

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

In re: Petters Capital, LLC

Bankr. No. 09-43847-NCD
Chapter 7

Debtor

Randall Seaver, Trustee for Petters Capital, LLC,

Plaintiff,

vs.

Ritchie Capital Management, LLC,
as administrative and collateral agent for
Ritchie Special Credit Investments, Ltd.,
Rhone Holdings II, Ltd., Yorkville
Investments I, LLC, and Ritchie Capital
Structure Arbitrage Trading, Ltd.,

Defendants.

COMPLAINT

Randall Seaver, Trustee for Petters Capital, LLC (“Plaintiff” or “Debtor”), as and for his Complaint against Ritchie Capital Management, LLC (“Ritchie Capital”), as administrative and collateral agent for Ritchie Special Credit Investments, Ltd., Rhone Holdings II, Ltd., Yorkville Investments I, LLC and Ritchie Capital Structure Arbitrage Trading, Ltd. (collectively referred to as “Ritchie Group”), states and alleges as follows:

PARTIES

1. On June 12, 2009 (the “Petition Date”), Debtor filed for protection under Chapter 7 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for

the District of Minnesota (this “Court”), commencing the above-referenced bankruptcy case (the “Bankruptcy Case”). The Bankruptcy Case is currently pending before this Court.

2. Debtor is a limited liability company duly organized and existing under the laws of the State of Delaware and at all times relevant, its principal place of business was located at 4400 Baker Road, Minnetonka, Minnesota 55343. At all times material hereto, Thomas J. Petters, served as Chairman and sole member of the Board of Directors of Debtor and owed Debtor fiduciary duties by virtue of his position with and influence over the company. At all times material hereto, Debtor has been owned by Petters Group Worldwide, LLC (“PGW”) which in turn is owned and controlled by Thomas J. Petters. At all times material hereto, Thomas J. Petters, served as Chairman of the Board of Directors and Chief Executive Officer of PGW.

3. PGW is a corporation duly organized and existing under the laws of the State of Delaware and is a debtor in a Chapter 11 Bankruptcy Case identified as BKY Case No. 08-45258 which is currently pending before this Court.

4. Ritchie Capital is a limited liability company duly organized and existing under the laws of the State of Delaware and, upon information and belief, is a hedge fund that has its principal place of business located at 801 Warrenville Road, Suite 650, Lisle, IL 60532. Ritchie Capital is an initial transferee of the fraudulent, preferential or other avoidable transfers alleged in this Complaint, or a person for whose benefit such transfers were made, or an immediate or mediate transferee of such an initial transferee.

5. Ritchie Special Credit Investments, Ltd. is a Cayman Islands exempt company whose address is c/o Ritchie Capital Management, LLC, 801 Warrenville Road, Suite 650, Lisle, IL 60532 (“Special Credit”).

6. Rhone Holdings II, Ltd. is a Cayman Islands exempt company whose address is c/o Ritchie Capital Management, LLC, 801 Warrenville Road, Suite 650, Lisle, IL 60532 (“Rhone”).

7. Yorkville Investments I, LLC, is a Cayman Islands exempt company whose address is c/o Ritchie Capital Management, LLC, 801 Warrenville Road, Suite 650, Lisle, IL 60532 (“Yorkville”).

8. Ritchie Capital Structure Arbitrage Trading, Ltd. is a Cayman Islands exempt company whose address is c/o Ritchie Capital Management, LLC, 801 Warrenville Road, Suite 650, Lisle, IL 60532 (“Capital Structure”).

JURISDICTION AND VENUE

9. This Court has jurisdiction under 28 U.S.C. §§ 157 and 1334 of the subject matter of this adversary proceeding because the claims asserted herein arise under Chapter 7 of the Bankruptcy Code and are related to a case pending under the Bankruptcy Code before this Court.

10. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(B), (F), (H), and (K).

11. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

NATURE OF THE ADVERSARY PROCEEDING

12. This Adversary Proceeding arises from the orchestrated efforts of Ritchie Capital to cover substantial investment losses and prefer its individual interest at the expense of Debtor, its creditors and other stakeholders.

13. Thomas J. Petters and companies owned and controlled by him, including PGW and Petters Company, Inc. (“PCI” and, collectively, with PGW referred to herein as the “Petters Companies”), obtained investment capital from the Ritchie Group of at least \$189,000,000. The

investment transactions between the Ritchie Group, Thomas J. Petters and the Petters Companies were established as note purchase and sale transactions under which Thomas J. Petters and one or more of the Petters Companies, as sellers of the securities, issued promissory notes to accredited investors.

14. Ritchie Capital serves as administrative agent and collateral agent for investors that purchased the Notes and has authority to act on behalf of the Ritchie Group.

15. The Notes were issued in 2008 and had a stated annual rate of interest equal to either 67% for one, “362.10%” for two and 80% for the rest. The maturity dates on the Notes were extended on one or more occasions, with all accrued interest capitalized and rolled into the original obligations under the Notes. As a result of the amortization and capitalization of accrued interest under the Notes, the outstanding principal balance claimed due by the Ritchie Group under the Notes is purportedly in excess of \$260,000,000 as of October 11, 2008.

