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**ATTORNEYS FOR THE HONORABLE PHILLIP JOURNEY,
 ROSCOE B. MARSHALL, JR., ESTHER SCHNEIDER, AND OWEN MILLS**

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 DALLAS DIVISION**

IN RE:	§ Chapter 11
	§
NATIONAL RIFLE ASSOCIATION OF AMERICA and SEA GIRT LLC	§ Case No. 21-30085-hdh11
	§
	§
Debtors ¹	§ Jointly Administered

MOTION FOR THE APPOINTMENT OF A MEMBER COMMITTEE

Phillip Journey (“Journey”), Roscoe B. Marshall, Jr. (“Marshall”), Esther Schneider (“Schneider”), and Owen “Buz” Mills (“Mills”) (collectively, the “Movants”), pursuant to §§ 105(a), 1102(a)(2), and 1109(a) of title 11 of the United States Code (the “Bankruptcy Code”) hereby file this motion (the “Motion”) for the entry of an order directing the appointment of an official committee to represent the members of the National Rifle Association of America (the “NRA”). In support of the Motion, Movants respectfully state as follows:

¹ The last four digits of the Debtors’ taxpayer identification numbers are: 6130 (NRA) and 5681 (Sea Girt). The Debtors’ mailing address is 11250 Waples Mill Road, Fairfax, Virginia 22030.

I.
PRELIMINARY STATEMENT

The members of the NRA deserve a prominent voice in these bankruptcy proceedings. As the primary financial backers and beneficiaries of the NRA’s mission, they stand to gain—and lose—the most from these proceedings. Yet, amidst all of the turmoil that has consumed these bankruptcy cases since their inception, the members have largely been sidelined with effectively no representation, save and except for the Movants named herein. Moreover, it is Movants who have borne the economic brunt of funding that representation and who have been forced to fundraise from the very same members who the NRA exists to serve, all in an effort to protect the membership’s rights. In essence, the Movants, and those members and donors contributing to Movants’ efforts, are double-paying to protect the very institution they comprise and support.

That does not need to be, nor should it be, the case here on these facts and these circumstances. The NRA is by all accounts solvent, and thus “equity” is in a position to receive a return. In these bankruptcy proceedings of a non-profit entity, the only interested parties who fulfill the role of equity are the members, especially given that millions of them are eligible to elect and attend meetings of the board of directors, support the NRA financially through dues and donations, and receive many of the core benefits of the non-profit’s activities. Although solvent companies in bankruptcy with equity value are rare, bankruptcy courts have appointed equity committees in such circumstances to advocate for the interests of equity holders. Similarly, bankruptcy courts have also appointed specialized creditor committees where necessary to represent unique creditor bodies, such as tort victims. In light of this precedent and the statutory authority identified below, Movants believe that this case presents an exceedingly unique set of circumstances—a solvent nonprofit with nationwide membership that is championing an important public mission defending

the Second Amendment rights of its members that is nevertheless in bankruptcy due to unusual political factors—whereby a member committee should be appointed.

There are multiple groups that represent parties who may hold similar viewpoints as those of the NRA's members, and whose interests may align at numerous points both in the past and on potential future issues. None of those parties, however, have interests that will always align with that of membership/equity. The Movants do not want to duplicate any of the efforts of those parties where their interests align, but they do want a vehicle and means to adequately represent the members. In addition to the financial viability of the NRA, the members deserve a voice with respect to protecting the mission they have supported for over a century. An official committee of members will be best positioned to protect and advocate for such NRA mission-critical issues. The Official Committee of Unsecured Creditors ("UCC") is primarily focused on the Debtors' financial solvency and operations for the benefit of its creditor constituency. The Movants respect that and will not seek to interfere with those roles, but merely to advise on those efforts and supplement that role where appropriate, such as where there are potential conflicts of interest by Committee members. On the other end of the spectrum, while having filed motions based on the same facts as Journey's motion for an examiner, the respective attorneys general of New York and the District of Columbia are actively seeking to dismantle the NRA. Meanwhile, the Debtors' current management are the targets of allegations of wrongful conduct, mismanagement, and extensive litigation, thus like the UCC, there is a potential conflict of interest between equity/members and current management. Even the current board of directors of the NRA is potentially conflicted due to these allegations of past misconduct and lack of oversight. In fact, the Board's inaction has required Movants to independently become involved in these cases in furtherance of their fiduciary duties and their personal dedication to the NRA and its purposes. Despite their best efforts, however, Movants believe that an official committee is now required to provide adequate

representation of the NRA membership and their unique interests. Accordingly, Movants request the appointment of an official committee to represent the 5 million members of the NRA.

