

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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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

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**NOTICE OF HEARING AND MOTION OBJECTING TO CLAIM NUMBERS 35-1 AND  
36-1 OF PALM BEACH FINANCE II, L.P. IN THE CASE OF PETTERS GROUP  
WORLDWIDE, LLC (08-45258)**

1. Creditors Ritchie Special Credit Investments, Ltd., Rhone Holdings II. Ltd., Yorkville Investment I, L.L.C., Ritchie Capital Structure Arbitrage Trading, Ltd., and Ritchie Capital Management, L.L.C. (together, "Ritchie") respectfully submit this Objection to the Proofs of Claim filed by Palm Beach Finance, L.P. and Palm Beach Finance II, L.P. (together, "Palm Beach"). Ritchie objects to Palm Beach's proofs of claim, and asserts that Palm Beach's vote in the Trustee election for PGW should be disregarded.

2. The Court will hold a hearing on this motion at 9:30 o'clock 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, or as soon thereafter as counsel can be heard.

3. Any response to this Motion must be filed and served by delivery no later than July 10, 2009 which is three (3) days before the time and date set for the hearing (excluding Saturday, Sunday and holidays) or mailed and filed by July 6, 2009 which is seven (7) days before the time set for hearing (excluding Saturday, Sunday and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. The Court has jurisdiction over this matter under 28 U.S.C. §§157 and 1334 Fed. R. Bank. 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. This case is now pending in this Court.

5. This motion arises under Bank. Rule 3007.

6. On April 22, 2009, just minutes before the scheduled election of a Trustee for Petters Group Worldwide, L.L.C. ("PGW"), Palm Beach filed proofs of claim against the PGW estate. (Claim Nos. 35-1 and 36-1.) The proofs list contractual claims against Petter Company, Inc. ("PCI"), but do not list any contractual claims against Petters Group Worldwide, LLC ("PGW"). The only claims against PGW are tort claims for fraud, fraudulent inducement and civil conspiracy, which Palm Beach leveled against "each of the debtors in this jointly-administered Chapter 11 case" seeking "the full amount of all outstanding amounts owed by any entity formerly controlled by Thomas J. Petters," which purportedly total more than \$1 billion. (Claim Nos. 35-1 and 36-1.)

## OBJECTION

7. 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).

8. Palm Beach is disqualified from voting for at least two reasons – its claim against PGW is disputed and it has a materially adverse interest to the creditors of the PGW estate.

### Palm Beach’s Claims are Disputed.

9. Ritchie disputes the validity of Palm Beach’s claim against PGW which, unlike its contract claim against PCI, sounds in fraud and has been asserted in conclusory fashion. Palm Beach asserts claims for fraud, fraud in the inducement and civil conspiracy against all of the debtors, but does not articulate what the “fraud” or “conspiracy” entailed, and offers absolutely no facts, specifics, or any other basis to demonstrate that PGW had a role in any fraud or conspiracy that provides Palm Beach with a valid and enforceable claim against PGW. Ritchie further contends that PGW did not engage in any fraud or conspiracy that would provide Palm Beach with an allowable claim against PGW, and therefore disputes Palm Beach’s proofs of claim. As holders of disputed claims, Palm Beach is not eligible to vote under Section 702(a)(1).

Palm Beach Has A Materially Adverse Interest.

10. 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 (5<sup>th</sup> ed. 2008). These factors strongly indicate that Palm Beach possesses a materially adverse interest to PGW creditors.

11. Palm Beach’s adverse interest lies in its efforts as a contract creditor of PCI to remove assets from the estate of PGW through its tort claims, no doubt because PCI has no appreciable assets. Palm Beach is therefore attempting to satisfy its claims against PCI by invading the estate of another debtor, which imbues Palm Beach with a material 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, a figure several multiples above the total assets in the PGW estate.

WHEREFORE, for the reasons set forth herein, Palm Beach has a disabling, material adverse interest against the other creditors of PGW, and thus its claims do not entitle it to vote for the PGW Trustee.

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

/e/ James M. Jorissen

Dated: June 1, 2009

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

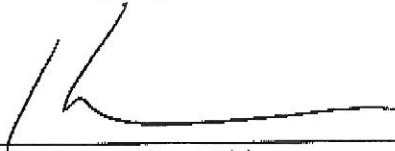
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HOLDINGS II, LTD., YORKVILLE  
INVESTMENT I, LLC, AND RITCHIE  
CAPITAL STRUCTURE ARBITRAGE  
TRADING, LTD.