18. On or about September 19, 2008, literally days before 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 and seized records relating to certain entities owned by Thomas J. Petters, Ritchie Capital, the Ritchie Group and Thomas J. Petters orchestrated a series of transactions targeted at securing the value of Polaroid and other assets owned or controlled by Thomas J. Petters in a final-hour attempt to shore up, conceal and cover millions of dollars in losses.

19. Polaroid is an operating company with brand value and revenues that is to some degree independent of other businesses and enterprises controlled by Thomas J. Petters. Ritchie Capital, the Ritchie Group and Thomas J. Petters unfairly used their leverage, information and positions in an attempt to keep the Petters empire afloat and extract value from Polaroid and

other assets through a series of agreements and transfers made to or for the benefit of Ritchie Capital and the Ritchie Group.

20. Upon information and belief, Thomas J. Petters violated his fiduciary duties to Petters Capital and Polaroid, their creditors and other stakeholders in response to demands from Ritchie Capital and the Ritchie Group and in furtherance of efforts to perpetuate the fraudulent scheme. Petters Capital, in response to Ritchie Capital's and the Ritchie Group's demands, entered into agreements, pledged assets and incurred obligations in favor of Ritchie Capital and the Ritchie Group to cover investment obligations for which Petters Capital received no or inadequate consideration.

21. The transactions, agreements, and transfers that were made to or for the benefit of Ritchie Capital and the Ritchie Group were made in furtherance of the fraudulent scheme for no or less than fair value to Petters Capital and resulted in substantial injury to Petters Capital and the Polaroid companies and their creditors.

22. The Ponzi scheme ultimately collapsed days before or after Ritchie Capital and the Ritchie Group inequitably encumbered value from Petters Capital and other assets owned or controlled by Thomas J. Petters.

23. Petters Capital seeks, among other things, the avoidance and recovery of liens and other assets of Petters Capital fraudulently and preferentially transferred at the direction of Ritchie Capital, the Ritchie Group and Thomas J. Petters shortly before the commencement of the Petters Capital and Polaroid Bankruptcy cases and the disallowance, recharacterization and/or the subordination of claims that Ritchie Capital and the Ritchie Group directly or indirectly asserts, or may assert, against the Petters Capital bankruptcy estate.

26. The liens and claims that Ritchie Capital and the Ritchie Group assert, or may assert, in the Bankruptcy Case are subject to bona fide dispute. Petters Capital brings this Adversary Proceeding Pursuant to §§ 105, 502, 506, 510(c), 544(b), 547, 548, 550, 551 and 1107 of the Bankruptcy Code and the Bankruptcy Rule 7001 et. seq., the Minnesota Uniform Fraudulent Transfer Act, codified at Minn. Stat. § 513.41 et. seq., and if the Court should determine that this action is covered by the laws of other states, Ritchie Capital and the Ritchie Group have violated the fraudulent transfer laws of such other states, and other applicable law, to, among other things, (i) set aside, avoid and recover certain fraudulent and preferential transfers made and obligations incurred to or for the benefit of Ritchie Capital and the Ritchie Group; (ii) declare that the agreements executed by Thomas J. Petters on behalf of Petters Capital in favor of Ritchie Capital and the Ritchie Group and obligations incurred were in breach of fiduciary duties and null and void or otherwise unenforceable; and (iii) disallow, recharacterize and/or subordinate any claims Ritchie Capital asserts or may assert against the bankruptcy estate, on its own account or on account of the Ritchie Group or any other party, to the claims of Petters Capital's general creditors.

FACTUAL BACKGROUND

The Ritchie Capital Investments

27. In February of 2008, Special Credit, Rhone and Yorkville made a series of loans to PGW, the parent company of Petters Capital. The loans are allegedly evidenced by the following promissory notes (the "February Notes") which PGW and Thomas Petters, as joint and several obligors, executed and delivered to the payees specified below:

- a. A \$31,000,000 note payable to Special Credit dated as of February 1, 2008;
- b. A \$31,000,000 note payable to Special Credit dated as of February 4, 2008;

- c. A \$13,000,000 note payable to Yorkville dated as of February 5, 2008;
- d. A \$4,000,000 note payable to Special Credit dated as of February 7, 2008;
- e. A \$12,000,000 note payable to Rhone dated as of February 7, 2008;
- f. A \$5,000,000 note payable to Yorkville dated as of February 15, 2008;
- g. A \$9,000,000 note payable to Special Credit dated as of February 19, 2008; and
- h. A \$16,000,000 note payable to Rhone dated as of February 19, 2008.

True and correct copies of the February Notes are attached hereto as Exhibits 1-8. Each of the February Notes contemplated a substantial rate of return and had a stated annual rate of interest equal to 80%. Upon information and belief, despite the fact that the February Notes were “papered” as only obligations of PGW and Thomas J. Petters individually, every dollar of the proceeds from the invested capital was wired by Ritchie Capital directly into the bank account of PCI.

