

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:	Jointly Administered under Case No. 08-45257
Petters Company, Inc., et al.,	Court File Nos.:
Debtors.	08-45257 (GFK)
(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.)	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

**NOTICE OF HEARING AND MOTION OF RITCHIE CAPITAL STRUCTURE
ARBITRAGE TRADING, LTD., YORKVILLE INVESTMENT I, LLC, RHONE
HOLDINGS II, LTD., AND RITCHIE SPECIAL CREDIT INVESTMENTS, LTD., FOR
RESOLUTION OF DISPUTED ELECTION FOR TRUSTEE OF PETTERS GROUP
WORLDWIDE, LLC.**

TO: The debtors and other entities specified in Local Rule 9013-3

1. Ritchie Capital Structure Arbitrage Trading, Ltd., Yorkville Investment I, L.L.C., Rhone Holdings II. Ltd., and Ritchie Special Credit Investments, Ltd. move the Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this motion at 9:30 a.m. on July 15, 2009, before the Honorable Gregory F. Kishel in Courtroom 2A, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and served by delivery not later than July 10, 2009, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than July 6, 2009, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 11 case was filed on October 11, 2008. The case is now pending in this Court.

5. This Motion arises under 11 U.S.C. §§ 1004(b)(1) and 702. This Motion is filed under Fed. R. Bankr. P. 9014 and Local Rule 9013-3. Movants request relief with respect to resolution of the disputed election for Trustee of Petters Group Worldwide, LLC., including that the Court reject the conclusions of the United States Trustee's Report of Disputed Election in the Case of Petters Group Worldwide, LLC., filed May 20, 2009 under jointly administered Case Number 08-45257, and that the Court appoint Mr. Timothy D. Moratzka as Trustee for Petters Group Worldwide, LLC.

Wherefore, Ritchie Capital Structure Arbitrage Trading, Ltd., Yorkville Investment I, L.L.C., Rhone Holdings II., Ltd., and Ritchie Special Credit Investments, Ltd. move the Court for resolution of the disputed election for Trustee of Petters Group Worldwide, LLC., including a

rejection of the conclusions of the United States Trustee's Report of Disputed Election in the Case of Petters Group Worldwide, LLC., and the appointment of Mr. Timothy D. Moratzka as Trustee for Petters Group Worldwide, LLC., and such other relief as may be just and equitable.

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

Dated: June 1, 2009

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

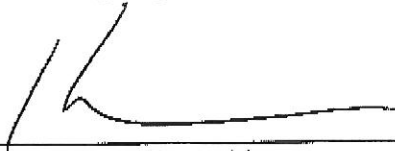
Bryan Krakauer
Thomas K. Cauley, Jr.
Brian A. McAleenan
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, Illinois 60603
(312) 853-7000

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

VERIFICATION

I, Kenneth Rosenblum, Associate General Counsel for the moving party named in the foregoing Notice of Hearing and Motion, declare under penalty of perjury that I have personal knowledge of the factual averments set forth in the above Motion and that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: June 1, 2009



Kenneth Rosenblum

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

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	Chapter 11 Cases Judge Gregory F. Kishel

**MEMORANDUM OF RITCHIE CAPITAL STRUCTURE ARBITRAGE TRADING,
LTD., YORKVILLE INVESTMENT I, LLC, RHONE HOLDINGS II. LTD., AND
RITCHIE SPECIAL CREDIT INVESTMENTS, LTD., IN SUPPORT OF MOTION FOR
RESOLUTION OF DISPUTED ELECTION FOR TRUSTEE OF PETTERS GROUP
WORLDWIDE, LLC.**

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Ritchie Special Credit Investments, Ltd., Rhone Holdings II. Ltd., Yorkville Investments I, L.L.C., Ritchie Capital Structure Arbitrage Trading, Ltd., and Ritchie Capital Management, L.L.C. (together, “Ritchie”) respectfully submit this memorandum in support of its motion for resolution of a disputed election respecting the Trustee in the case of Petters Group Worldwide, LLC (“PGW”).

