discovery of admissible evidence. The requested information is also cumulative and duplicative of the information Mr. Kelley has already provided in public documents relating to his actions as the Receiver, and regarding his "fitness" to serve as trustee. Finally, the Ritchie Group's requests are overly broad and unduly burdensome. Justice requires that the Court protect Mr. Kelley from the burden and expense of the Ritchie Group's discovery by prohibiting the discovery or, at the very least, greatly narrowing the scope of such discovery.

1. <u>The Discovery Sought is Irrelevant and Not Likely to Lead to the Discovery of Admissible Evidence</u>.

The Ritchie Group asserts that the Court should compel discovery into the Mr. Kelley's fitness to serve as Trustee for all Debtors, to "determine whether Kelley is truly 'disinterested' and free of disabling conflicts, and thus suitable for services as a Trustee in these bankruptcy cases." (Ritchie Motion at p. 2.). The term "disinterested" is defined by 11 U.S.C. § 101(14); "[t]he focus of that section is not on the interest to be represented by the trustee, but on any

disqualifying interest held by the trustee…while the trustee must be free of any scintilla of personal interest, the trustee does not become interested by reason of his appointment as trustee in two related estates." *In re B.H. Smartt*, 132 B.R. 765, 768 (Bankr. D. Colo. 1990) (noting that although "there are obvious conflicts of interest" that arise in jointly administered matters, where a common trustee disclosed efforts made to fulfill his fiduciary obligations and to reach the basis of a common accounting between the different estates, there was no evidence that trustee had conflicts such that the creditors would be prejudiced.)

Mr. Kelley cannot be deemed interested by reason of his appointment as trustee as to related estates. And the determination of whether he is "disinterested" is not based on the interest to be represented by Mr. Kelley as trustee of the various estates, but rather, on any disqualifying interests possessed by him. Here, the District Court previously determined that Mr. Kelley did not have personal interests that would prevent him from acting as Receiver for the various estates. Further, Mr. Kelley has provided a verified statement regarding any prior relationships with any interested parties. (Statement, Trustee's response to Ritchie Group's Objection, Ex. B.) Discovery on this topic, or into the specific actions taken by Mr. Kelley since being appointed Receiver, is not relevant to the Court's determination as to whether Mr. Kelley is "disinterested," nor is it likely to lead to discovery of admissible evidence.

2. Discovery Seeking Disclosure of the Receiver's Actions is Cumulative and Duplicative of Publicly Available Information On this Topic.

The Ritchie Group's contention that formal, full-scale discovery is necessary to explore potential and purported conflicts of interest arising from Mr. Kelley's receivership responsibilities is overstated. Ample information responsive to the Ritchie Group's overbroad discovery requests has been made available to the District Court and exists in the public record.

The vast majority of the Ritchie Group's discovery requests simply seek information

relating to Mr. Kelley's role and actions as Receiver. (Ritchie's Motion, Ex. A.) For example, several overlapping discovery requests ask Mr. Kelley to state all actions taken as Receiver and specifically, actions taken to investigate and recover assets in his Receiver role. (*Id.*) The discovery requests also seek information regarding Mr. Kelley's compensation as Receiver, in addition to communications with a host of individuals and entities. (*Id.*)

This information, and most of the information the Ritchie Group seeks, is already publicly available. In fact, Mr. Kelley was appointed by Judge Montgomery to be the sole agent for the District Court in acting as Receiver and he is "accountable directly to" that Court. (Order, Trustee's Response to Ritchie Group's Objection, Ex. A at p. 13.) The Order does not contemplate third-party discovery of his ongoing actions as Receiver because his reporting obligations are public and supervised by the Court. For example, the First Report of the Receiver describes in detail the way in which Mr. Kelley has carried out his responsibilities as Receiver through December 24, 2008. (Report, Trustee's Response to Ritchie Group's Objection, Ex. G.) Because this Report is one important mechanism by which the Receiver accounts to the District Court, all of the material information regarding Mr. Kelley's fulfillment of his duties as Receiver is included therein. No further information is required to fully assess Mr. Kelley's duties and interests. Specifically, the Report details Mr. Kelley's reasonable investigations and recovery actions, as well as his general course of dealing in securing, valuing, and selling assets. (*Id.*) Specific assets and related financial details are disclosed. (*Id.*) The Report also describes Mr. Kelley's initial activities and business transactions, including the liquidation or sale of certain Petters' entities and, in some instances, the rationale for those decisions. (*Id.*) With transparency, the Report discloses each transaction and also details other important actions that Mr. Kelley took during his first 60 days as Receiver. (*Id.*)