II.
JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code §§ 105(a), 1102(a)(2), and 1109(a).

III.
RELIEF REQUESTED

2. Movants request that the Court enter an order directing the United States Trustee (the “UST”) to form an official committee of members of the NRA (the “Member Committee”) and appoint representatives to serve on the Members Committee in order to adequately represent the NRA’s membership.

IV.
BACKGROUND

3. Movants are each current and/or former members of the NRA’s Board of Directors. Journey is an endowment life member, donor, director, and volunteer of the NRA. Marshall is a current benefactor, life member, donor, and director. Mills is a current member and director, and Schneider is a benefactor life member and former director. Movants are also creditors of the Debtors holding either liquidated and/or contingent unliquidated claims.

4. The NRA is a not-for-profit corporation organized under the New York Not-For-Profit Corporation Law and is a tax-exempt entity. It has approximately 5 million members and its

programs reach millions more, including firearm safety, promotion, awareness, and other related issues.

5. The NRA is governed by a 76-member board of directors directly elected by its members. Members pay annual or lifetime dues and also provide financial contributions.

6. The NRA advocates more generally on gun-related issues, and is affiliated with certain § 501(c)(3) public charities and a § 527 political action committee. The NRA also contains the NRA Institute for Legislative Action to advocate for legislation on behalf of its members and gun owners more broadly. The NRA is also a recognized non-governmental organization with the United Nations.

7. On January 15, 2021, the Debtors filed their petitions for relief under the Bankruptcy Code.

8. On February 4, 2021, the UST appointed the UCC.

9. On February 8, 2021, Journey filed his *Motion for Appointment of Examiner* [Docket No. 114] (the “Examiner Motion”), which is set to be heard starting on March 29, 2021. The Examiner Motion was originally set for hearing on March 9, 2021, but was continued at the request the NYAG to be heard with the Dismissal Motions.

10. The Attorney General of the State of New York (the “NYAG”) [Docket Nos. 155 and 156], Ackerman McQueen, Inc. (“AMc”) [Docket No. 131], and the Attorney General for the District of Columbia (the “DCAG”) [Docket No. 214] subsequently each filed either motions or joinders requesting the dismissal of, or alternatively, the appointment of a chapter 11 trustee for, the Debtors’ chapter 11 bankruptcy cases (collectively, the “Dismissal Motions”). The Dismissal Motions are likewise set to be heard starting on March 29, 2021.

11. To date, no proposed chapter 11 plan or disclosure statement has been filed and no significant sale motion has been filed.

V.
ARGUMENT

12. Section 1102(a)(2) of the Bankruptcy Code provides that “[o]n request of a party in interest, the court may order the appointment of . . . committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States trustee shall appoint any such committee.” 11 U.S.C. § 1102(a)(2). Section 1102 does not define “adequate representation,” but the prior precedent in this District, in addition to cases outside this District interpreting § 1102, generally consider the factors set forth:

- (i) whether the debtor is likely to prove solvent;
- (ii) whether equity is adequately represented by stakeholders already at the table;
- (iii) the complexity of the debtors’ cases;
- (iv) the likely cost to the debtors’ estates of an equity committee; and
- (v) the extent the debtor’s shares are widely held and actively traded.

See In re Pilgrim’s Pride Corp., 407 B.R. 211, 216, n. 13 (Bankr. N.D. Tex. 2009); *see also Tuesday Morning Corp.*, No. 20-31476-hdh (Bankr. N.D. Tex. Sep. 18, 2020), Order Directing the Appointment of a Committee of Equity Security Holders, Docket No. 892.

13. In addition, § 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

14. Finally, § 1109(a) of the Bankruptcy Code states that any “party in interest . . . may raise and may appear and be heard on any issue in a case under this chapter.”

15. Pursuant to the statutory authority granted to the Court by these Bankruptcy Code provisions, and in light of the extraordinary circumstances giving rise to these proceedings, Movants believe there is ample cause for the appointment of a Member Committee.