Ritchie’s motion arises out of the creditors meeting called by the United States Trustee (“UST”) at the request of Ritchie, seeking the election of a Trustee for PGW. The creditors meeting occurred on April 22, 2009. Ritchie believes sufficient votes were cast at that meeting to satisfy the requirements of 11 U.S.C. §§ 1004(b)(1) and 702(a)(b)(c) to elect Mr. Timothy Moratzka Trustee in the PGW case. In particular, Ritchie contends that creditors holding more than 20% of qualified claims appeared at such meeting, and that the qualified creditors present unanimously voted for Moratzka as Trustee. On May 20, 2009, the UST filed an Election Report, which stated its view that neither the 20% quorum threshold nor the majority vote requirements were satisfied for Mr. Moratzka’s election, and thus that Mr. Douglas Kelly remains as Trustee in the PGW case. Ritchie brings this motion for the Court to determine this disputed election.

The main issue before this Court is whether or not the votes of creditors of Petters Company, Inc. (the “PCI Creditors”) who have no contractual rights against PGW and whose proofs of claim against PGW are actively disputed, should be counted in connection with the PGW Trustee election. If they are not counted, which Ritchie believes the Bankruptcy Code requires, then Moratzka has been elected as the Trustee in the PGW case, and the Court should so confirm.

FACTUAL BACKGROUND

On October 11, 2008, Kelley commenced Chapter 11 proceedings on behalf of PCI. (Docket No. 1.) On that same date, Kelley initiated separate bankruptcy proceedings on behalf of PGW. (Case No. 08-45258, Docket No. 1.) Eleven days later, the Court granted Kelley's request to jointly administer the PCI and PGW proceedings. (Docket No. 21.) On December 2, 2008, the UST moved for appointment of a Chapter 11 Trustee for PGW and PCI, while Ritchie submitted a separate motion requesting that the Court appoint different Trustees for the two entities. (Docket No. 80; Docket No. 79.) The UST appointed Kelley as Trustee for both PGW and PCI on December 24, 2008. (Docket No. 114.) Ritchie filed an opposition to that appointment, and on December 29, 2008 also requested an election of a disinterested trustee for PGW. (Docket No. 115.) On February 26, 2009, this Court ruled against Ritchie's opposition to the appointment of a single trustee for both PCI and PGW, and the Court's ruling in that regard is presently on appeal.

In response to Ritchie's request for a Trustee election, the UST scheduled a meeting of creditors for April 22, 2009. The following six creditors attended and participated in the Election: Ritchie, Insight Partners LP ("Insight"), True North Funding ("True North"), Lancelot¹, Interlachen Harriet Investments, Ltd. ("Interlachen"), and Palm Beach Finance Partners, LP and Palm Beach Finance Partners II, LP (together, "Palm Beach"). (United States Trustee's Report of Disputed Election, Docket No. 218, at pp. 3-4.) Ritchie and Insight are the only parties with contract claims against PGW and are the only parties of the six reflected on the Schedules filed by the Trustee in the PGW case. Ritchie's claims arise from a series of

¹ "Lancelot" refers to Ronald R. Peterson as chapter 7 trustee for the following estates: Lancelot Investors Fund, LP; Lancelot Investors Fund II, LP; Colossus Capital Fund, Ltd.; Colossus Capital Fund, LP; Lancelot Investors Fund, Ltd.; and RWB Services, LLC.