**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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**MEMORANDUM IN SUPPORT OF  
OBJECTION TO CLAIMS 35-1 AND 36-1**

**INTRODUCTION**

Creditors Ritchie Special Credit Investments, Ltd., Rhone Holdings II. Ltd., Yorkville Investment I, L.L.C., Ritchie Capital Structure Arbitrage Trading, Ltd., and Ritchie Capital Management, L.L.C. (together, "Ritchie") respectfully submit this Objection to the Proofs of Claim filed by Palm Beach Finance, L.P. and Palm Beach Finance II, L.P. (together, "Palm Beach"). Ritchie objects to Palm Beach's proofs of claim, and asserts that Palm Beach's vote in the Trustee election for PGW should be disregarded.

## ARGUMENT

### I. STANDARD FOR CLAIM OBJECTION

Under 11 U.S.C. § 502(a), a proof of claim filed in a bankruptcy proceeding "is deemed allowed unless a party in interest . . . objects." *In re Oriental Rug Warehouse*, 205 B.R. 407, 409 (Bankr. D. Minn. 1997). A properly filed proof of claim constitutes prima facie evidence of the validity and the amount of the claim. *Id.*, at 409-10 (citing Fed. R. Bankr. P. 3001(f)). In the event an objection is made to a proof of claim, the objecting party must produce evidence to rebut the claimant or the claimant will prevail. *Id.*, at 410 (citing *Gran v. Internal Revenue Serv. (In re Gran)*, 964 F.2d 822, 827 (8th Cir. 1992)). If, however, the objecting party brings forth evidence rebutting the claim, then the claimant must produce additional evidence to prove the validity of the claim by a preponderance of the evidence. *Id.* In other words, once an objection is made to the proof of claim, the ultimate burden of persuasion as to the claim's validity and amount rests with the claimant. *Id.* (citing *In re Harrison*, 987 F.2d 677, 680 (10th Cir. 1993); *In re Allegheny Intern., Inc.*, 954 F.2d 167, 173-74 (3rd Cir. 1992)).

In this case, Ritchie has succeeded in transferring the burden in this matter to Palm Beach.

Section 502(b)(1) of the Code provides that a claim shall not be allowed in bankruptcy if it "is unenforceable against the debtor and property of the debtor, under any agreement or applicable law . . ." *Id.* (citing 11 U.S.C. § 502(b)(1)). Therefore, a claim against the bankruptcy estate will not be allowed if the same claim would not be enforceable against the debtor outside of bankruptcy. *Id.* (citations omitted).

Palm Beach's Claims are not allowable under bankruptcy law or state law.



**CONCLUSION**

WHEREFORE, for the reasons set forth herein, Palm Beach has a disabling, material adverse interest against the other creditors of PGW, and thus its claims do not entitle it to vote for the PGW Trustee.

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

/e/ James M. Jorissen

Dated: June 1, 2009

By \_\_\_\_\_  
James M. Jorissen, #262833  
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CAPITAL STRUCTURE ARBITRAGE  
TRADING, LTD.

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Chapter 11 Cases  
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**UNSWORN CERTIFICATE OF SERVICE**

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

***Notice of Hearing and Motion Objecting to Claim Numbers 35-1 and 36-1 of Palm Beach Finance II, L.P., Memorandum in Support of Objection to Claims 35-1 and 36-1; and Proposed Order Dissallowing Claim Filed by Palm Beach Finance, L.P.***

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
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- Richard D Anderson randerson@briggs.com
- Daniel C. Beck dbeck@winthrop.com, tcooke@winthrop.com
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- US Trustee ustpreion12.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:

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ALEXANDRA STEINBERG BARRAGE MORRISON & FOERSTER 2000 PENNSYLVANIA AVE NW SUITE 6000 WASHINGTON, DC 20006-71888	JUNICHI UMEHARA ALPS ELECTRIC COMPANY, LTD 1-7 YUKIGAYA OTSUKAMACHI OTA-KU, 145-8501 TOKYO, JAPAN
TW TELECOM INC C/O LINDA BOYLE 10475 PARK MEADOWS DR STE 400 LITTLETON, CO 80124	PETER E. KREBS SKADDEN ARPS SLATE MEAGHER & FLOM 333 W WACKER DR STE 2100 CHICAGO, IL 60606

Dated: June 1, 2009

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

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Chapter 11 Cases  
Judge Gregory F. Kishel

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**ORDER DISALLOWING CLAIM FILED BY PALM BEACH FINANCE, L.P.**

This matter came before the undersigned upon the Motion by the Trustee of the above-named Debtor for an Order disallowing claim numbers 35-1 and 36-1 filed by Palm Beach Finance, L.P. Based upon all the files, records, and proceedings herein, it is hereby

**ORDERED:**

That Ritchie's Motion is granted and Claim Nos. 35-1 and 36-1 filed by Palm Beach Finance, L.P. is disallowed in its entirety.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Gregory F. Kishel