

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

**Jointly Administered under  
Case No. 08-45257**

Petters Company, Inc., et al.,

Court File No. 08-  
45257

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.)

Court Files No.'s:

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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**APPLICATION TO EMPLOY KEVIN J. SHORT AS  
SPECIAL COUNSEL**

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TO: United Bankruptcy Judge and the United States Trustee and other parties in interest identified in Local Rule 2014-1.

The Chapter 11 Trustee, Douglas A. Kelley (the "Trustee"), hereby submits his application (the "Application") for an order, pursuant to section 327(e) of title 11 of the United States Code (as amended, the "Bankruptcy Code") and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (i) authorizing the Trustee to retain and employ Kevin J. Short ("Mr. Short") as special counsel to the Trustee in the above-captioned Chapter 11 bankruptcy cases *nunc pro tunc* to January 1, 2009, (ii) approving the terms and conditions under which Mr. Short will be retained and compensated and (iii) granting related relief. This

application is filed under Bankruptcy Rules 2014 and 9014 and Local Rule 2014-1. The facts and circumstances supporting this application are set forth in the Unsworn Declaration of Kevin J. Short attached hereto as Exhibit A. In further support of this Application, the Trustee represents as follows:

1. Petters Company, Inc. is a Minnesota corporation, the shares of which are owned and controlled 100% by Thomas J. Petters (“Petters”). PCI, in turn, is the sole member and owns 100% of the membership interests of PC Funding, Thousand Lakes, SPF Funding, PL Ltd., Edge One and MGC Finance, and PAC Funding. The operations and management decisions of PCI and its subsidiary entities were all conducted at the company’s headquarters, located at 4400 Baker Road, Minnetonka, Minnesota. PCI served as a venture capital arm of the Petters enterprises, utilizing single purpose entities to obtain billions of dollars of funding, and purportedly to acquire merchandise for sale to wholesalers and retailers nationwide, which purchase and sale business may have not ever existed.

2. Petters Group Worldwide, LLC is a privately held Delaware limited liability company owned 100% by Petters. The management decisions of PGW and its subsidiary entities were conducted at the company’s headquarters, located at 4400 Baker Road, Minnetonka, Minnesota (the “Petters Headquarters”). PGW has investments in companies worldwide, which include 100% ownership of Polaroid (products include cameras, PoGo™ printers, LCD TVs, portable DVD players), among others. PGW obtained funding from investors/lenders and from PCI.

3. On or about September 24, 2008, the Federal Bureau of Investigation (“FBI”), together with the Internal Revenue Service – Criminal Investigation Division (“IRS”) and the United States Postal Inspection Service (“USPI”) executed a search warrant on the Petters

Headquarters at 4400 Baker Road, Minnetonka, Minnesota, and seized records of PCI, PGW, other subsidiaries, sole owner Petters, and other employees allegedly involved in a fraudulent Ponzi scheme. On October 3, 2008, Petters was arrested on charges of mail and wire fraud, money laundering, and conspiracy. Other executives implicated in this scheme have also been arrested on various charges and have pled guilty to certain crimes.

4. On December 1, 2008, Thomas J. Petters, PCI and PGW were indicted by a federal grand jury on charges of: (i) mail fraud, (ii) wire fraud, (iii) conspiracy to commit mail fraud and wire fraud, (iv) money laundering, and (v) conspiracy to commit money laundering, in violation of 18 U.S.C. §§ 371, 1343, 1956, and 1957. *See* Indictment, Doc. No. 75, *U.S.A. v. Petters et al.*, Case No. 08-cr-00364 (RHK-AJB) (D. Minn.) (the “Indictment”). The indictment alleges that Petters PCI and PGW, as well as their subsidiary entities, to orchestrate a massive Ponzi scheme to defraud investors out of more than \$3 billion.

5. As a result of the investigation and arrests, numerous other employees terminated their employment with the Debtors, including the main law firm providing overall corporate counsel, the two senior in-house counsels, the CEO, the CFO, and others with knowledge of the financial transactions among the several Debtors and with outside lenders and creditors. In addition, several lenders have commenced actions against the Debtors in several courts, both in Minnesota as well as in other states.