Furthermore, the First Report of the Receiver describes the many meetings that Mr. Kelley has participated in and generally the subject matter of those meetings. (*Id.*) It also explains the different professionals Mr. Kelley has retained to assist him in his receivership duties. (*Id.*) And similar to Mr. Kelley's public Report, Receiver Gary Hansen—receiver over the assets of Frank Vennes—has disclosed his initial activities and the steps taken to identify and secure Vennes's assets, including entities in which he has a controlling interest. (Ex. 1.) This accountability to the District Court will continue and Mr. Kelley's actions will remain publicly transparent.

In addition to these public reports, Mr. Kelley's Affidavit in Support of His Motion to Approve Payments of Receiver and Attorney Fees makes public information regarding Mr. Kelley's role as Receiver, his actions taken pursuant to those duties, and expenditures undertaken to date. (Ex. 2.) In that Affidavit, Mr. Kelley forthrightly disclosed to the Court the nature of his work completed for the Petters entities prior to his appointment as Receiver, during which Kelley effectively acted as an informal receiver. (*Id.*) The reasonable fees requested on behalf of Kelley's law firm are also disclosed. (*Id.*) That Affidavit also describes the work that the Lindquist & Vennum law firm completed as lead counsel for Mr. Kelley, and the reasonable fees requested for that service. (*Id.*) The same transparent process was followed for the fee-application requests for Felharber, Larson & Vogt, P.A., Joe Friedberg, Greene, Espel, P.L.L.P., and Frederic Bruno & Associates. (*Id.*)

In light of Mr. Kelley's transparent reporting to the Court and the public nature of the record in that proceeding, the Ritchie Group's discovery requests are redundant and unnecessary. These requests simply constitute a fishing expedition and should be foreclosed on that basis alone. Allowing the Ritchie Group's requests would effectively permit any party opposing a

trustee on the basis of an alleged conflict to mire the Bankruptcy Court in taxing, inefficient, and costly discovery proceedings. The parties can fully argue and the Court can effectively and fairly assess the merits of the Ritchie Group's opposition to the appointment of Mr. Kelley as Trustee on the basis of the record and other publicly available information. Moreover, if at the hearing the Court believes further detail regarding Mr. Kelley's actions is necessary, the Court can order such discovery.

3. The Discovery Sought is Overly Broad and Unduly Burdensome.[3]

The Ritchie Group's discovery request are so broad, that even if the Court determines that the requests seek relevant information, the Court should exercise its discretion to limit discovery, because any potential benefit of the discovery is outweighed by the burdens and expenses involved. Here, Mr. Kelley has engaged in an extensive analysis of the transactions of the Petters' entities, and the interrelatedness of the financial web of transactions flowing across the Petters' empire. He has been marshalling the assets to preserve their value to facilitate an equitable property distribution. The Ritchie Group's assertion that compelling Mr. Kelley to respond to the broad discovery would pose only a "minimal burden" is false.

Mr. Kelley should be protected from having to respond to the Ritchie Group's overly broad and unduly burdensome requests, such as the parallel requests seeking a description and all documents related to:

- All actions Mr. Kelley has taken as a Receiver;
- All communications with the United States Attorney;
- All analyses of claims or potential claims against or by PCI and PGW; and
- All investigations and plans for future investigations of the fraud perpetrated by Petters.

[3] Mr. Kelley reserves his right to assert protection from disclosure of any information protected by the attorney-client privilege, the work product doctrine, or other available privilege.

(Ritchie Group's Documents Requests 1 – 5; Interrogatories 1 - 3, 5 and 6). Justice requires that the Court protect Mr. Kelley and the assets of the joint administered estates from the undue burden and expense necessary to respond to the Ritchie Group's discovery requests.