promissory notes executed by PGW in February and May 2008.² Copies of the notes are on file with the Court, attached to Ritchie's proofs of claim. Insight's claims relate to services rendered in the normal course of business, and Insight also filed a proof of claim in these proceedings. (Claim No. 11-1.) Insight's claim against PGW is for \$667,000, and no one opposed or objected to Insight's right to vote that claim at the Trustee Election. True North, Interlachen, Lancelot and Palm Beach are all creditors of PCI ("PCI Creditors"), who asserted, or stated an intent to assert, tort claims against PGW, all of which are vigorously disputed by Ritchie. Lancelot filed its proofs of claim the evening before the election, which Ritchie found out about the morning of the Election and thus had time to file only a short objection prior to the Election. Palm Beach filed its proofs of claim mere minutes before the election began, which prevented Ritchie from filing a formal objection to its claims. True North has filed a proof of claim only against PCI, and Interlachen has not filed any proof of claim. Ritchie orally objected to all of the PCI Creditor claims on the record, and has now filed formal objections to the claims of both Lancelot and Palm Beach. At the election, the parties voted as follows: Ritchie and Insight voted for Moratzka; the four PCI Creditors voted to not to hold an election, or in the alternative to maintain Kelley as Trustee.

Following the PGW creditors meeting, on May 20, 2009, the UST issued its Election Report and concluded that the Election is disputed. (Docket No. 218 at p. 14.) The UST included the claims of Lancelot, Palm Beach and Insight in determining the outcome of the election, and excluded the claims of Ritchie, True North and Interlachen. (*Id.* at pp. 10-12.) The UST also concluded that the voting quorum needed for a trustee election had not been met. (*Id.* at 14.). Ritchie contests the UST's conclusions in the Election Report as legally incorrect.

² On April 21, 2009, Ritchie filed four proof of claims against PGW, totaling \$209,400,314.20.

ARGUMENT

Section 1104(b)(1) of the Bankruptcy Code provides that a request for election of a Chapter 11 Trustee “shall be conducted in the manner provided in sections (a), (b) and (c) of Section 702 of this title.” 11 U.S.C. § 1104(b)(1). Section 702(a) states that a “creditor may vote” in a Trustee election “only if such creditor –

(1) holds an allowable, undisputed, fixed, liquidated, unsecured claim . . .

(2) does not have an interest materially adverse . . . to the interests of creditors entitled to such a distribution; and

(3) is not an insider.”

11 U.S.C. § 702(a). A candidate for Trustee is elected “if creditors holding at least 20% in amount of the claims specified in subsection (a)(1) of this section vote,” and the candidate receives a majority of such votes. 11 U.S.C. § 702(c).

As explained below, once the votes of Lancelot and Palm Beach are properly set aside because they fail the requirements of Section 702(a), Moratzka becomes the winner of the election because the 20% quorum and majority vote requirements in Section 702(c) are satisfied. This result obtains even if Ritchie’s vote is disallowed, because in that event the required quorum of eligible voters likewise was present, and Moratzka was unanimously elected.

I. The PCI Creditors Were Not Qualified To Vote Because Their Claims Are Disputed, And They Have Interests Materially Adverse To PGW Creditors.

The PCI Creditor claims should not be counted for purposes of the Election. Their claims are not “undisputed” as required by Section 702(a)(1), nor are they free from holding an adverse interest, as required by Section 702(a)(2).

A. The PCI Creditors’ Claims Are Disputed.

Lancelot filed its proofs of claim the afternoon prior to the Trustee election, and Palm Beach filed its proofs of claim minutes before the election meeting began, and neither claim was

included on PGW's bankruptcy schedules. The late filing of those proofs prevented Ritchie from lodging a full, formal objection to the subject claims. Ritchie did, however, orally object to those claims at the election meeting. Ritchie has now filed formal objections to those claims as well. Under these circumstances, Ritchie's objections to Lancelot's and Palm Beach's claims are proper and timely. *See, e.g., In re Sforza*, 174 B.R. 656, 658 (Bankr. D. Mass. 1994) ("a clearly expressed objection, stating the grounds therefore, satisfies the requirement of § 702, even if no written objection to the claim has been filed at that time. This rule comports with the requirement of due process. If, as here, a proof of claim is filed just minutes before the § 341(a) meeting, the debtor should not be required to attempt to comply with formalities in objecting to that claim for purposes related to the meeting").³ Indeed, the Court should look askance at such claims, which were filed for patently tactical reasons, and certainly should not deem them undisputed simply because Ritchie did not file a full formal objection in the few short hours (or minutes, in the case of Palm Beach) between the filing and the Trustee election meeting.