6. As a result of the investigation, subsequent arrests and litigation by numerous creditors, Debtors sought relief under Chapter 11 of the Bankruptcy Code in order to reorganize and/or preserve their operations, sell assets and preserve potential avoidance and claims. Debtors continue to operate their businesses as debtors-in-possession. Except for PGW, PCI and the remaining Debtors’ operations will be, for the most part, limited to reconstructing accounting

records and analyzing and pursuing potential claims. PGW will conduct these activities as well, but will also be involved in the ongoing management, operations and sales (as the case may be) of its subsidiaries and their respective assets.

7. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This is a core proceeding. Petitions commencing the Chapter 11 cases of PCI and PGW were filed on October 11, 2008. Petitions commencing the Chapter 11 cases of PC Funding, Thousand Lakes, SPF Funding, PL Ltd., Edge One and MGC Finance were filed on October 15, 2008. The petition commencing the Chapter 11 case of PAC Funding was filed on October 17, 2008. The petition commencing the Chapter 11 case of Palm Beach Finance was filed on October 19, 2008 (collectively, the “Cases”).

8. By order dated October 22, 2008, the Debtors’ Chapter 11 cases were administratively consolidated.

9. On December 24, 2008, Douglas A. Kelley was appointed by the United States Trustee as Chapter 11 Trustee for the administratively consolidated Debtors, and on February 26, 2009, the Court entered an order approving the appointment. The Trustee continues to operate the Debtors’ business pursuant to Section 1108 of the Bankruptcy Code.

10. By this Application, Trustee hereby seeks the entry of an order pursuant to Section 327(e) of the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Rule 2014-1 (i) authorizing the employment and retention of Mr. Short as special counsel to advise the Trustee and represent the Debtors in the Indictment, (ii) approving the terms and conditions contained in that certain engagement letter, dated March 2, 2009 (the “Engagement Letter”), under which Mr. Short will be retained and compensated at the expense of the Debtors’ estates and (iii) granting related relief. A true and correct copy of the Engagement Letter is attached hereto as Exhibit B.

11. Trustee desires to retain Mr. Short as special criminal counsel to represent the Debtors and believes that the best interest of the Debtors' estates would be served by retaining Mr. Short. Mr. Short is experienced in criminal law generally as well as cases presenting similar legal issues as those contained in the Indictment and is agreeable to performing such services according to the terms of the Engagement Letter.

12. Mr. Short has extensive knowledge and experience in the area of criminal law and in matters similar to those presented in the Indictment. Moreover, Trustee has a high degree of trust and confidence in Mr. Short's counsel. Trustee believes Mr. Short's knowledge of the legal issues raised by the Indictment, and experience in criminal matters generally, renders him uniquely qualified to represent the Debtors in connection with the matters described herein. Were Trustee required to obtain different counsel, Trustee believes that he would incur significant cost educating another firm about the Indictment and developing a relationship of trust and confidence. Trustee does not believe that the retention of Mr. Short will be duplicative of services being provided by other attorneys or firms.

13. To the best of Trustee's knowledge, neither Mr. Short nor any of his employees holds or represents any material interest adverse to the Trustee, Debtors, the United States Trustee, employees of the United States Trustee, or their respective attorneys.

14. To the best of Trustee's knowledge, Mr. Short does not hold or represent any material interest adverse to the Trustee or Debtors with respect to matters upon which he is to be engaged. Mr. Short has received no compensation from any party in connection with Debtor's Chapter 11 case.

15. Compensation to Mr. Short will be based on the hourly rates of the attorneys representing Debtors, plus reimbursement of actual, necessary expenses. The current hourly rates of attorneys expected to provide services to the Trustee and the Debtors are as follows:

<u>Name</u>	<u>Hourly Rate</u>
Kevin J. Short	\$400

16. Trustee requests that fee applications for Mr. Short in this case be heard on 90-day intervals. Trustee further requests that he be permitted to pay invoices from Mr. Short as received on a monthly basis, subject to the holdback of 20% of the invoiced fees as provided in Instruction 9 of this Court's published Instructions for Filing a Chapter 11 case. Trustee has been informed by Mr. Short that if any fees and costs are subsequently disallowed by the Court after application for allowance of same, any previously paid, but disallowed fees and costs are subject to disgorgement, that Mr. Short will disgorge the same, and that Mr. Short will have the ability to disgorge the same.

17. Notice of this Application has been provided to the persons and entities listed on the attached Certificate of Service. In light of the nature of the relief requested, Trustee submits that no other or further notice is necessary.