A. The Members of the NRA Are Effectively Equity Holders for Purposes of § 1102.

16. The membership of the NRA operates as the equity of the non-profit organization, and therefore the Court should consider them as such in evaluating whether they have adequate representation in the Debtors' bankruptcy cases under 11 U.S.C. § 1102(a)(2). Movants acknowledge that the NRA's members are not equity holders in the literal sense of the term, especially considering the definitions set forth in 11 U.S.C. §§ 101(16) and 101(17). However, for the reasons set forth below, in the absence of any other residual interest holder, and for the limited purposes of analyzing adequate representation, the Court should treat the NRA members as equity holders.

17. The NRA's members display many of the indicia of equity ownership. First, they maintain control over corporate governance through their rights to (1) nominate and elect the NRA's board of directors, (2) petition for the removal of officers and directors, and (3) attend all meetings of the board of the directors, the NRA's Executive Committee, and any standing or special committees (other than executive sessions). Second, the NRA must hold an annual meeting of members and the members themselves may call a special members meeting. Third, the members are obligated under the NRA's bylaws "to assist in every feasible manner in promoting the objectives of the [NRA]". Fourth, the members must pay annual dues or lifetime dues which provide the financial liquidity for the NRA's operations, and members receive documentary evidence of their membership. Fifth, the members are the primary recipients of value from the Debtors' operations and programming. Given these hallmarks of ownership, Movants should be considered equity holders for purposes of § 1102(a)(2). *See, e.g., In re E. Me. Elec. Coop., Inc.*, 121 B.R. 917 (Bankr. D. Me. 1990) (finding that members of an electricity cooperative were equity holders despite not "hold[ing] equity security as that term is commonly understood" and denying appointment of equity committee only due to lateness of request).

18. Alternatively, even if the Court declines to treat the NRA's members as equity holders for purposes of § 1102(a)(2), Movants would still request the appointment of a Member Committee pursuant to §§ 105(a), 1102(a)(2), and 1109(a) to ensure that the membership as a whole can participate in the NRA's bankruptcy proceedings.

B. The NRA's Solvency is Not Disputed.

19. The first factor strongly supports the appointment of a Member Committee, as the Debtors are financially solvent. Prior judicial analysis on this factor has merely focused on whether the debtors "appear to be hopelessly insolvent." *In re Williams Commc'ns Group, Inc.*, 281 B.R. 216 (Bankr. S.D.N.Y. 2002); *In re Emons Indus., Inc.*, 50 B.R. 692, 694 (Bankr. S.D.N.Y. 1985). "[T]here is no clear litmus test" in determining a debtor's solvency. *Williams Commc'ns*, 281 B.R. at 220. Instead, it is a "practical conclusion, based on a confluence of factors." *Id.* at 221.

20. Here, the Debtors' solvency has not been challenged by any party. To the contrary, the Debtors' financial health has been used in the Dismissal Motions against them as a basis to dismiss the cases. *See* Dismissal Motions, Docket Nos. 131 and 156.

21. The Debtors' solvency is supported by their schedules of assets and liabilities in which they report assets valued at over twice their liabilities. *See* Am. Summary of Assets and Liabilities for Non-Individuals, Docket No. 286. Moreover, there have been no allegations of cash flow issues or other financial problems that would indicate any sort of economic duress.

22. The Debtors' ample financial solvency will allow the NRA to not only continue paying its creditors, but more importantly, to continue offering its programs, advocating on Second Amendment issues, and operating in the ordinary course for the benefit of its members and the public at large. Similar to a for-profit company that successfully returns value to its shareholders, the NRA is financially positioned to provide significant value to its members.

C. The NRA Members Are Not Adequately Represented.

23. The second factor likewise provides support for the appointment of a Member Committee. There are no parties and counsel already involved in these cases that speak for the unique interests of the NRA members. Given this lack of representation, a Member Committee should be appointed to provide a voice to this important constituency.

24. Generally, a debtor's officers and board of directors acts for the equity security holders. Once a company becomes insolvent or files for bankruptcy protection, the officers and directors still owe a fiduciary duty to equity holders. *See, e.g., Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 355 (1985). Upon commencement of a bankruptcy case, however, the board's fiduciary duty is extended to the creditors, and the focus of the debtor's directors and officers will be the reorganization itself and the interests of other constituents. *Id.*; *see also* 7 Collier on Bankruptcy ¶ 1102.03 (16th ed. 2020) (observing that the officers and directors' primary focus during a bankruptcy case "will generally be on reorganizing the debtor and it would be distracting and inappropriate for them to be looking out for the interests of stockholders at the expense of creditors.").