Ritchie strenuously disputes Lancelot's and Palm Beach's eleventh-hour claims. As revealed in their proofs of claim, those parties are contract creditors of PCI, but *not* PGW. The only claims asserted against PGW are tort claims – civil conspiracy and fraud – which they leveled in blanket fashion against all of the debtors in these jointly-administered cases (including PGW). Those claims are wholly conclusory. Neither Lancelot nor Palm Beach articulates what the fraud or conspiracy entailed, and offers absolutely no facts, specifics, or any other basis to

³ Interlachen never filed a proof of claim, and True North filed a proof of claim against PCI, but not PGW. Accordingly, neither party has asserted a claim entitling it to vote at the election. If they did file a proper proof of claim, Ritchie would dispute those claims for the same reasons it has disputed the claims of Lancelot and Palm Beach, and those parties would have the same materially adverse interests as Lancelot and Palm Beach, and thus Interlachen and True North would be disqualified from voting for the same reasons described herein with respect to Lancelot and Palm Beach.

demonstrate that PGW had a role in any fraud or conspiracy that provides either party with a valid and enforceable claim against PGW. Ritchie contends that PGW did not engage in any fraud or conspiracy that would provide Lancelot or Palm Beach with an allowable claim against PGW, and it blinks reality to characterize these claims as anything but disputed and ineligible to vote under 11 U.S.C. § §1104(b)(1) and 702(a). As holders of disputed claims, Lancelot and Palm Beach are not eligible to vote for a PGW Trustee and their claims do not count for purposes of determining whether a 20% quorum of claims was present and seeking election of a Trustee at the PGW creditors meeting.

B. The PCI Creditors Hold Materially Adverse Interests.

The determination of whether a creditor holds a “materially adverse interest” is made on a case-by-case basis, after considering factors including the nature, size and degree of the adverse interest. 2 Nancy C. Dreher & Joan N. Feeney, *Bankruptcy Law Manual* § 10:11, at 10-27 to 10-28 (5th ed. 2008). These factors strongly indicate that Lancelot and Palm Beach possess materially adverse interests, and should be disqualified from voting.

Lancelot’s and Palm Beach’s adverse interests lie in their efforts as contract creditors of PCI to remove assets from the estate of PGW through tort claims, no doubt because PCI has no appreciable assets. Lancelot and Palm Beach are therefore attempting to satisfy their claims against PCI by invading the estate of another debtor, which imbues them with a materially adverse interest to the true creditors of PGW. The size of that adverse interest is considerable – Palm Beach values its claim at over \$1 billion, and Lancelot values its claim at \$3.5 billion, figures several multiples above the total assets in the PGW estate.

Further, and separately, the fact that the Unsecured Creditors Committee (“UCC”), which is comprised entirely of PCI creditors, objected only to Ritchie’s claims and not to Lancelot’s or

Palm Beach's claims reveals the rank bias of the UCC. The UCC is composed entirely of creditors who lent funds to PCI and its subsidiaries and had no contractual claims against PGW. An official committee genuinely adhering to its fiduciary interests to the PGW estate would not conceivably have failed to object to the claims of the PCI creditors against PGW. Indeed, this bias is starkly evident in the objection the UCC filed to Ritchie's claim, in which it stated that "[n]ow that Polaroid and PCE's assets have been sold, a *primary goal* of the PGW and PCI creditors is to *share equally* in the distribution of the Polaroid and PCE sale proceeds on a pro rata basis." Objection by Creditors Committee, Docket No. 206, at p. 5 (emphasis added).) This ignores that the "primary goal" of PGW creditors is precisely the opposite of what the UCC asserts (while supposedly acting as a PGW fiduciary); namely, PGW creditors aim to preserve the assets of the PGW estate, and in particular the proceeds of the Polaroid sale, for the benefit of the true creditors of PGW. A review of the UCC objection thus illustrates, and indeed confirms, the point that the PCI creditors have a materially adverse interest to PGW.