C. The Ritchie Group Is Not Entitled to Expedited Discovery.

Even if the Court orders Mr. Kelley to respond to certain narrowly tailored requests, discovery should not be conducted on an expedited basis because the Ritchie Group is to blame for the timing of its requests. By order dated December 17, 2008, this Court granted the joint motions seeking the appointment of a trustee, ordered that the United States Trustee shall appoint a trustee or trustees by December 24, that any objections thereto must be filed by January 7, 2009 for a hearing on January 26, 2009. (Ordered dated Dec, 17, 2008). The US Trustee's office applied to the Court for an Order approving the appointment of Mr. Kelley on December 24, 2008. Although the Ritchie Group now asserts that discovery is necessary prior to the hearing, it did not serve its discovery requests until January 9, 2009. To account for its delay in issuing discovery requests, the Ritchie Group demanded that Mr. Kelley respond to the requests within twelve (12) days.

The Ritchie Group's procrastination should not cause an emergency on the part of Mr. Kelley. The Ritchie Group's failure to issue timely discovery requests does not provide a basis for requiring Mr. Kelley to respond on an expedited basis, nor does it warrant an extension of the hearing date. As such, even if the Court permits limited discovery related to the Ritchie Group's objection to the appointment of Mr. Kelley as trustee, Mr. Kelley should be provided the time permitted by the rules to respond.

III. CONCLUSION

For the foregoing reasons, Mr. Kelley respectfully requests that the Court deny the Ritchie Group's motion for expedited discovery. Alternatively, Mr. Kelley respectfully requests that the Court move forward with the January 27, 2009 hearing, and if after the hearing the Court determines it needs more information to rule on the Ritchie Group's conflict objection, the question of what discovery is necessary can then be addressed at that time.

DATED: January 22, 2009

LINDQUIST & VENNUM P.L.L.P.

s/ Sandra Smalley-Fleming
James A. Lodoen, No. 173605
Sandra S. Smalley-Fleming, No. 0296983
Nicole M. Siemens, No. 0322866
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2205
Telephone: (612) 371-3211
Facsimile: (612) 371-3207

ATTORNEYS FOR DOUGLAS A. KELLEY, APPOINTED TRUSTEE

Exhibit 1

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS J. PETTERS, et al.,

Defendants.

Case No. 08-cv-5348 ADM/JSM

FIRST STATUS REPORT OF RECEIVER GARY HANSEN

Gary Hansen submits this Status Report as required by Section IV.B.9 of the October 16, 2008 Order for Entry of Preliminary Injunction, Appointment of Receiver, and Other Equitable Relief.

My initial activity has been to identify and secure assets of Frank Vennes and entities in which he has a controlling interest. A partial list of those assets includes:

1. A residence in Shorewood, Minnesota
2. A residence in Jupiter, Florida
3. An eight building apartment complex and two additional apartment buildings in Williston, North Dakota
4. Two apartment buildings in Mandan, North Dakota
5. A house in Mandan, North Dakota
6. A rental house in Minneapolis, Minnesota
7. Property in Nopeming, Minnesota
8. A commercial building in Youngstown, Ohio
9. Two office buildings in Orlando, Florida

10. A surface parking lot in Jacksonville, Florida

11. Eight rental houses in Melbourne, Merritt Island, and Palm Bay, Florida

12. Four vacant residential lots in Palm Bay, Florida

13. A "tear down" house in Merritt Island, Florida

14. Automobiles, motorcycles, and watercraft

15. Coins and collectibles

16. Accounts at eight to ten financial institutions, with balances ranging up to several hundred thousand dollars

17. Stock in Ionic Fusion, Red Tag, and GeoMask

18. An investment interest in BTA Oil Producers

19. An ownership interest in a bank

With respect to liquid assets, I have taken steps to transfer account balances to a receivership account. To date, those transfers total approximately $650,000. There are other accounts, such as investment and retirement accounts, that are less liquid. I have not transferred funds from those accounts, but have advised the financial institutions of the receivership and of their obligation to hold the account assets pending my further direction. Those account balances total approximately $980,000.

