

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Court File No. 08-45257 (Joint Admin.)

Petters Company, Inc., et al.,

Debtors. Chapter 11 Case
Bankruptcy Judge Gregory F. Kishel

**OBJECTION TO APPOINTMENT OF DOUGLAS A. KELLEY AS TRUSTEE
FOR ALL OF THE DEBTORS IN THESE JOINTLY ADMINISTERED
PROCEEDINGS**

On December 24, 2008, the United States Trustee appointed Douglas A. Kelley Trustee for all of the Debtors in these jointly administered proceedings, and now seeks this Court's approval of the appointment. Ritchie Special Credit Investments, Ltd., Rhone Holdings II. Ltd., Yorkville Investment I, L.L.C., Ritchie Capital Structure Arbitrage Trading, Ltd., and Ritchie Capital Management, Ltd. (together, "Ritchie") respectfully submit this Objection to the United States Trustee's appointment of Kelley as Trustee for all Debtors in these jointly administered proceedings.¹

INTRODUCTION

Inherent, intractable and immediate conflicts of interest preclude Kelley from serving as Trustee for all of the Debtors. *First*, Kelley's role as Receiver for all victims

¹ A hearing on this Objection will be held before the Honorable Gregory F. Kishel on the 27th day of January, 2009, at 2:00 p.m. in Courtroom 2A, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Responses to this Objection must be filed and served no later than January 23, 2009.

of the alleged fraud of Thomas J. Petters (“Petters”) is in direct conflict with the fiduciary obligations of a Trustee for the Debtors, whose duty it is to advance the interests of *all* creditors of the Debtors (not just victims). *Second*, Kelley would be hopelessly conflicted if he attempted to represent each of the Debtors in these jointly administered cases, primarily because the principal role of the Trustee for Petters Company, Inc. (“PCI”) will be to assert claims against Petters Group Worldwide, L.L.C. (“PGW”), which the Trustee for PGW will have a fiduciary duty to defend against.

Kelley serves as Receiver for each of the Debtors, pursuant to Orders entered by the District Court in Case No. 08 cv 5348 (ADM/JSM). The roles of Receiver and Trustee entail distinct, and conflicting, duties, and thus cannot be filled by the same person. Kelley’s duty as Receiver is to seek redress and restitution for the victims of the alleged fraudulent scheme, which Petters and his accomplices committed through PCI and which involved duping investors into providing funds for fictitious merchandise sales to major retailers. A Trustee, however, must act in the best interests of *all* creditors, which includes creditors who, like Ritchie and trade creditors of PGW, are not victims of the fraudulent scheme perpetrated through PCI.² Kelley thus represents two different

² The references made in this Objection to Ritchie not being a victim of the fraudulent scheme perpetrated through PCI are made solely with respect to Ritchie in its capacity as a contractual creditor of PGW. Ritchie is also a creditor of PCI under a contractual relationship separate and apart from the PGW contractual relationship. Ritchie is likely a victim of the PCI fraudulent scheme in its capacity as a PCI creditor. Additionally, as explained further below, Ritchie’s status as a PGW creditor only avoids victim status for Ritchie to the extent that PGW’s distinct legal status is respected, and its assets are not forfeited, pooled or otherwise used for the benefit of non-contractual creditors of PGW. If any such event occurs, Ritchie would be in a substantially worse position, and would be, or should be treated as, a victim of the fraudulent scheme.

groups who will seek recovery from the same assets – a scenario that unavoidably generates conflicts of interest.

The District Court’s Order appointing Kelley Receiver vividly demonstrates one manifestation of the conflicts arising from Kelley’s role as Receiver. The order explicitly directs Kelley to “coordinate” with the United States Attorney in order to “*ensure that any assets subject to the terms of this Order are available for criminal restitution, forfeiture*” or similar remedies in actions brought by the government.³ Criminal forfeiture actions will plainly harm trade creditors and other non-victims of Petters’s fraud by removing assets from estates that otherwise could satisfy their claims. Accordingly, a Trustee must, on behalf of non-victim creditors, resist any such action by the Receiver. But Kelley could not properly resist such actions by the Receiver because he is the Receiver and is obligated to assist the government with forfeiture. Kelley simply cannot serve as both Receiver and Trustee.

