

**UNITED STATES BANKRUPTCY COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
FT. LAUDERDALE DIVISION**  
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Case No.: 17-22819-BKC-RBR  
Chapter 11

In re:

FISHERMAN'S PIER, INC.,

Debtor.

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**UNITED STATES TRUSTEE'S EXPEDITED MOTION FOR  
THE APPOINTMENT OF A CHAPTER 11 TRUSTEE  
AND REQUEST FOR AN EXPEDITED HEARING**

**(Expedited Hearing so that it could be heard together with the motion to dismiss  
On December 12, 2017, at 10:00am)**

Guy G. Gebhardt, Acting United States Trustee for Region 21, pursuant to 11 U.S.C. §§ 1104 and 1112,<sup>1</sup> respectfully moves this Court, on an expedited basis, to enter an order appointing a Chapter 11 Trustee, and in support hereof, states:

**BACKGROUND**

1. Pursuant to 28 U.S.C. § 586, the United States Trustee is charged with the administrative oversight of cases commenced pursuant to Title 11 of the Bankruptcy Code. This duty is part of the United States Trustee's responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that the United States Trustee has "public interest standing" under 11 U.S.C. § 307, which goes beyond a mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the United States Trustee as a "watchdog").

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<sup>1</sup> Unless otherwise indicated, all statutory references pertain to title 11 of the United States Code ("Bankruptcy Code").

2. On October 23, 2017, Fisherman's Pier, Inc., filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

3. The Debtor owns real property in Broward County, Florida.

4. The meeting of creditors, pursuant to 11 U.S.C. § 341, was held on and concluded on November 28, 2017.

5. The United States Trustee has not appointed a committee of unsecured creditors as of the date of this motion.

6. On October 27, 2017, Spiro Marchelos, one of the Debtor's shareholders, filed an emergency motion to dismiss the instant case ("Motion to Dismiss") (ECF # 23) as a bad faith filing. The hearing is currently scheduled for an evidentiary hearing on December 12, 2017.

7. After the initial first-day hearings and the 341 meeting of creditors, it has become clear that this case involves solely, or in most part, a shareholder dispute. The record in this case, both at the hearings, and the in the pleadings filed, support that.

#### **RELIEF REQUESTED**

8. By way of this Motion, the United States Trustee seeks the appointment of a Chapter 11 Trustee.

9. The appointment of a trustee in Chapter 11 cases is governed by Section 1104, which provides that at any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States Trustee and after notice and a hearing, the court shall order the appointment of a trustee for cause.

10. Furthermore, Section 1112(b)(1) provides that the Court should convert or dismiss a case *unless* the court determines that the appointment of a trustee is in the best interests of the creditors and the estate.

11. Under the facts of the instant case, a Chapter 11 Trustee is the only appropriate party to lead this case, as the Debtor requires an independent fiduciary to guide this case through the Chapter 11 that is otherwise not the current management or shareholders of the Debtor. It is clear that the case will benefit from a third party fiduciary to resolve the shareholder dispute and to take this case through Confirmation.

12. The appointment of a Chapter 11 Trustee would also be in the best interests of creditors and the estate, as further evidenced by the facts plead herein and the record in this case.

13. Pursuant to Bankruptcy Rules 2002 and 9006, the United States Trustee requests that the notice be shortened and that an expedited hearing be scheduled for December 12, 2017, so that it can be heard at the same time as the motion to dismiss.

WHEREFORE, the United States Trustee respectfully requests (i) the entry of an order mandating the appointment of a Chapter 11 Trustee; and (ii) for such other and further relief as may seem just and proper, including requiring the Debtor to immediately pay to the United States Trustee all United States Trustee fees due.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and that I am in compliance with all additional qualifications to practice before this Court as set forth in Local Rule 2090-1(A).

Dated: December 7, 2017

Guy G. Gebhardt  
Acting United States Trustee  
Region 21

/s/ Damaris Rosich-Schwartz  
Damaris Rosich-Schwartz  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of this Motion was sent on December 7,

2017 as follows:

Stephen C Breuer	<a href="mailto:stephen@moffa.law">stephen@moffa.law</a>
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William N. Platzer  
6-- N Pine Island Rd #470  
Plantation, FL 33324

All creditors as listed on the Creditor Mailing Matrix

Dated: December 7, 2017.

Guy G. Gebhardt  
Acting United States Trustee  
Region 21

/s/ Damaris Rosich-Schwartz  
Damaris Rosich-Schwartz, Esq.