I have investigated the condition of the assets under my control, the existence of mortgages or other encumbrances, and likely market value. For rental properties, I have investigated whether there is a positive cash flow and whether substantial improvements or repairs may be required in the near term. These steps were taken to determine whether it made more sense to hold the asset, market the asset, or abandon the asset. Unlike the other defendants in this action, Frank Vennes has not at this time been charged with a

crime. Mindful of that distinction, I have discussed aspects of my investigation and conclusions with Mr. Vennes and his counsel and have solicited their input as part of my decision making process. I have consulted with the government in a similar manner.

The actions I have taken include the following:

1. I sold the Jupiter, Florida residence (Item 2, above) and recognized net proceeds of approximately $1,380,000.

2. I sold a house in Mandan, North Dakota (Item 5, above) and recognized net proceeds of approximately $140,000.

3. I have been marketing the Williston apartment buildings (Item 3, above). We are currently evaluating an offer to purchase all of the buildings. The proposed purchase price is significantly in excess of the mortgages.

4. I reached an agreement to sell a Bentley automobile and expect proceeds of approximately $138,000.

5. I redeemed the BTA Oil Producers investment interest (Item 18, above) and received net proceeds of $300,000.

6. I obtained return of attorneys' fees retainers in the approximate amount of $135,000.

7. I reached an understanding with Mr. Vennes' current counsel that funds and other assets deposited with him for payment of fees would be segregated from firm funds, would not be applied to attorneys' fees obligations without my approval or the approval of the Court, and would be subject to a possible future determination as to whether they would remain available to apply against attorneys' fees.

8. I took custody of jewelry, coins and other collectibles with a value yet to be determined, but estimated at $600,000.

9. I conducted negotiations with multiple lessees of the Orlando office buildings (Item 9, above), dealt with significant maintenance and repair issues, dealt with issues related to the mortgages on one of the buildings, and am offering both buildings for sale. One of the buildings appears to have substantial equity and one has significantly less equity. It may or may not ultimately make financial sense to sell one or both of the buildings at

this time. That decision can be made when we determine interest among potential purchasers.

10. I spent considerable time dealing with issues related to the Jacksonville surface parking lot (Item 10, above). That lot is subject to a development agreement with the City of Jacksonville. The fact of this receivership has impacted compliance with that agreement, requiring negotiation with the City. It currently appears that the property has significant equity. I am marketing it to determine the current interest among prospective purchasers. As with the Orlando office buildings, the question of whether it is better to sell or hold this asset can be more accurately assessed once we determine market interest.

11. I reached accommodations with most pre-receivership creditors with small claims unrelated to preserving the assets under my control. The total of those expenditures was approximately $12,000.

12. I assessed ongoing expenses to determine which relate to the preservation of assets and which are personal in nature. I am paying expenses that are necessary to preserve assets. I have limited payment of Mr. Vennes' personal expenses in a manner similar to the expense payments recently approved by the Court for the other defendants in this action, having in mind that Mr. Vennes has not at this time been charged with a crime.

13. I had numerous communications with secured creditors and with individuals and entities who placed funds with the Petters entities through Mr. Vennes. To date, none of those creditors, individuals, or entities has initiated legal action.

14. I am assessing whether claims should be asserted on behalf of Mr. Vennes or entities controlled by him in bankruptcy actions related to other defendants to this action.

The receivership accounts I have established have a current balance of approximately $3,930,000. This is in addition to balances in accounts I have not closed or transferred, to the assets deposited by Mr. Vennes with his current counsel, to the value of jewelry, coins and collectibles in my possession, and to equity in the real estate holdings.