II. Once The Claims Of Lancelot And Palm Beach Are Excluded, Moratzka Becomes The Winner Of The Trustee Election.

As the UST explained in the Report, determining the results of the election entails several steps: (1) ascertaining the total amount of unsecured, non-priority claims against PGW; (2) subtracting from that amount all claims that are ineligible for voting purposes under Section 702(a), *i.e.* claims that are, among other things, contingent, unliquidated or disputed; (3) determining if the requisite 20% quorum of eligible claims cast a vote and whether any Trustee candidate received a majority vote. Pursuant to that process, Moratzka was elected PGW Trustee at the April 22, 2009 election hearing, regardless of whether Ritchie's vote is counted.

The PGW claims register reveals that, at the time of the election, the total value of all non-secured, non-priority proofs of claim filed against PGW equaled \$4,466,284,050.⁴ Added to that sum are the claims listed on PGW's schedules that were not characterized as contingent, unliquidated or disputed, which equals \$519,737.95. The total of those sums is \$4,466,803,788.

The next step is to subtract from that number the amounts of the proofs of claim not proper under Section 702(a). One set of such claims are those that are contingent or unliquidated, which includes those of Sun Minnesota Foreign Holdings, LLC and Sun Minnesota Holding, LLC (together, "Sun"). The Sun claims are based upon a purported guaranty by PGW of certain promissory notes issued by Petters Aviation, LLC ("Petters Aviation"), a separate entity owned by Thomas Petters that owns Sun County Airlines ("Sun Country"). (Claims 21-1 and 22-1.) "[G]uaranties, by their very nature, are conditional promises to pay because guarantors promise to pay only on the condition that the principal debtor fails to pay . . . and do not involve a sum certain because the amount of the guarantor's liability cannot be determined solely from the instrument itself without reference to an outside source." *Max Arnold & Sons, LLC v. W.L. Hailey & Co., Inc.*, 452 F.3d 494, 499 (6th Cir. 2006). Therefore, the existence and extent of PGW's obligation will not be known until it is determined whether, and to what extent, Petters Aviation and Sun Country satisfy the underlying obligation.⁵ Accordingly, the Sun claims are both contingent and unliquidated, and not eligible to be voted. 11 U.S.C. § 702(a). The Sun claims total \$26,831,698 (Claims 21-1 and 22-1), which reduces the eligible claims to \$4,439,972,090. Also ineligible are disputed claims. 11 U.S.C. § 702(a). Removing the

⁴ That figure does not include the claims of Interlachen or True North, because they were not asserted against PGW at the time of the election. Also excluded is the claim of Neal Gerber & Eisenberg, L.P. ("Neal Gerber"), which was not filed until May 14, 2009. Moreover, the Neal Gerber claim is only for \$43,467, and would have no effect on the results even if included.

⁵ Petters Aviation and Sun Country are also in bankruptcy, and thus that determination will not

disputed claims of Lancelot (which total \$3,141,060,012) and Palm Beach (which total \$1,088,312,353) leaves \$210,599,725 in eligible claims.

The required quorum under Section 702(c) is 20%, and 20% of the \$210,599,725 in eligible claims is \$47,486,290. Ritchie's claims total \$209,400,314, which alone far surpasses the minimum for a quorum. All of the eligible votes actually cast (those of Ritchie and Insight) were for Moratzka. Accordingly, Moratzka is elected as the new PGW Trustee.