28. In May 2008, Yorkville and Capital Structure made additional loans to PGW. These loans were evidenced by the following promissory notes (the “May Notes”) which PGW, Thomas J. Petters, and PCI, as joint and several obligors, executed and delivered to the payees as specified below:

- a. A \$4,000,000 note payable to Yorkville dated as of May 9, 2008; and
- b. A \$8,000,000 note payable to Capital Structure dated as of May 9, 2008.

Each of the May Notes matured on May 30, 2008. Each of the May Notes contemplated a substantial rate of return and had a stated annual interest rate equal to 362.10%. True and correct copies of the May Notes are attached hereto as Exhibits 9-10 and made a part hereof.

29. Thomas J. Petters, PGW and PCI had the right and ability under the Operative Agreements to utilize the proceeds from the invested capital under the Notes for such purposes

as they determined in their sole discretion. Upon information and belief, every dollar of the funds invested were initially wired to PCI and then used by PCI to principally satisfy other investors' claims.

30. On or about June 17, 2008, PGW or a Petters affiliate paid off one of the February Notes. The retired Note was in the principal amount of \$9,000,000 and bore "interest" at the rate of 80% for a total return to the investor at pay off of \$11,620,945.97 (of which \$2,620,945.97 represented interest that accrued over the approximate four-month period).

31. The maturity dates for certain of the February Notes and the May Notes were extended on one or more occasions with the entire principal amounts of all Notes, and all accrued and unpaid interest thereon, due and payable on August 31, 2008. On September 19, 2008, Ritchie Capital, the Ritchie Group, PGW, Thomas Petters, and PCI entered into an Extension and Amendment Agreement, pursuant to which the parties agreed, among other things, to extend the maturity of the February Notes and the May Notes to December 19, 2008. A true and correct copy of the Extension and Amendment Agreement, together with related exhibits, is attached hereto as Exhibit 11 and made a part hereof.

33. The Notes (other than the single Note paid off in June) were not paid as required by their terms and were in default as of August 31, 2008.

RITCHIE CAPITAL COLLATERALIZATION

34. Upon information and belief, Ritchie Capital discovered at some point on or before September 19, 2008 that the obligations owed by Thomas J. Petters and the Petters Companies under the Notes involving millions of dollars of investments was in serious jeopardy. Petters Capital and its assets were used by Ritchie Capital, the Ritchie Group and Thomas J. Petters to secure the Notes. Ritchie Capital and the Ritchie Group leveraged their position with

Thomas J. Petters to extract value from business enterprises owned or controlled by him in furtherance of Ritchie Group and Thomas J. Petters' interest and imposed substantial obligations on Petters Capital for which no or inadequate corresponding benefit was conferred.

35. On or about September 19, 2008, Ritchie Capital, the Ritchie Group and Thomas J. Petters and each of the Petters' Companies entered into an Extension and Amendment Agreement under which the parties acknowledged the occurrence of one or more defaults under the Notes and agreed, among other things, to extend the final maturity dates of the Notes for one additional period.

36. Pursuant to the terms and conditions of the Extension and Amendment Agreement and other documents, Ritchie Capital and the Ritchie Group required Thomas J. Petters and the Petters Companies to execute and deliver a number of security agreements under which assets were purportedly pledged in favor of Ritchie Capital and The Ritchie Group in order to extract value and shore up an unsecured or under secured position.

37. The Extension and Amendment Agreement thus called for, among other things, the execution of a Security and Intercreditor Agreement dated as of September 26, 2008, by and among Petters Capital, Ritchie Capital (in its capacity as administrative agent for Special Credit, Rhone, Yorkville and Capital Structure), RWB Services LLC ("RWB"), and TLP, in its capacity as administrative agent for the Ritchie Group and RWB Services LLC. Pursuant to the Security and Intercreditor Agreement, Petters Capital assigned to TLP, for the benefit of the Ritchie Group, Ritchie Capital, and RWB, all of Petters Capital's right, title and interest in and to, and granted to TLP a security interest in, the following promissory notes:

- a. Senior Subordinated Note, in the original principal amount of \$125,000,000, from Polaroid, as maker to Petters Capital as payee, dated as of April 27, 2005, as amended and restated as of September 11, 2008 (“Senior Subordinated Note”);
- b. Amended and Restated Secured Subordinated Term Note, secured and in the original principal amount of \$5,000,000, from Polaroid, as maker to Petters Capital as payee, dated December 15, 2007, as amended and restated as of September 11, 2008 (“Secured Note I”); and
- c. Amended and Restated Secured Subordinated Term Note, secured and in the principal amount of \$5,000,000, from Polaroid, as maker, to Petters Capital as payee, dated December 15, 2007, as amended and restated as of September 11, 2008 (“Secured Note II”).