December 22, 2008

Respectfully submitted,

s/ Gary Hansen
Gary Hansen, Receiver

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
Civil No. 08-5348 (ADM/JSM)

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
v.	)
	)
1. THOMAS JOSEPH PETTERS;	)
PETTERS COMPANY, INC., aka	)
PCI; PETTERS GROUP WORLDWIDE, LLC;	)
2. DEANNA COLEMAN aka DEANNA MUNSON;	)
3. ROBERT WHITE;	)
4. JAMES WEHMHOFF;	)
5. LARRY REYNOLDS dba	)
NATIONWIDE INTERNATIONAL RESOURCES	)
aka NIR;	)
6. MICHAEL CATAIN dba	)
ENCHANTED FAMILY BUYING COMPANY;	)
7. FRANK E. VENNES JR., dba	)
METRO GEM FINANCE,	)
METRO GEM INC.,	)
GRACE OFFERINGS OF FLORIDA LLC,	)
METRO PROPERTY FINANCING, LLC,	)
38 E. ROBINSON, LLC,	)
55 E. PINE, LLC,	)
ORLANDO RENTAL POOL, LLC,	)
100 PINE STREET PROPERTY, LLC,	)
ORANGE STREET TOWER, LLC,	)
CORNERSTONE RENTAL POOL, LLC,	)
2 SOUTH ORANGE AVENUE, LLC,	)
HOPE COMMONS, LLC,	)
METRO GOLD, INC.;	)
	)
Defendants.	)

AFFIDAVIT OF RECEIVER IN SUPPORT OF FEE APPLICATION

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Douglas A. Kelley, being first duly sworn, deposes and states:

1. I am an attorney with the law firm of Kelley & Wolter, P.A. On October 6, 2008, the Court appointed me Receiver for Petters Company Inc. (PCI) and Petters Group Worldwide, LLC (PGW) in the above-captioned matter. On October 14, 2008, the Court also appointed me Receiver for individual defendants Thomas Petters, Deanna Coleman, Robert White, James Wehmhoff, Larry Reynolds and Michael Catain, and their wholly-owned entities. I make this application based on personal knowledge and offer it in support of the fee application described more fully herein.

Kelley & Wolter, P.A. Fee Application

2. I have received a statement from Kelley & Wolter, P. A. describing work performed by me and my agents during the period September 26, 2008 through September 30, 2008. The statement includes the date, the name of the person performing the work, the time expended, and a detailed description of the task(s) performed. Finally, the statement reflects the amount of compensation requested for the work performed. I am submitting that statement to the Court under separate correspondence for an *in camera* review.

3. The work described in paragraph 2 above was performed by me and other members of my firm prior to my actual appointment as Receiver. All such work was undertaken, however, with the knowledge and consent of both Thomas Petters and the

United States Attorney's Office, which informed PCI and PGW that unless a mutually satisfactory individual other than Thomas Petters assumed immediate control of the Petters Companies, the government would seek emergency relief to take over all operations of the companies. All sides expressed a common desire to avoid such a course of action since doing so would irreparably damage the ongoing portions of the business that remained commercially viable (including but not limited to Polaroid and Sun Country Airlines), thereby dissipating value and reducing the potential recovery ultimately available to creditors of the receivership. For this reason, I believe that all of the work performed by me or my agents while acting as an "informal receiver" is properly compensable from the receivership estate.

4. I have reviewed the itemized statement describing services provided by my firm and certify that all of the stated work was actually performed and was necessary to fulfill my duties and responsibilities as Receiver. I further state that all unnecessary or duplicative services were removed from this fee application.

5. I therefore request Court approval of the Receiver's fee application in favor of the law firm of Kelley & Wolter, P.A. in the amount of $39,607.50.

6. Some or all of the foregoing fees and costs may be reimbursable under certain insurance policies, including directors and officers (D&O) coverage maintained by PCI, PGW or related entities. I am informed that such policies are "reimbursement policies," which require the insured party to initially pay legal fees and costs before applying for

reimbursement from the insurer. After the fee applications described herein are approved and paid, I will apply to the applicable insurers for reimbursement to the maximum extent possible.

Lindquist & Vennum Fee Application

7. I have received a statement from Lindquist & Vennum describing work performed through October 31, 2008. The statement includes the date, the name of the person performing the work, the time expended, and a detailed description of the task(s) performed. Finally, the statement reflects the amount of compensation requested for the work performed. I am submitting that statement to the Court under separate correspondence for an *in camera* review.

8. I hired Lindquist & Vennum to represent me initially while I served as "informal receiver" and later as my lead counsel when I was formally appointed Receiver in this matter. Their assistance was necessary to avoid waste and dissipation of receivership assets and to preserve ongoing value of corporations owned or controlled by the receivership defendants for the same reasons described in paragraph 3 above.