That result does not change if Ritchie's claims are also excluded from the vote.⁶ Subtracting Ritchie's \$209,400,314 claims from the \$210,599,725 in eligible claims leaves \$1,199,411. The required quorum is 20% of that amount, which is \$239,882. Insight's claim is for \$677,000, and thus constitutes a quorum. Insight voted for Moratzka, making Moratzka the elected Trustee. *See In re Poage*, 92 B.R. at 659 (election of Trustee pursuant to Section 702

be made until that bankruptcy process is completed.

⁶ Ritchie believes that its claims should not be disregarded. The UCC filed the only objection to Ritchie's claim. It appears that objection is not properly before the court for failure to comply with Local Rules 3007 and 9013, and should not be considered. Also, as explained above, the UCC is comprised of PCI creditors, none of which have a contract claim against PGW. The UCC wants to keep Kelley as Trustee for PGW, as well as for PCI, which furthers its aim of accessing PGW assets for PCI creditors. Tellingly, the UCC did not object to the claims of Lancelot or Palm Beach, even though there are powerful grounds to object to those claims. The UCC is thus strongly biased against Ritchie, and its objection should be disregarded. *See In re Poage*, 92 B.R. at 665 (objection to proof of claim may not be brought for improper purpose). Furthermore, Ritchie's claims against PGW are valid. The fact that PCI received the funds loaned by Ritchie in no way impacts Ritchie's status as a PGW creditor. In *In re Luis Elec. Contracting Corp.*, 149 B.R. 751 (Bankr. E.D.N.Y. 1992), the Trustee argued that the debtor had no liability because a supplier, not the debtor, received the loan proceeds. The court rejected the argument, explaining that "[a] loan is no less a loan if it is remitted to a third party at the borrower's direction and on the borrower's behalf." *Id.* at 759. It is not disputed that Ritchie wired funds to an account specified by PGW and that PGW is an obligor of the Ritchie loans. Ritchie also has no material adverse interest, because its secured claims are not in the assets of PGW, but in the assets of Polaroid and certain related entities. And, to the extent that a claim against Polaroid assets is a basis to disqualify Ritchie's claims, then Lancelot, which also asserts a direct and indirect secured or factor claim against Polaroid assets, must be disqualified on the same basis.

proper even if only one creditor voted, assuming such creditor holds 20% of the claims eligible to vote).

In sum, Moratzka was properly elected pursuant to the proceedings on April 22, 2009, whether or not Ritchie's claims are deemed eligible for the vote.

CONCLUSION

For the reasons stated herein, Ritchie respectfully requests that the Court reject the conclusions of the UST Report, and confirm the election of Timothy Moratzka as Trustee for PGW.

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

Dated: June 1, 2009

By /e/ James M. Jorissen

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, L.L.C., RITCHIE
SPECIAL CREDIT INVESTMENTS,
RHONE HOLDINGS II. LTD.,
YORKVILLE INVESTMENT I, LLC, AND
RITCHIE CAPITAL STRUCTURE
ARBITRAGE TRADING, LTD.

402402

**UNITED STATES BANKRUPTCY COURT
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In re:

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PAC Funding, LLC)	08-45371 (GFK)

Chapter 11 Cases
Judge Gregory F. Kishel

**ORDER RESOLVING DISPUTED ELECTION FOR TRUSTEE
OF PETTERS GROUP WORLDWIDE, LLC.**

Based upon the argument of counsel, pleadings, files, and the record in this matter, IT IS HEREBY ORDERED THAT:

1. The Court rejects the conclusions of the United States Trustee's Report of Disputed Election in the Case of Petters Group Worldwide, LLC., filed May 20, 2009 under jointly administered Case Number 08-45257.

2. The Court appoints Mr. Timothy D. Moratzka as Trustee for Petters Group Worldwide, LLC.

Dated this _____ day of _____, 2009.