Ritchie Capital and the Ritchie Group allege that Secured Note I and the Secured Note II are, in turn, secured by all or substantially all of the assets of Polaroid pursuant to the Third Amended and Restated Pledge and Security Agreement dated as of September 26, 2008. A true and correct copy of the Security and Intercreditor Agreement is attached hereto as Exhibit 12 and made a part hereof.

37. The Security and Intercreditor Agreement inappropriately attempts to set forth a comprehensive compelled structure for repaying and collateralizing preexisting investment obligations that were not owed by Petters Capital with revenues and assets owned by Petters Capital. The Agreement purports to, among other things, impose indemnification and other obligations upon Petters Capital, and collateralize millions of dollars of punitive debt associated with the securities transactions among Ritchie Capital, the Ritchie Group and its investors, Thomas J. Petters and the Petters Companies. Any and all assignments, security interests, liens,

claims, encumbrances, conveyances, pledges, transfers and/or obligations, in whole or in part, of any kind set forth in and/or contemplated by the Security and Intercreditor Agreement (and any related financing statements or filings) or otherwise imposed upon Petters Capital for the benefit of Ritchie Capital and/or the Ritchie Group are collectively referred to in this Complaint as the “Transfers.”

38. Petters Capital received no or inadequate benefit of value in exchange for the Transfers.

39. Thomas J. Petters executed and delivered the Extension and Amendment Agreement and the Security and Intercreditor Agreement on behalf of Petters Capital on or within ninety (90) days of the filing of the PGW and Polaroid bankruptcy cases and within one year of the filing of the Petters Capital bankruptcy case.

40. Upon information and belief, the Security and Intercreditor Agreement executed and delivered by Thomas J. Petters on behalf of Petters Capital to Ritchie Capital in connection with the Note transactions was part and parcel of a continuing scheme and conspiracy to defraud creditors. The agreements and transactions contained in the Security and Intercreditor Agreement were designed to extract value from Petters Capital for the benefit of Ritchie Capital and the Ritchie Group at the expense of and detriment to Petters Capital, its creditors and other constituencies.

41. On or about September 26, 2008, the same day Ritchie Capital acquired the benefit of various fraudulent and preferential Transfers consisting of pledges, indemnification obligations, lien commitments, and other self-dealing covenants, Ritchie Capital and its investors declared a default and accelerated all amounts due under the Capital Notes. A true and correct copy of the Notice of Default and demand letter delivered by Ritchie Capital and the Ritchie

Group, its investors to Thomas J. Petters and each of the Petters Companies is attached hereto as Exhibit 13 and made a part hereof.

42. The existence of and obligations imposed by Ritchie Capital and the Ritchie Group upon Petters Capital under the Security and Intercreditor Agreement are burdensome and have impaired Petters Capital's ability to obtain financing and contributed to the current bankruptcy filing.

THE RECEIVERSHIP

43. 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"), based upon claims made of fraud or other wrongdoing on the part of Thomas J. Petters, executed a search warrant and seized records relating to certain entities owned by him, and other employees allegedly involved in a fraudulent Ponzi scheme. On October 3, 2008, Thomas J. Petters was arrested on charges of mail and wire fraud, money laundering, and conspiracy. Other executives and employees implicated in this scheme have also been arrested on various charges and have pled guilty to certain crimes.

44. On October 6, 2008, the Honorable Ann D. Montgomery, United States District Court, District of Minnesota, issued an Order that, among other things, appointed Douglas A. Kelley as Receiver for PGW, PCI, Petters Capital, and other affiliated Petters entities (the "Receiver") in the matter identified as Civil No. 08-5348(ABM/JSM). Pursuant to that Order, and subsequent Orders that have been entered, the Receiver has been vested with the authority to manage and take possession of property, assets, and estates belonging to or in the possession, custody or under the control of the entities under the Receivership.

45. On October 17, 2008, the Receiver, acting in accordance with the authority conferred upon him by the District Court, filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code for PGW, BKY Case No. 08-45258, PCI, BKY Case No. 08-45257, and other affiliated companies for the purpose of preserving value and the status quo, analyzing accounting records, investigating various transactions, transfers and dealings with investors, and, where appropriate, pursuing potential claims.

46. 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 alleges that Petters used PCI and PGW, as well as their subsidiary entities, to orchestrate a massive Ponzi scheme to defraud investors out of more than \$3 billion.

47. The transactions and agreements surrounding the Transfers represent part and parcel of a continuing fraudulent investment scheme, and conspiracy, and are properly voidable for the benefit of the Debtor and other legitimate stakeholders. The Transfers made and obligations incurred were fraudulent and preferential and the results of inequitable conduct on the part of Ritchie Capital, the Ritchie Group and Thomas J. Petters. The Transfers operated to harm the Debtor and the Bankruptcy Estate and should be satisfied and declared void.