Additionally, the same person cannot be Trustee for all of the Debtors, because the Debtors have different creditor constituencies, and those creditor constituencies have competing claims and interests. The primary conflict concerns the differences between PGW and PCI. PGW, a holding company, has subsidiaries owning significant assets and operating business. In contrast, PCI, also a holding company, owns subsidiaries that were mere shell companies primarily used for furthering Petters’s fraud, have few assets and likely have no legitimate business operations. Indeed, PCI’s only assets might be

³ See Second Amended Order for Entry of Preliminary Injunction, Appointment of Receiver and Other Equitable Relief, p. 13 (D. Minn., Case No. 08-5348, December 8, 2008) (Docket Entry 127) (“Receivership Order”).

potential claims against PGW. Thus, the Trustee for PCI, which has the fiduciary responsibility to pursue claims against PGW to maximize recovery for PCI's creditors, cannot also be the Trustee for PGW, which is charged with the fiduciary responsibility to vigorously oppose such efforts by a PCI Trustee.

Finally, the conflicts of interest presented by Kelley's appointment as Trustee are real and immediate. They can, and must, be addressed now. Moreover, under the applicable caselaw, this Court should address all conflicts regarding Trustees now, both actual or potential, and should also act to prevent even the appearance of a conflict of interest.

In sum, Kelley's role as Receiver prevents him from serving as Trustee for any Debtor and, in all events, PGW and PCI must have separate and independent Trustees.

ARGUMENT

Section 1104(b) of the Bankruptcy Code requires a Chapter 11 Trustee to 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."⁴ 11 U.S.C. § 101(14)(E). Section 1104(d) is "broad enough to include anyone who in the slightest degree might have some interest or relationship that

⁴ "Adverse interest," although not defined in the Code, has been held in the context of Section 327 to mean, with respect "to two or more entities (1) *to possess or assert mutually exclusive claims to the same economic interest*, thus creating either an actual or potential dispute between the rival claimants as to which, if any, of them the disputed right or title to the interest in question attaches under valid and applicable law; or (2) to possess a predisposition or interest under circumstances that render such a *bias in favor of or against one of the entities.*" *In re Roberts*, 46 B.R. 815, 826-27 (Bankr. D. Utah 1985) (emphasis added), *aff'd in part, rev'd and remanded on other grounds*, 75 B.R. 402 (D. Utah 1987).

would even faintly color the independent and impartial attitude required by the Code.” *In re Criello*, 134 F.3d 831, 836 (7th Cir. 1998).

Courts have also recognized that, apart from the statutory requirement of “disinterestedness,” a Trustee cannot serve if it suffers from significant conflicts of interest. *See, e.g., In Re BH & P, Inc.*, 949 F.2d 1300, 1311 (3d Cir. 1991). Such conflict of interest analyses focus on the particular facts of each case, and do not require an actual, existing conflict. *Id.* at 1313. Indeed, a “potential conflict of interest,” or even an “appearance of impropriety,” are “viable cause[s] for removal” of a Trustee. *In re AFI Holding Co., Inc.*, 530 F.3d 832, 850 (9th Cir. 2008); *see also BH&P*, 949 F.2d at 1313 (explaining that a Trustee appointment “‘should not be upheld simply because, after the fact, no harm appears to have been done.’ In some circumstances, the potential for conflict and the appearance of conflict may, without more, justify removing a trustee from service.”). Thus, given Kelley’s present and inevitable conflicts, the Court should decide now whether Kelley can fill the role of Trustee. Waiting until actual harm is done is neither necessary nor advisable. As the Third Circuit explained, in considering whether a Trustee is fit to serve:

the court should consider the full panoply of events and elements The nature and extent of the conflict must be assayed, along with the likelihood that a potential conflict might turn into an actual one. An effort should be made to measure the influence the putative conflict may have in subsequent decision-making. Perceptions are important; how the matter likely appears to creditors and to other parties in legitimate interest should be taken into account

What counts is that the matter not be left either to hindsight or the unfettered desires of the [parties involved], but that the bankruptcy judge be given an immediate opportunity to make an intelligent appraisal of the

situation and to apply his experience, common sense, and knowledge of the particular proceeding to the request.