18. No application for the relief requested herein has been made by Trustee/Debtors to this or any other court.

WHEREFORE, Trustee respectfully requests that this Court (i) authorize Trustee to retain and employ Mr. Short as special counsel *nunc pro tunc* to January 1, 2009, (ii) approve the terms and conditions contained in the Engagement Letter and (iii) grant such other relief the Court deems just and equitable.

Dated: ~~April~~ <sup>May</sup> 7, 2009

  
DOUGLAS A. KELLEY,  
CHAPTER 11 TRUSTEE

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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Chapter 11 Cases  
Judge Gregory F. Kishel

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**UNSWORN DECLARATION OF KEVIN J. SHORT**

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I, Kevin J. Short, declare under penalty of perjury that:

1. I am an attorney licensed to practice law in the State of Minnesota and in the United States Federal District Court for the District of Minnesota. I make this Declaration in support of the Application of Douglas A. Kelley, as Chapter 11 Trustee, To Employ Kevin J. Short as Special Counsel (the "Application"). The facts set forth in this Declaration are personally known to me based upon my review of the relevant documents and other pertinent information and, if called as a witness, I could and would testify thereto. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Application.



2. Trustee has requested that I represent and advise Trustee/the Debtors in that certain twenty count criminal indictment captioned as *U.S.A. v. Petters et al.*, Case No. 08-cr-00364 (RHK-AJB) (D. Minn.) (the "Indictment").

3. I may have performed services in the past, and may perform services in the future, in matters unrelated to the Debtors' Chapter 11 cases, for persons that are parties in interest in the Debtors' Chapter 11 cases. As part of my customary practice, I am retained in criminal cases and proceedings involving many different parties, some of whom may represent or be claimants, employees of the Debtors, or other parties in interest in the Chapter 11 cases. I do not perform services for any such person in connection with these Chapter 11 cases and do not have any relationship with any such person, their attorneys or accountants that would be adverse to the Trustee, the Debtors or their estates.

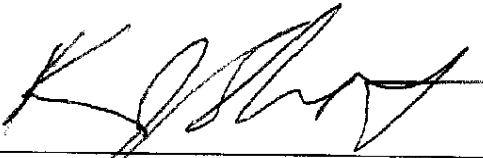
4. To the best of my knowledge, neither I nor any of my employees have any connection with the United States Trustee or employees of the United States Trustee.

5. I will not share any compensation received for services provided to the Trustee/Debtors with any other person or entity, other than my employees.

6. I am not owed any compensation by the Debtors for prepetition services.

7. If at any time during the period of my employment, I discover any facts bearing on the matters described herein, I will supplement the information contained herein to the extent necessary to comply with the Bankruptcy Rules and the Bankruptcy Code.

Dated: April 30, 2009

  
\_\_\_\_\_  
Kevin J. Short

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Chapter 11 Cases  
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**ORDER AUTHORIZING THE EMPLOYMENT OF  
KEVIN J. SHORT AS SPECIAL COUNSEL**

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Upon the application of Douglas A. Kelley, as Chapter 11 Trustee in the above-entitled cases, and it appearing necessary and appropriate that said Trustee/Debtors be represented by Kevin J. Short;

IT IS ORDERED:

1. The employment of Kevin J. Short, 150 South Fifth Street, Suite 3260, Minneapolis, MN 55402 ("Mr. Short"), as special criminal counsel in connection with the matters described in the Application and on the terms described therein, is approved *nunc pro tunc* to January 1, 2009.

2. Mr. Short shall submit regular monthly bills to the Trustee and the Trustee is authorized to pay 80% of Mr. Short's fees and 100% of expenses pending court approval of such fees and expenses pursuant to the procedures contained in Instruction 9(c) of this Court's published Instructions for Filing a Chapter 11 Case.

3. Fee applications by Mr. Short may be heard on 90-day intervals and are subject allowance by the Court and the provisions of 11 U.S.C. §§ 328 and 330 and Local Rules 2016-1.

Dated: \_\_\_\_\_, 2009

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The Honorable Gregory F. Kishel,  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
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Chapter 11 Cases  
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**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 May 7, 2009 she served the following documents:

1. Application to Employ Kevin J. Short as Special Counsel;
2. Unsworn Declaration of Kevin J. Short;
3. Proposed Order Authorizing the Employment of Kevin J. Short as Special Counsel

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