9. I am familiar with the rates charged in the local community by attorneys performing services similar to those provided by Lindquist & Vennum and certify that the requested rates are within the range charged by attorneys of comparable experience employed by comparable Minnesota law firms for work of a comparable nature and complexity.

10. I have reviewed the itemized statement describing services provided by Lindquist & Vennum and certify that, to the best of my knowledge and based on the representation of Lindquist and Vennum lawyers, all of the stated work was actually performed and was necessary for representation of The Receiver.

11. I therefore request Court approval of the Receiver's fee application in favor of the law firm of Lindquist & Vennum in the amount of $607,050.78.

Felhaber Fee Application

12. I have received a statement from Felhaber, Larson & Vogt, P.A. describing work performed during the period September 25, 2008 through November 5, 2008. The statement includes the date, the name of the person performing the work, the time expended, and a detailed description of the task(s) performed. Finally, the statement reflects the amount of compensation requested for the work performed. I am submitting that statement to the Court under separate correspondence for an *in camera* review.

13. The Felhaber firm was personally retained by Thomas Petters to represent him in ongoing civil and criminal proceedings arising out of the federal investigation. Jon Hopeman of the Felhaber firm serves as Mr. Petters' chief legal counsel.

14. I am familiar with the rates charged in the local community by attorneys performing services similar to those provided by Mr. Hopeman and the Felhaber law firm and certify that the requested rates are within the range charged by attorneys of comparable experience employed by comparable Minnesota law firms for work of a comparable nature

and complexity.

15. I have reviewed the itemized statement describing services provided by the Felhaber law firm and certify that, to the best of my knowledge and based on the representation of Mr. Hopeman, all of the stated work was actually performed and was necessary for representation of Mr. Petters.

16. I therefore request Court approval of the Receiver's fee application in favor of the Felhaber law firm in the amount of $247,905.35.

Friedberg Fee Application

17. I have received a statement from Joe Friedberg describing work performed during the period from his initial retention through November 1, 2008. I am submitting that statement to the Court under separate correspondence for an *in camera* review.

18. The Friedberg firm was personally retained by Robert White to represent him in ongoing civil and criminal proceedings arising out of the federal investigation. Joe Friedberg serves as Mr. White's chief legal counsel.

19. I am familiar with the rates charged in the local community by attorneys performing services similar to those provided by Mr. Friedberg and the Friedberg law firm and certify that the requested rates are within the range charged by attorneys of comparable experience employed by comparable Minnesota law firms for work of a comparable nature and complexity.

20. I have reviewed the statement describing services provided by the Friedberg

law firm and certify that, to the best of my knowledge and based on the representation of Mr. Friedberg, all of the stated work was actually performed and was necessary for representation of Mr. White.

21. I therefore request Court approval of the Receiver's fee application in favor of the Friedberg law firm in the amount of $150,000.

Greene, Espel Fee Application

22. I have received a statement from Greene, Espel, P.L.L.P. describing work performed during the period September 25, 2008 through October 31, 2008. The statement includes the date, the name of the person performing the work, the time expended, and a detailed description of the task(s) performed. Finally, the statement reflects the amount of compensation requested for the work performed. I am submitting that statement to the Court under separate correspondence for an *in camera* review.

23. The Greene, Espel firm was personally retained by James Wehmhoff to represent him in ongoing civil and criminal proceedings arising out of the federal investigation. Andy Luger of the Greene, Espel firm serves as Mr. Wehmhoff's chief legal counsel.

24. I am familiar with the rates charged in the local community by attorneys performing services similar to those provided by Mr. Luger and the Greene, Espel law firm and certify that the requested rates are within the range charged by attorneys of comparable experience employed by comparable Minnesota law firms for work of a comparable nature

and complexity.

25. I have reviewed the itemized statement describing services provided by the Greene, Espel law firm and certify that, to the best of my knowledge and based on the representation of Andy Luger, all of the stated work was actually performed and was necessary for representation of Mr.Wehmhoff.