BH&P, 949 F.2d at 1312-13 (quoting *In re Martin*, 817 F.2d 175, 182-83 (1st Cir. 1987)).

I. Kelley’s Role As Receiver For The Petters Entities Generates Disabling Conflicts Of Interest That Prevent Him From Serving As Trustee.

Kelley cannot serve as Trustee for the Debtors because his duties as Receiver stand at odds with the role of Trustee. Specifically, as Receiver, Kelley is charged with seeking redress for the victims of Petters’s fraud. As Trustee, he must advance the interests of *all* creditors – including those who were not victims of the fraud – by, among other things, maximizing the assets available to satisfy the claims of the estate’s creditors. These obligations place Kelley in the untenable position of having to advance the interests of two distinct groups seeking recovery from the same assets.

The conflict between victims of the fraudulent scheme and other creditors arises primarily because creditors of PGW, of which Ritchie is clearly the largest, were not victimized by the fraudulent scheme involving PCI. PGW is a separate and distinct legal entity from the other Debtors, and there has been no judicial determination that PGW’s separateness was disregarded, nor any facts advanced that would support such a determination. Furthermore, and critically, PCI was the vehicle for the fraud – not PGW. The affidavit submitted in support of the search warrants obtained for Petters home and PCI’s offices clearly described Petters’s fraud as “a scheme to fraudulently induce investors to provide funds for, and financing to, *PCI*.”⁵ (Affidavit of Eileen Rice, ¶ 7 (emphasis added) (Exhibit 1 to Affidavit of Jennifer Wilson (“Wilson Aff.”).) PCI

⁵ No search warrants applications were filed for PGW. (Wilson Aff., Exh. 2.)

falsely led these investors to believe that their funds would be used to finance acquisitions of merchandise that would later be sold to major retailers, such as Sam's Club. (*Id.*) PGW has never been mentioned as having a role in such fraud.⁶ Rather it owns legitimate businesses, such as Polaroid, and those assets – not fictitious merchandise sales – were the basis on which Ritchie lent money to PGW. Thus, Ritchie and other PGW creditors are not “victims” of the fraudulent scheme perpetrated through PCI.⁷

As Receiver for all of the Petters's entities, Kelley's duties run to the fraud victims, but not to all creditors of such entities. Thus, a substantial conflict exists because Kelley will no doubt seek to use the assets of all the entities under Receivership, including PGW, to benefit victims – to the detriment of creditors of PGW such as Ritchie, who are not victims of the fraudulent scheme perpetrated through PCI in connection with Ritchie's loans to PGW.

⁶ PGW was subsequently named in a criminal indictment filed against PGW, PCI and Petters. However, only one of the twenty Counts (Count 20) of the indictment mentions a transaction involving PGW (a transfer of funds from PGW to Petters). But Count 20 is a money laundering count, and is not even leveled at PGW (only Petters). The indictment thus identifies no transaction involving PGW related to the PCI merchandise-financing scheme.

⁷ If later there is a determination that PGW's status as a legal entity distinct from the other Debtors should be disregarded, or PGW's assets are forfeited, pooled or in any other way used to benefit non-contractual creditors of PGW, then of course Ritchie and other creditors of PGW would be, or should be treated as, victims of Petters's fraud. No such determinations have been made, nor facts advanced to support any such outcome. And, because such a result would harm PGW creditors such as Ritchie, the PGW Trustee must make all efforts to resist them.