COUNT I – FRAUDULENT TRANSFERS

ACTUAL FRAUD – 11 U.S.C. §§ 548(a)(1)(A), 550, 551 AND 1107

48. Petters Capital realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

49. The Transfers represent transfers that were made or obligations that were incurred with actual intent to hinder, delay or defraud a creditor to which the Debtor was or became indebted on or after the date of the Transfers.

50. The Transfers were made to or for the benefit of Ritchie Capital and the Ritchie Group in furtherance of a fraudulent investment scheme.

51. To the extent that Ritchie Capital and the Ritchie Group is not an initial transferee of the Transfers, they are an immediate or mediate transferee of the initial transferee of the Transfers, and cannot satisfy the burden that they took the Transfers for value and in good faith or without knowledge of the void ability of the Transfers.

52. As a result of the foregoing, the Debtor is entitled to judgment pursuant to Bankruptcy Code §§ 548(a)(1)(A), 550(a), 551 and 1107: (a) Avoiding and preserving the Transfers free and clear from any claimed interest of Ritchie Capital and/or the Ritchie Group; (b) Directing that the Transfers be satisfied; (c) Recovering such Transfers or the value thereof, from Ritchie Capital and/or the Ritchie Group for the benefit of the estate of the Debtor; and, (d) Recovering attorneys' fees from Ritchie Capital and the Ritchie Group.

COUNT II – FRAUDULENT TRANSFERS

CONSTRUCTIVE FRAUD – 11 U.S.C. §§ 548(a)(1)(B), 550(a), 551, AND 1107

53. Petters Capital realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

54. At all times material hereto, the Debtor: (a) was insolvent on the dates the Transfers were made or became insolvent as a result of the Transfers; and/or (b) was engaged in businesses or transactions, or was about to engage in businesses or transactions, for which the property remaining with the Debtor after the Transfers were effectuated constituted unreasonably

small capital, and/or (c) at the time of the Transfers, intended to incur, or believed that it would incur, debts that would be beyond their ability to pay as the debts matured.

55. The Debtor received less than a reasonably equivalent value in exchange for the transfers.

56. To the extent that Ritchie Capital and the Ritchie Group is not an initial transferee of the Transfers, they are an immediate or mediate transferee of the initial transferee, of the Transfers, and cannot satisfy the burden that they took Transfers for value or in good faith or without knowledge of the void ability of the Transfers.

57. As a result of the foregoing, the Debtor is entitled to judgment pursuant to Bankruptcy Code §§ 548(a)(1)(B), 550(a), 551 and 1107: (a) avoiding and preserving the Transfers free and clear from any claimed interest of Ritchie Capital and/or the Ritchie Group, (b) directing that the Transfers be satisfied, (c) recovering such Transfers or the value thereof from Ritchie Capital and/or the Ritchie Group for the benefit of the bankruptcy estate of the Debtor, and (d) recovering attorneys' fees from Ritchie Capital and/or the Ritchie Group.

COUNT III – FRAUDULENT TRANSFERS

ACTUAL FRAUD – 11 U.S.C. §§ 544(b), 550(a), 551 AND 1107 & MINN. STAT. § 513.41 ET SEQ. OR OTHER GOVERNING FRAUDULENT TRANSFER LAWS

58. Petters Capital realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

59. At all times material hereto, there was and is at least one or more creditors who have and who hold unsecured claims against the Debtor that was and is allowable under Bankruptcy Code § 502 or that were and are not allowable only under Bankruptcy Code §502(e). The Transfers are avoidable under applicable non-bankruptcy law by a creditor holding an unsecured claim in the bankruptcy case.

60. The Transfers represent transfers that were made or obligations that were incurred with actual intent to hinder, delay or defraud a creditor to which the Debtor was or became indebted on or after the date of the Transfers.

61. The Transfers were made to or for the benefit of Ritchie Capital and/or the Ritchie Group in furtherance of a fraudulent investment scheme.

62. To the extent that Ritchie Capital and the Ritchie Group is not an initial transferee of the Transfers, they are an immediate or mediate transferee of the initial transferee of the Transfers, and cannot satisfy the burden that they took the Transfers for value or in good faith or without knowledge of the void ability of the Transfers.

63. As a result of the foregoing, the Debtor is entitled to judgment pursuant to Bankruptcy Code, Section §§ 544(b), 550(a), 551 and 1107, Minn. Stat. § 513.41 et seq., and if the Court should determine that this action was governed by the laws of other states, the fraudulent transfer laws of such other states: (a) avoiding and preserving the Transfers free and clear from any claimed interest of Ritchie Capital and/or the Ritchie Group (b) directing that the Transfers be set aside, (c) recovering such Transfers or the value thereof from Ritchie Capital and/or the Ritchie Group for the benefit of the bankruptcy estate of the Debtor, and (d) recovering attorneys' fees from Ritchie Capital.