26. I therefore request Court approval of the Receiver's fee application in favor of the law firm of Greene, Espel in the amount of $62,361.26.

Frederic Bruno & Associates

27. I have received a statement from Frederic Bruno & Associates describing work performed during the period September 29, 2008 through November 20, 2008. The statement includes the date the work was performed by Mr. Bruno, the time expended, and a detailed description of the task(s) performed. Finally, the statement reflects the amount of compensation requested for the work performed. I am submitting that statement to the Court under separate correspondence for an *in camera* review.

28. The Frederic Bruno & Associates firm was personally retained by Larry Reynolds to represent him in ongoing civil and criminal proceedings arising out of the federal investigation. Fred Bruno serves as Mr. Reynold's chief legal counsel.

29. I am familiar with the rates charged in the local community by attorneys performing services similar to those provided by Mr. Bruno and certify that the requested rates are on the high end but within the range charged by attorneys of comparable experience

employed by comparable Minnesota law firms for work of a comparable nature and complexity.

30. I have reviewed the itemized statement describing services provided by Mr. Bruno and certify that, to the best of my knowledge and based on the representation of Fred Bruno, all of the stated work was actually performed and was necessary for representation of Mr.Reynolds.

31. I therefore request Court approval of the Receiver's fee application in favor of the law firm of Fred Bruno & Associates in the amount of $74,799.00.

FURTHER AFFIANT SAYETH NOT.

s/Douglas A. Kelley
Douglas A. Kelley

Subscribed and sworn to before me
this 17th day of December, 2008.

s/Tina M. Knoll
Notary Public

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 Files No.'s:
(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

CERTIFICATE OF SERVICE

Gretchen Luessenheide of the City of New Hope, County of Hennepin, State of Minnesota, being first duly sworn on oath, states that on January 22, 2009 she served the following document:

1. Douglas A. Kelley's Memorandum of Law in Opposition to the Ritchie Group's Motion for Expedited Discovery

upon

Arrowhead Capital Management LLC c/o James N. Fry 601 Carlson Parkway, Suite 1250 Minnetonka, MN 55305	Mark R. Jacobs Pryor Cashman LLP 410 Park Avenue New York, NY 10022
Ronald R. Peterson Jenner & Block, LLP 330 North Wabash Avenue Chicago, IL 60611-7603	Taunton Ventures LP c/o Paul Taunton 990 Deerbrook Drive Chanhassen, MN 55317
Petters Company, Inc. 4400 Baker Road Minnetonka, MN 55343	Petters Group Worldwide 4400 Baker Road Minnetonka, MN 55343

Dean Vlahos 294 Grove Lane E, Suite 113 Wayzata, MN 55391	Welsh Baker Road c/o Steve Ryan or Mike Gordon Briggs and Morgan 2200 IDS Center 80 South Eighth Street Minneapolis, MN 55402
Internal Revenue Service PO Box 21126 Philadelphia, PA 19114	US Attorney for District of Minnesota 600 U.S. Courthouse 300 South Fourth Street Minneapolis, MN 55415
Minnesota Department of Revenue Collection Division P. O. Box 64564 St. Paul, MN 55164-0564	Huron Consulting Group, Inc. 4795 Paysphere Circle Chicago, IL 60674-4795
Douglas A. Kelley Kelley & Wolter Centre Village Offices 431 S. Seventh Street, Suite 2530 Minneapolis, MN 55415	Connie Lahn David Runck Fafinski Mark & Johnson, P.A. Flagship Corporate Center 775 Prairie Center Drive, Suite 400 Eden Prairie, MN 55344
Richard Chesley Greg Otsuka Paul, Hastings, Janofsky & Walker, LLP 191 N. Wacker Drive, 30th Floor Chicago, IL 60606	Luc Despins Paul, Hastings, Janofsky & Walker, LLP Park Avenue Tower 75 E. 55th Street First Floor New York, NY 10022

via U.S. Mail to the addresses listed above, and electronically by Notice of Electronic Filing upon all parties who have requested service in these cases by filing the same via ECF with the Bankruptcy Court in the District of Minnesota.

/e/ Gretchen Luessenheide
Gretchen Luessenheide