The terms of the Receivership Order highlight one aspect of the conflict between Kelley's roles as Receiver and Trustee.⁸ The order expressly directs Kelley to “[c]oordinate with representatives of the United States Attorney’s office and Court personnel as needed 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.*” (Receivership Order pp. 16-17 (emphasis added).) Consistent with the Receivership Order, Kelley has expressly acknowledged that his “receiverships were established pursuant to 18 U.S.C. § 1345 Section 1345 authorizes broad injunctive relief *to protect those affected by the ongoing mail fraud, wire fraud or banking fraud schemes*” and that “[v]ictim restitution is a primary focus of § 1345.” (Memorandum in Support of Motion to Amend and Clarify, Case No. 08-5348, p. 2 (November 24, 2008), Wilson Aff., Exh. 10; *see also* Wilson Aff., Exh. 5.)

The Receivership Order and Kelley's positions thus demonstrate that real and immediate conflicts arise with respect to Kelley's dual roles as Receiver and Trustee. The Trustee of PGW in bankruptcy is the representative of the bankruptcy estate, is given power to control the assets of the estate, and has fiduciary duties to act in the best interests of the creditors. *See* 11 U.S.C. §§ 323, 1106; *In re NWFEX, Inc.*, 267 B.R. 118,

⁸ Notably, in the Receivership Order, the District Court commanded that the “Receiver shall be solely the agent of this Court in acting as Receiver under this Order and shall have judicial immunity” and, as such, “shall be accountable directly to this Court.” (Receivership Order, p. 13.) Thus, with respect to any given action, Kelley must answer not only to this Court and the creditors, but also to the District Court – a circumstance rife with likely conflicts.

151 (Bankr. W.D. Ark. 2001) (stating that, “according to the Eighth Circuit Court of Appeals, a trustee has a fiduciary duty to act in the best interest of the creditors . . . of a debtor corporation”); *In re Suntastic USA, Inc.*, 269 B.R. 846, 850 (Bankr. D. Ariz. 2001) (“The touchstone of a trustee's duty is to act in the best interests of all creditors”). As Receiver, however, Kelley is agent of, and accountable to, the District Court with respect to victims of Petters’s fraud. Thus, because the victims of Petters’s fraud are only a subset of the creditors of the Petters entities, and do not include Ritchie and other PGW creditors, Kelley’s duty as Receiver to further the interests of victims of the PCI fraudulent scheme conflicts with his duty as Trustee to protect all creditors.

More troubling is Kelley’s duty to “coordinate” with the United States Attorney’s office to “ensure that any assets subject to the terms of this Order are available for criminal restitution, forfeiture” and other claims by the United States. (Receivership Order pp. 16-17.) Kelley is therefore expressly commanded to make Debtors’ assets available for, and thus not to oppose, any forfeiture or other action by the United States on behalf of victims of Petters’s fraud. But a forfeiture action would remove assets from Debtor estates to the benefit of the fraud victims, and to the detriment of PGW creditors, such as Ritchie. A Trustee for the Debtors must therefore vigorously defend any forfeiture or criminal restitution action. As Trustee, Kelley cannot fairly undertake such a defense while under the Receivership Order’s countervailing obligation to “ensure” that PGW’s assets are “available” to the government for forfeiture or to other parties for restitution.

Essentially, Kelly would be working to benefit victims of the fraudulent scheme as agent for the District Court (wearing his Receiver hat) and agent for the Government should it seek forfeiture (wearing his Receiver hat), while simultaneously acting as agent for all creditors, including PGW's creditors (wearing his new Trustee hat). The court in *In re Kalil Fresh Marketing, Inc.*, 2008 WL 2928562, (S.D. Tex. July 22, 2008), considered a substantially similar issue and concluded that the same person could not properly serve in both fiduciary roles. That case involved a bankruptcy Trustee who executed an agreement with a subset of creditors called the "PACA Claimants." The Trustee's role with respect to the PACA Claimants was analogized to a federal court receiver. *Id.* at *2. The court frowned upon the arrangement, stating that it saw "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." *Id.* The court then offered the following example of a conflict, which illustrates the untenable scenario created where, as here, duties owed to separate constituencies pull a fiduciary in opposite directions:

[U]nder the Bankruptcy Code the Chapter 7 Trustee owes a fiduciary duty to the general unsecured creditors. Under the agreement with some PACA Claimants, the trustee would owe like duties to the PACA Claimants. The Court finds it difficult to understand how the Chapter 7 Trustee could make a decision with respect to specific assets or claims. And even if the trustee were undecided and resolved to bring an issue to the Court for decision, the Court does not understand how the trustee could present the issue in an even-handed way since the Bankruptcy Code requires the trustee to protect the interests of general unsecured creditors, and presumably the trustee

would have the same duty for the PACA Claimants.⁹

Id. at *2, n.2. As in the scenario discussed by *Kalil Fresh Marketing*, Kelley owes fiduciary duties (i) to fraud victims in his capacity as Receiver, and (ii) to all creditors in his capacity as Trustee. Those groups have competing claims to the Debtors' property. Kelley cannot adequately represent both groups simultaneously, and thus cannot serve as Trustee while also acting as Receiver.¹⁰

II. Kelley Cannot Serve As Trustee For PGW And Also Serve As Trustee For PCI Or (Any Other Debtor).

Apart from the fact that, as Receiver, Kelley cannot properly serve as Trustee for the Debtors, Kelley cannot serve as Trustee for both PGW and PCI (and the other Debtors) because serving in both roles also results in a conflict of interest. The substantial differences between PGW and PCI and the other Debtors lie at the heart of the conflict.

⁹ The conflicts discussed in the *Kalil Fresh Marketing* decision were all potential conflicts that would almost certainly arise, and thus constitute another example of potential conflicts being sufficient to disqualify a Trustee.

¹⁰ The Verified Statement of Douglas A. Kelley dated December 23, 2008 and submitted to the Court with the United States Trustee's request for approval ("Verified Statement") contains further indicia of potential conflicts of interest. For example, Kelley states that his law partner, Steven E. Wolter, holds "an Irrevocable Proxy . . . with respect to stock and membership interests owned by Mr. Petters," purportedly to assist with "governance matters" of the Petters entities (Verified Statement ¶ 6), but Kelley does not provide any detail regarding the rights, powers and benefits that "Irrevocable Proxy" bestows upon Mr. Wolter. Additionally, Mr. Kelley's law firm, Kelley & Wolter, represented the Petters entities prior to Kelley's appointment as Receiver and the bankruptcy filing. (*Id.* ¶ 7 a, b, c.) Finally, Kelley and his firm appeared to have ceased their representation of the Petters entities at the behest of the United States Attorney's office, which then put forth Mr. Kelley's name to the District Court for selection as Receiver.

PGW is a distinct legal entity with a creditor constituency that is separate and distinct from the creditor constituency of PCI and each of the other Debtors. It appears that, while many of Petters's victims had a contractual relationship with PCI and its subsidiaries, very few of them also had a contractual relationship with PGW. These circumstances produced the different creditor constituencies for PGW and PCI, and those constituencies have diametrically opposed interests given the dramatically different financial circumstances of PGW and PCI. PGW has substantial operating assets, such as Polaroid and Fingerhut, which are legitimate businesses with potentially considerable value, and PGW had little or no connection to the fraud. (*See Wilson Aff.*, Exh. 11.) Creditors of PGW almost certainly decided to engage in a business relationship with, and to extend credit to, PGW based at least in part on PGW's ownership of such operating businesses. In contrast, PCI and its subsidiaries have little or no assets of value, and appear primarily to have been vehicles for fraud. Indeed, PCI's only assets might prove to be potential claims against other entities with assets, such as PGW. (*See id.*) Most, if not all, of the creditors of PCI almost certainly decided to engage in a business relationship with, and to extend credit to, PCI based on, and secured by, the fictitious merchandise to be financed with the credit extended by such creditors.

The different creditor constituencies and financial situations of PGW and PCI place very different demands upon the Trustees for those two entities. The Trustee for PCI and its creditors must seek to maximize the value of the PCI estate by seeking access to all potential sources of funds, including making claims against PGW. On behalf of PGW's separate set of creditors, the PGW Trustee must resist any effort to gain access to

PGW's assets for the benefit of the creditors of PCI. The disparity between PCI and PGW's assets creates a real and immediate conflict.