BY THE COURT:

The Honorable Gregory F. Kishel
Judge of District Court

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

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Chapter 11 Cases
Judge Gregory F. Kishel

UNSWORN CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2009, I caused the following documents:

Notice of Hearing and Motion and Motion of Ritchie Capital Structure Arbitrage Trading, Ltd., Yorkville Investment I, L.L.C., Rhone Holdings II, Ltd., and Ritchie Special Credit Investments, Ltd., For Resolution of Disputed Election For Trustee of Petters Group Worldwide, LLC.; and Proposed Order Resolving Disputed Election For Trustee of Petters Group Worldwide, LLC.

to be filed electronically with the Clerk of the 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;mrlemke@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
- Roylene A Champeaux Roylene.Champeaux@usdoj.gov,
karen.malikowski@usdoj.gov;
usamn.ecfbankruptcy@usdoj.gov;
Muriel.Holland@usdoj.gov
- Zack A Clement zclement@fulbright.com, arodriguez@fulbright.com
- Barbara Jean D'Aquila bdaquila@fulbright.com, pjackson@fulbright.com

- Angela D. Dodd dodda@sec.gov
- Michael S. Dove mdove@gislason.com,
KGleisner@gislason.com;JBurgau@gislason.com
- Michael Fadlovich michael.fadlovich@usdoj.gov
- William Fisher william.fisher@gpmlaw.com
- Terrence J. Fleming tfleming@lindquist.com, mwilkinson@lindquist.com
- Timothy A. Fusco fusco@millercanfield.com, skoczylas@millercanfield.com
- 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, mckinven.jane@dorsey.com
- Mark J. Kalla kalla.mark@dorsey.com, hanson.leann@dorsey.com
- Douglas W. Kassebaum dkassebaum@fredlaw.com, scharter@fredlaw.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
- David B. Levant dblevant@stoel.com, sljaggers@stoel.com;sea_docket@stoel.com
- James A. Lodoen jlodoen@lindquist.com, gluessenheide@lindquist.com
- John R. McDonald jmcdonald@briggs.com, mjacobson@briggs.com
- Michael L Meyer mlmeyer@ravichmeyer.com
- ANDREW S NICOLL anicoll@jenner.com
- David Bradley Olsen dolsen@hensonefron.com, cfisher@hensonefron.com
- John B. Orenstein jorenstein@rossbizlaw.com, pmau@rossbizlaw.com
- RONALD R PETERSON rpeterson@jenner.com
- Robert Raschke robert.raschke@usdoj.gov
- Larry B. Ricke rickel@srs.net
- Michael E. Ridgway mike.ridgway@usdoj.gov
- James A. Rubenstein rubenstein@moss-barnett.com, montpetitm@moss-barnett.com
- David E. Runck david.runck@fmjlaw.com, Aong.Moua@fmjlaw.com
- BRANDY A SARGENT basargent@stoel.com
- K&L Gates LLP Shea mackenzie.shea@klgates.com, chad.dale@klgates.com
- George H Singer gsinger@lindquist.com, lnorton@lindquist.com
- Sandra S. Smalley-Fleming ssmalley@lindquist.com, bhaberman@lindquist.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 ustpregion12.mn.ecf@usdoj.gov
- Cass Weil weilc@moss-barnett.com

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:

MARGARET M. ANDERSON
FOX HEFTER SWIBEL LEVIN &
CARROLL LLP
200 W MADISON ST STE 3000
CHICAGO, IL 60606

LYNN HAMILTON BUTLER
BROWN MCCARROLL LLP
111 CONGRESS AVE, SUITE 1400
AUSTIN, TX 78701

RICHARD A. CHESLEY
PAUL HASTINGS JANOFSKY & WALKER
191 N WACKER DR 13TH FLR
CHICAGO, IL 60606

MARTIN CROYLE
CROYLE & ASSOCIATES PC
220 BROADWAY
SUITE 204
LYNNFIELD, MA 01940

FAEGRE & BENSON LLP
90 SOUTH SEVENTH STREET
2200 WELLS FARGO CENTER
MINNEAPOLIS, MN 55402~3901

E.J. HARRIS
MARKETSTAR CORPORATION
2475 WASHINGTON BLVD
OGDEN, UT 84401

IKON FINANCIAL SERVICES
BKY ADMINISTRATION
1738 BASS RD
PO BOX 13708
C/O CHRISTINE ETHERIDGE
MACON, GA 31208-3708

JAMES P KAREN
JONES DAY
2727 N HARWOOD ST
DALLAS, TX 75201

DANIEL PHIPPS
AXIS DESIGN
106 WEST BAGDAD AVENUE
ROUND ROCK, TX 78664
ROBERT B. LAMB
PO BOX 45120
SALT LAKE CITY, UT 84145-0120