COUNT IV – FRAUDULENT TRANSFERS

CONSTRUCTIVE FRAUD – 11 U.S.C. §§ 544(b), 550(a), 551 AND 1107 & MINN. STAT. § 513.41 ET SEQ. OR OTHER GOVERNING FRAUDULENT TRANSFER LAWS

64. Petters Capital realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

65. At all times material hereto, there was and is at least one or more creditors who held or who hold unsecured claims against the Debtor that was or is allowable under Bankruptcy

Code § 502 or that was and is not allowable only under Bankruptcy Code § 502(e). The Transfers are avoidable under applicable non-bankruptcy law by a creditor holding an unsecured claim in the bankruptcy case.

66. At all times material hereto, the Debtor: (a) was insolvent on the dates the Transfers were made or became insolvent as a result of the Transfers, and/or (b) was engaged in businesses or transactions, or was about to engage in businesses or transactions, for which the property remaining with the Debtor after the Transfers were effectuated constituted unreasonably small capital, and/or (c) at the time of the Transfers, intended to incur, or believed that it would incur, debts that would be beyond its ability to pay as the debts matured.

67. The Debtor received less than a reasonably equivalent value in exchange for the Transfers.

68. To the extent that Ritchie Capital and the Ritchie Group is not an initial transferee of the Transfers, they are an immediate or mediate transferee of the initial transferee of the Transfers, and cannot satisfy the burden that they took the Transfers for value or in good faith or without knowledge of the void ability of the Transfers.

69. As a result of the foregoing, the Debtor is entitled to judgment pursuant to Bankruptcy Code §§ 544(b), 550(a), 551 and 1107, Minn. Stat. § 513.41 et seq., and if the Court should determine that this action is governed by the laws of other states, the fraudulent transfer laws of such other states: (a) avoiding and preserving the Transfers free and clear from any claimed interest of Ritchie Capital and/or the Ritchie Group, (b) directing that the Transfers be set aside, (c) recovering such Transfers or the value thereof from Ritchie Capital and/or the Ritchie Group for the benefit of the bankruptcy estate of the Debtor, and (d) recovering attorneys' fees from Ritchie Capital.

COUNT V – PREFERENTIAL TRANSFER

11 U.S.C. §§ 547, 550, 551 AND 1107

70. Petters Capital realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

71. To the extent that any of the Transfers were made by Petters Capital to or for the benefit of Ritchie Capital and/or the Ritchie Group, in whole or in part, on account of a pre-existing obligation, such Transfers were made by the Debtor on account of an antecedent debt owed before such Transfers were made.

72. The Transfers were made while Debtor was insolvent.

73. The Transfers were made either on or within ninety (90) days before the date of the filing or the Petition commencing the Bankruptcy Case or on or within one (1) year before the date of the filing of the Petition commencing the Bankruptcy Case and the creditor was an insider.

74. The Transfers enabled Ritchie Capital and/or the Ritchie Group to receive more than they would receive if the Bankruptcy Case was a case under Chapter 7 of the Bankruptcy Code, the Transfers had not been made and they received payment of such debt to the extent provided for by the provisions of the Bankruptcy Code.

75. As a result of the foregoing, the Debtor is entitled to judgment pursuant to Bankruptcy Code §§ 547(b), 550(a), 551 and 1107: (a) avoiding and preserving the Transfers free and clear from any claimed interest of Ritchie Capital and/or the Ritchie Group, (b) directing that the Transfers be set aside, (c) recovering such Transfers or the value thereof from Ritchie Capital and/or the Ritchie Group for the benefit of the bankruptcy estate of the Debtor, and (d) recovering attorneys' fees from Ritchie Capital and/or the Ritchie Group.

COUNT VI – DISALLOWANCE

11 U.S.C. § 502(b) AND (d)

76. Petters Capital realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

77. To the extent that Ritchie Capital and/or the Ritchie Group asserts it is entitled to any claim in this Bankruptcy Case, directly on its own account or for its investors' account or indirectly by virtue of any other agreement with Thomas J. Petters or any of his affiliates, such claim is unenforceable against the Debtor or the property of the Debtor under any Agreement or applicable law and should be disallowed under 11 U.S.C. § 502(b).

78. Further, any claim of an entity from which property is recoverable under 11 U.S.C. § 550 or held by transferee or a transfer that is avoided under 11 U.S.C. §§ 544, 547 or 548 shall be disallowed by the Court unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable.

79. As a result of the foregoing, to the extent that Ritchie Capital and/or the Ritchie Group asserts or may assert it is entitled to any claim in this Bankruptcy Case, directly on their own account or for their investors' account, or directly by virtue of any other agreement with Thomas J. Petters or any of his affiliates, all such claims are and should be in all things disallowed.

COUNT VII – LIEN AVOIDANCE

11 U.S.C. §§ 506(c)

80. Petters Capital realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

81. To the extent that a lien secures a claim against a debtor that is not an allowed secured claim, such lien is void in accordance with 11 U.S.C. §506(d).

82. As a result of the foregoing, Petters Capital seeks an Order declaring and ordering that any lien asserted by Ritchie Capital and/or the Ritchie Group directly on their own account or for their investors' account or indirectly by virtue of any other agreement with Thomas J. Petters or any of his affiliates, is invalid and void.