The need for separate Trustees among related entities when such conflicts of interest arise is widely acknowledged in the case law. *See, e.g., In re United Church of the Ministers of God*, 74 B.R. 271, 279 (E.D. Pa. 1987) (potential conflicts of interest among estates of debtor church and its founder led court to “appoint separate Trustees in each case”). The court’s resolution of an analogous scenario in *In re BH & P, Inc.*, 103 B.R. 556 (Bankr. D.N.J. 1989), is instructive. In *BH&P*, the bankruptcy court concluded that a common Trustee should not have been appointed for three related entities. The Trustee had the “right and duty to pursue the claims” of one debtor against a second debtor, and “unless all creditors are paid in full, such claims are materially adverse to” the claims of the unsecured creditors of the second debtor. *Id.* at 561. As further explained by the Third Circuit, which affirmed the result, the bankruptcy court concluded that Trustee for BH&P had “obligation to pursue claims against Herman and Merkow,” who were the founders of BH&P and who had also filed for bankruptcy. *In re BH&P*, 949 F.2d at 1313. The “claims were disputed,” and thus required “advocacy of competing interests.” *Id.* Consequently, separate Trustees were needed for BH&P and its founders.¹¹

¹¹ On appeal in *BH & P*, the Third Circuit disagreed with the bankruptcy court’s conclusion that *any* inter-debtor claim would *automatically* require separate Trustees. *In Re BH & P*, 949 F.2d at 1311-12. The Third Circuit instead adopted the flexible, case-by-case approach to Trustee conflicts of interest described above, which takes into account all relevant facts, including inter-debtor claims, and permits disqualification where the actual, potential, or even mere appearance, of conflict, can alone disqualify a

In the case of PGW and PCI, the conflict is even more significant and apparent. PGW is the only entity that has substantial, tangible assets, and it is clearly in the best interests of creditors of all other Debtors – the bulk of whom are *not* also PGW creditors – to assert claims for PGW’s assets. Thus, the present scenario does not merely require “advocacy of competing interests” – the question of whether PGW’s assets should be available to creditors of PCI and of the other Debtors will likely prove to be the central issue of these bankruptcy cases.¹² Notably, Kelley has already demonstrated that he has prejudged this paramount issue by asserting that the affairs of PGW and PCI are closely intertwined. (*See, e.g.*, Kelley Verified Statement ¶ 6 (stating “there are likely various claims yet to be determined between and among the various Petters Entities, as the funds flowed freely between and among virtually all of the several dozen Petters Entities as financial needs arose”).) This position could support a claim to disregard the legal separateness of PGW under a “veil piercing” or “alter ego” theory, which would substantially harm PGW’s creditors. PGW is the only entity with substantial assets, and each dollar pulled out to benefit the many victims of the Petters fraud who are not PGW creditors is a dollar taken away from a PGW creditor.

It is also important to note that the Unsecured Creditors Committee (“Committee”) consists entirely of PCI creditors who have no contractual claims against PGW. The

Trustee. *Id.* at 1312-13. Using that standard, the Third Circuit let stand the bankruptcy court’s decision to appoint separate Trustees. *Id.* at 1313.

¹² Cost and efficiency are of course important considerations, but they must yield to the legal requirement that a Trustee be disinterested. Thus, “to the extent that there is any tension between disinterestedness on the one hand and efficiency and economy on the other, disinterestedness must prevail” because “[i]ntegrity is no less necessary because it may be inconvenient or expensive.” *In re BH & P*, 103 B.R. at 572.

United States Trustee declined to create a separate Committee for PGW, or even to appoint creditors who have contract claims against PGW to the existing, supposedly joint committee. Appointing a separate Trustee for PGW is therefore all the more imperative because the Committee at present contains no representatives of these PGW constituencies.