TIMOTHY S MCFADDEN
LOCKE LORD BISSELL & LIDDELL LLP
111 S. WACKER DR
CHICAGO, IL 60606

CHAD COOLEY
WCD PROPERTY LLC
60 COLUMBUS CIRCLE, 18TH FLOOR
NEW YORK, NY 10023

VAN C. DURRER
SKADDEN ARPS SLATE MEAGHER &
FLOM
300 S. GRAND AVE STE 3400
LOS ANGELES, CA 90071

GREGORY M GORDON
JONES DAY
2727 N HARWOOD ST
DALLAS, TX 75201

RICHARD HETTLER
4818 OVERLOOK LAKE CIRCLE
BLOOMINGTON, MN 55437

IRON MOUNTAIN INFORMATION
MANAGEMENT, INC.
C/O FRANK F. MCGINN, ESQ.
BARTLETT HACKETT FEINBERG P.C.
155 FEDERAL STREET, 9TH FLOOR
BOSTON, MA 02110

KPMG LLP
99 HIGH ST
BOSTON, MA 02110-2371

SOTHEBY'S, INC.
1334 YORK AVE.
NEW YORK, NY 10021

GREGG A. LOWRY
LOCKE LORD BISSELL & LIDDELL LLP
2200 ROSS AVE STE 2200
DALLAS, TX 75201

MASA TOSHI MAEDA
OS ELECTRONICS COMPANY, LTD
3-16-8 SOTOKANDA
CHIYODA-KU, 1010021
TOKYO, JAPAN

RAY MAI
PROVIEW TECHNOLOGY (SHENZHEN)
COMPANY
NORTH BLOCK 23# SHATOUKOK
FREE TRADE ZONE
SHENZHEN, 518081
CHINA

KELLY MUNDORFF
THULE ORGANIZATION SOLUTIONS
6303 DRY CREEK PKWY
LONGMONT, CO 80503

ORACLE USA, INC.
C/O BUCHALTER NEMER
SHAWN M. CHRISTIANSON
333 MARKET ST., 25TH FLOOR
SAN FRANCISCO, CA 94105
ALEXANDRA STEINBERG BARRAGE
MORRISON & FOERSTER
2000 PENNSYLVANIA AVE NW
SUITE 6000
WASHINGTON, DC 20006-71888

TW TELECOM INC
C/O LINDA BOYLE
10475 PARK MEADOWS DR STE 400
LITTLETON, CO 80124

Dated: June 1, 2009

MOSS & BARNETT
4800 WELLS FARGO CENTER
90 SOUTH SEVENTH STREET
MINNEAPOLIS, MN 55402-4129

RAMON M. NAGUIAT
SKADDEN ARPS SLATE MEAGHER &
FLOM
300 S. GRAND AVE STE 3400
LOS ANGELES, CA 90071

PAUL, HASTINGS, JANOFSKY &
WALKER LLP
191 NORTH WACKER DRIVE
30TH FLOOR CHICAGO, IL 60606

JUNICHI UMEHARA
ALPS ELECTRIC COMPANY, LTD
1-7 YUKIGAYA OTSUKAMACHI
OTA-KU, 145-8501
TOKYO, JAPAN

PETER E. KREBS
SKADDEN ARPS SLATE MEAGHER &
FLOM
333 W WACKER DR STE 2100
CHICAGO, IL 60606

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