COUNT VIII – EQUITABLE SUBORDINATION

11 U.S.C. § 510(c)

83. Petters Capital realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

84. Thomas J. Petters, in breach of his fiduciary duties to Petters Capital and the Petters Companies, misused his position to perpetuate an ongoing criminal enterprise and fraudulent conduct. The Transfers were designed to prop up millions of dollars of investments in favor of Ritchie Capital and the Ritchie Group and disguise or perpetuate a multi-billion dollar Ponzi scheme. The Security and Intercreditor Agreement, which was imposed by Ritchie Capital and the Ritchie Group and delivered in the midst of the schemes' collapse, is the product of self-dealing and breaches of fiduciary duty owed to the Debtor and its creditors.

85. Ritchie Capital and the Ritchie Group used the leverage and position they had with Thomas J. Petters for their own benefit on or about the final days before and during the Ponzi scheme orchestrated by Thomas J. Petters collapsed. In connection therewith, Ritchie Capital and the Ritchie Group knowingly, purposefully and systemically subjected Petters Capital and its assets to liens, claims, encumbrances, contractual obligations and liabilities for which Petters Capital obtained no or inadequate value. The participation by Ritchie Capital and

the Ritchie Group with Thomas J. Petters in such transactions, together with the substantial burdens imposed on Petters Capital by Ritchie Capital and the Ritchie Group in the Security and Intercreditor Agreement, constitutes inequitable conduct that conferred an unfair advantage on Ritchie Capital and the Ritchie Group to the detriment of other stakeholders and resulted in injury to Petters Capital and its creditors.

86. As a result of the foregoing, to the extent that Ritchie Capital asserts it is entitled to any claim in the Bankruptcy Cases, directly on its own account or for the account of the Ritchie Group or indirectly by virtue of any other agreement with Thomas J. Petters or any of his affiliates, justice demands that all such claims are and should be appropriately equitably subordinated to the claims of creditors in this Bankruptcy Case and the Debtors hereby request that release.

87. The equitable subordination of any such claims would be consistent with the principles and purposes of the Bankruptcy Code and its policies.

COUNT IX – RECHARACTERIZATION

11 U.S.C. § 105

88. Petters Capital realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

89. The obligations represented by the securities labeled as promissory notes and purported to be secured under the Security and Intercreditor Agreement on the eve of bankruptcy represent in substance and economic reality capital investments. Notes in the approximate principal of \$189 million were sold to investors that made investment representations and warranties that are customary in securities offerings. The Notes contemplated short-term, high-yield equity returns. Indeed, the Notes carried interest rates as high as 362.10%. The total

obligations owed by Thomas J. Petters, PGW and/or PCI to Ritchie Capital and the Ritchie Group are with the capitalization of “interest,” purportedly claimed by Ritchie Capital and the Ritchie Group to be in excess of \$260 million as of October 11, 2008.

90. As a result of the foregoing, to the extent that Ritchie Capital asserts it is entitled to any claim in this Bankruptcy Case, directly on its own account or for the account of any member of the Ritchie Group or indirectly by virtue of any other agreement with Thomas J. Petters or any of his affiliates, justice demands that all such claims are and should be appropriately re-characterized as equity in order to facilitate the priority scheme established by Congress in the Bankruptcy Code and the debtor hereby requests that relief.

91. The re-characterization of any such claims would give effect to the parties’ agreements and economic expectations and be consistent with the principals and purposes of the Bankruptcy Code and its policies.

COUNT X – DECLARATORY AND OTHER RELIEF

11 U.S.C. § 105

92. Petters Capital realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

93. The Security and Intercreditor Agreement setting forth the Transfers and other provisions that impose obligations upon Petters Capital should be declared null, void and unenforceable due to, among other things, the fact that such transactions and agreement were imposed by Ritchie Capital and the Ritchie Group and executed by Thomas J. Petters under duress as part and parcel of a fraudulent scheme in which Ritchie Capital and the Ritchie Group does not have clean hands.

94. The Security and Intercreditor Agreement further fails to impose contractual obligations that should be sustained due to a failure of consideration.

95. As a result of the foregoing, the Debtor is entitled to judgment pursuant to Bankruptcy Code § 105 declaring the Security and Intercreditor Agreement to be in all things null, invalid, void and unenforceable.

96. The relief requested in this Count of the Complaint should be construed to also include a request for and declaration with respect to a determination as to the validity, priority and extent of a lien or other interests in property of the Debtor in accordance with Rule 7001(2) of the Federal Rules of Bankruptcy Procedure as well as a request for a declaration relative to equitable subordination and recharacterization as more fully set forth in other Counts of this Complaint.