* * * * *

Finally, there can be no dispute that now is a proper time to address the issue of Kelley's fitness to serve as Trustee in light of his conflicts of interest. As an initial matter, a court can properly disqualify a Trustee on the basis of actual or *potential* conflicts, or even the appearance of such conflicts. *See In re AFI*, 530 F.3d at 850; *In Re BH & P*, 949 F.2d at 1313. In any event, the conflicts that impair Kelley exist now. The Receivership Order directs him to exercise his duties in a fashion that will "ensure" the availability of the Debtors' assets in forfeiture proceedings – to the detriment of the Debtors' non-victim creditors. Furthermore, given that PGW is the only Debtor with appreciable assets, efforts by creditors of the other Debtors to gain access to PGW's assets for their claims is not merely a potential conflict, but an inevitable one. *See In Re BH&P*, 949 F.2d at 1312-13 (bankruptcy court must consider "the likelihood that a potential conflict might turn into an actual one").

EVIDENCE IN SUPPORT OF OBJECTION

If evidence is to be offered at any hearing on this Objection, Ritchie may call Douglas A. Kelley, or one or more Ritchie employees, to testify and give evidence. This

Objection is based on all the files and proceedings in these jointly administered cases, and upon the Affidavit of Jennifer Wilson and the exhibits thereto.

CONCLUSION

For the foregoing reasons, Ritchie respectfully requests that the Court reject the appointment of Douglas A. Kelley as Trustee for all Debtors or, in the alternative, require appointment of a separate and independent Trustee for PGW.

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

/e/ James M. Jorissen

Dated: January 7, 2009

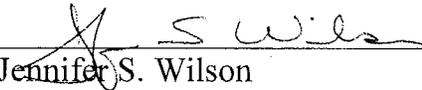
By _____
James M. Jorissen, #262833
100 South Fifth Street, Suite 2500
Minneapolis, Minnesota 55402-1234
(612) 332-1030

Bryan Krakauer
Thomas K. Cauley, Jr.
Brian A. McAleenan
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, Illinois 60603
(312) 853-7000

COUNSEL FOR RITCHIE CAPITAL
MANAGEMENT, LTD., RITCHIE SPECIAL
CREDIT INVESTMENTS, LTD., RHONE
HOLDINGS II, LTD., YORKVILLE
INVESTMENT I, LLC, AND RITCHIE
CAPITAL STRUCTURE ARBITRAGE
TRADING, LTD.

4. Attached hereto as Exhibit 3 is a true and correct copy of a letter from Ritchie Capital Management, L.L.C. to Mary Jeffries, et al. dated October 8, 2008.
5. Attached hereto as Exhibit 4 is a true and correct copy of a letter from Ritchie Capital Management, L.L.C. to Douglas Kelley dated October 13, 2008.
6. Attached hereto as Exhibit 5 is a true and correct copy of a letter from Douglas A. Kelley to John Wappler dated October 10, 2008.
7. Attached hereto as Exhibit 6 is a true and correct copy of a letter from Timothy D. Kelly to Douglas A. Kelley dated October 31, 2008.
8. Attached hereto as Exhibit 7 is a true and correct copy of an email and attachments from Julie Zimmerman on behalf of Timothy D. Kelly to Douglas A. Kelley dated November 18, 2008 at 8:53 AM.
9. Attached hereto as Exhibit 8 is a true and correct copy of an email and attachments from Julie Zimmerman on behalf of Timothy D. Kelly to Douglas A. Kelley dated November 18, 2008 at 11:05 AM.
10. Attached hereto as Exhibit 9 is a true and correct copy of an email from Daryle L. Uphoff to Timothy Kelly dated November 20, 2008.
11. Attached hereto as Exhibit 10 is a true and correct copy of Receiver's Memorandum in Support of Motion to Amend and Clarify the Preliminary Injunction and Receivership Orders dated November 24, 2008.
12. Attached hereto as Exhibit 11 is a true and correct copy of chart entitled Comparison of D, E, and F of Schedules for PGW and PCI prepared by my law firm.

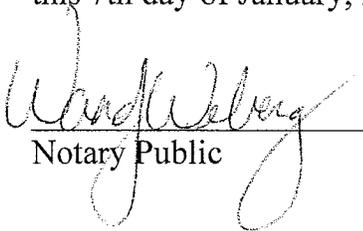
I declare under penalty of perjury that the foregoing is true and correct. Executed
on January 7, 2009.