WHEREFORE, Plaintiff respectfully requests this Court enter judgment in favor of Plaintiff and against Defendants as follows:

A. On Count 1 – Fraudulent Transfers (actual fraud), pursuant to 11 U.S.C. §§ 548(a)(1)(A), 550, 551 and 1107: (a) avoiding and preserving the Transfers free and clear from any claimed interest of Ritchie Capital and/or its investors, (b) directing that the Transfers be set aside, (c) recovering such Transfers for the value thereof from Ritchie Capital and/or the Ritchie Group for the benefit of the estate of the Debtor, and (d) recovering attorneys’ fees from Ritchie Capital and The Ritchie Group;

B. On Count 2 – Fraudulent Transfers (constructive fraud), pursuant to 11 U.S.C. §§ 548(a)(1)(B), 550(a), 551 and 1107: (a) avoiding and preserving the Transfers free and clear from any claimed interest of Ritchie Capital and/or The Ritchie Group, (b) directing that the Transfers be set aside, (c) recovering such Transfers or the value thereof from Ritchie Capital

and/or the Ritchie Group for the benefit of the bankruptcy estate of the Debtor, and (d) recovering attorneys' fees from Ritchie Capital and/or The Ritchie Group;

C. On Count 3 – Fraudulent Transfers (actual fraud), pursuant to 11 U.S.C. §§ 544(b), 550, 551 and 1107, Minn. Stat. § 513.41 eq seq., and if the Court should determine that this action is governed by the laws of other states, the fraudulent transfer laws of such other states: (a) avoiding and preserving the Transfers free and clear from any claimed interest of Ritchie Capital and/or the Ritchie Group, (b) directing that the Transfers be set aside, (c) recovering such Transfers or the value thereof from Ritchie Capital and/or the Ritchie Group for the benefit of the bankruptcy estate of the Debtor, and (d) recovering attorneys' fees from Ritchie Capital and/or the Ritchie Group;

D. On Count 4 – Fraudulent Transfers (constructive fraud), pursuant to 11 U.S.C. §§ 544(b), 550, 551 and 1107, Minn. Stat. § 513.41 eq seq., and if the Court should determine that this action is governed by the laws of other states, the fraudulent transfer laws of such other states: (a) avoiding and preserving the Transfers free and clear from any claimed interest of Ritchie Capital and/or the Ritchie Group, (b) directing that the Transfers be set aside, (c) recovering such Transfers or the value thereof from Ritchie Capital and/or the Ritchie Group for the benefit of the bankruptcy estate of the Debtor, and (d) recovering attorneys' fees from Ritchie Capital and/or The Ritchie Group;

E. On Count 5 – Preferential Transfer, pursuant to 11 U.S.C. §§ 547, 550, 551 and 1107: (a) avoiding and preserving the Transfers free and clear from any claimed interest of Ritchie Capital and/or The Ritchie Group, (b) directing that the Transfers be set aside, (c) recovering such Transfers for the value thereof from Ritchie Capital and/or the Ritchie Group for

the benefit of the bankruptcy estate of the Debtor, and (d) recovering attorneys' fees from Ritchie Capital and/or The Ritchie Group;

F. On Count 6 – Disallowance, pursuant to 11 U.S.C. § 502(b) and (d): declaring and ordering that, to the extent that Ritchie Capital assert it is entitled to any claim in these Bankruptcy Cases, directly on its own account or for The Ritchie Group or indirectly by virtue of any other agreement with Thomas J. Petters or any of his affiliates, all such claims are in all things disallowed;

G. On Count 7 – Lien Avoidance, pursuant to 11 U.S.C. §506(d): declaring and ordering that any lien asserted by Ritchie Capital on its own account or for the Ritchie Group or indirectly by virtue of any other agreement with Thomas J. Petters or any of his affiliates, all such liens are invalid and void;

H. On Count 8 – Equitable Subordination, pursuant to 11 U.S.C. § 510(c): declaring and ordering that, to the extent that Ritchie Capital asserts it is entitled to any claim in this bankruptcy case, directly on its own account or for The Ritchie Group or indirectly by virtue of any other agreement with Thomas J. Petters or any of his affiliates, all such claims are and should be appropriately equitably subordinated to the claims of creditors in this bankruptcy case;

I. On Count 9 – Recharacterization, pursuant to 11 U.S.C. § 105: declaring and ordering that to the extent that Ritchie Capital asserts it is entitled to any claim in this bankruptcy case, directly on its own account or for The Ritchie Group or indirectly by virtue of any other agreement with Thomas J. Petters or any of his affiliates, all such claims are and should be appropriately recharacterized as equity in this bankruptcy case;

J. On Count 10 – Declaratory Relief and Other Relief, pursuant to 11 U.S.C. § 105: declaring and ordering the Security and Intercreditor Agreement to be null, void, invalid and unenforceable and granting further declaratory relief;

K. Awarding Plaintiff all applicable interest (including prejudgment and post judgment interest), attorneys’ fees, costs and disbursements in this action; and

L. Granting Plaintiff such other, further and different relief as the Court deems just, proper and equitable.

Dated: September 17, 2010

MASCHKA, RIEDY & RIES

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