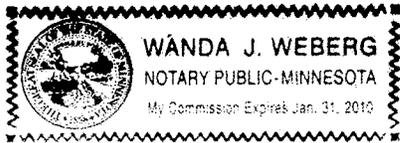
Jennifer S. Wilson

Subscribed and sworn to before me

this 7th day of January, 2009.



Notary Public



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Petters Company, Inc., et al.,

Debtors.

(includes:

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

Jointly Administered under
Case No. 08-45257

Court File No. 08-45257

Court File Nos.:

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

Chapter 11 Cases
Judge Gregory F. Kishel

UNSWORN CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2009, I caused the following documents:

Objection to Appointment of Douglas A. Kelley as Trustee for all of the Debtors in These Jointly Administered Proceedings and Affidavit of Jennifer Wilson

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:

- Marc A AL maal@stoel.com, jlhanson@stoel.com, cjbishman@stoel.com
- Carolyn G. Anderson cga@zimmreed.com,
kmc@zimmreed.com, mbk@zimmreed.com
- Richard D Anderson randerson@briggs.com
- Daniel C. Beck dbeck@winthrop.com, tcooke@winthrop.com
- Johnathan C Bolton jbolton@fulbright.com, arodriguez@fulbright.com
- Cynthia A. Bremer cbremer@fulbright.com, pjackson@fulbright.com

- Zack A Clement zclement@fulbright.com, arodriguez@fulbright.com
- Barbara Jean D'Aquila bdaquila@fulbright.com, pjackson@fulbright.com
- Michael S. Dove mdove@gislason.com,
K Gleisner@gislason.com; JBurgau@gislason.com
- Michael Fadlovich michael.fadlovich@usdoj.gov
- Michael D Gordon mgordon@briggs.com
- Wesley T. Graham wgraham@hensonefron.com, cfisher@hensonefron.com
- Brian C Gudmundson bcg@zimmreed.com
- J Jackson jackson.j@dorsey.com
- James M. Jorissen jjorissen@losgs.com, vrittenbach@losgs.com
- Mark J. Kalla kalla.mark@dorsey.com, jorgensen.karen@dorsey.com
- Douglas W. Kassebaum dkassebaum@fredlaw.com, scharter@fredlaw.com
- Lorie A. Klein klein@moss-barnett.com, montpetitm@moss-barnett.com
- Ronn B Kreps rkreps@fulbright.com, pjackson@fulbright.com
- Connie Lahn connie.lahn@fmjlaw.com, Aong.Moua@fmjlaw.com
- Thomas Lallier tlallier@foleymansfield.com
- Chris T Lenhart lenhart.chris@dorsey.com
- Brian F Leonard bleonard@losgs.com
- David B. Levant dblevant@stoel.com, sljaggers@stoel.com; sea_docket@stoel.com
- James A. Lodoen jlodoen@lindquist.com, gluessenheide@lindquist.com
- ANDREW S NICOLL anicoll@jenner.com
- David Bradley Olsen dolsen@hensonefron.com, cfisher@hensonefron.com
- RONALD R PETERSON rpeterson@jenner.com
- Robert Raschke robert.raschke@usdoj.gov
- Michael E. Ridgway mike.ridgway@usdoj.gov
- David E. Runck david.runck@fmjlaw.com
- BRANDY A SARGENT basargent@stoel.com

- Olufemi O Solade osolade@fulbright.com, sbechtel@fulbright.com
- John R. Stoebner jstoebner@lapplibra.com, rtri@lapplibra.com;lfrey@lapplibra.com
- MICHAEL S TERRIEN mterrien@jenner.com
- US Trustee ustpreion12.mn.ecf@usdoj.gov

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

N/A

Dated: January 7, 2009

/e/ Valerie Rittenbach

Valerie Rittenbach
100 South Fifth Street, Suite 2500
Minneapolis, MN 55402
(612) 332-1030

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