25. In addition to now focusing on the bankruptcy cases and the interests of all other interested parties, the Debtors' officers in these proceedings are particularly inattentive to the interests of members. The NYAG, the DCAG, and AMc have each filed the Dismissal Motions premised on allegations of extensive wrongdoing by the Debtors' management, and Journey himself has sought an examiner to investigate these allegations. Thus, not only are the Debtors' officers required to focus on this ongoing litigation and the bankruptcy case as a whole, but the allegations themselves—fraud, dishonesty, insider dealing, and gross mismanagement—strongly indicate that the Debtors' current management are inadequate representatives for the members.

26. Likewise, the current board of directors for the NRA has not presented a unified front on behalf of the NRA members. As a result, Journey and the other Movants have been required to personally expend and raise funds in the exercise of their fiduciary obligations as well as their personal interests as members. But they cannot go it alone. The costs are simply too great. In furtherance of these same fiduciary duties and in light of the size and complexity of these cases, Movants are seeking a Member Committee to more fully and properly represent the interests of the NRA's 5 million members.

27. Moreover, the interests of the Debtors' secured and unsecured creditors and the UCC are markedly different from those of the NRA membership. *See, e.g., Pilgrim's Pride*, 407 B.R. at 218-19 (“[I]t is hardly likely that the UCC or the Banks will be disposed to value Debtors so liberally that equity may be sure to receive its due.”); *see also In re Saxon Indus., Inc.*, 29 B.R. 320, 321 (Bankr. S.D.N.Y. 1983) (holding that unsecured creditors' committees and equity committees “are separate and distinct entities with the members of the unsecured creditors and equity creditors class possessing variant priorities and interests with respect to their relationship with the debtor”). Secured and unsecured creditors and the UCC are disposed to protect and maximize their recoveries and ensure only the Debtors' ongoing financial viability. The interests of the NRA's members, however, extend well beyond financial interests and instead include the NRA's charitable and non-profit missions as well as the benefits of the NRA's operations with respect to its Second Amendment advocacy.

28. Finally, the attorneys general for New York and the District of Columbia have each staked a position that Movants believe is antithetical to the interests of the NRA's members.²

² Although Movants appreciate that both the NYAG and the DCAG are seeking to act in the public interests of their respective populations, in each case, they are overtly seeking to terminate the NRA.

Movants strongly believe that the outright dismantling of the NRA would not be in the interests of its members or the public at large.

29. Given the unique circumstances of these bankruptcy cases, only a Member Committee will be able to adequately represent and provide a voice for the interests the NRA's members. Without giving them a voice through an official committee, the NRA's members will not have a seat at the negotiation table or be in a position to adequately express their views about the future of the NRA.

D. The Debtors' Bankruptcy Cases are Highly Complex.

30. The third factor, the complexity of the Debtors' cases, clearly points to the need and justification for a Member Committee. *See, e.g., Pilgrim's Pride*, 407 B.R. at 220 (noting that the more complex that a bankruptcy case is, the more difficult it is for management to protect the interests of equity security holders).

31. The NRA itself is a large, national, and prominent non-profit institution with over 5 million members, multiple channels of operation, and an extensive local presence across the nation.

32. The NRA has been involved in significant and complex litigation for years involving its management and the NYAG as well as other parties.

33. In addition, these bankruptcy proceedings present many novel issues surrounding the reorganization of a non-profit entity and is already proving to be fast-paced and with complex bankruptcy and non-bankruptcy issues.

34. The many layers of complexity and conflicting interests between and among the various parties in the NRA's bankruptcy cases dictate that a Member Committee be appointed.

E. The Costs of a Member Committee Can be Reasonable.

35. The fourth factor, the likely costs to the Debtors' estates of a Member Committee, can be regulated from the outset to provide members with the necessary representation while avoiding duplication with other parties' efforts. As this Court noted when it appointed an equity committee in *Tuesday Morning Corp.*: “[T]he likely cost to the Debtors' estates of an official equity committee, does not lean heavily for or against the appointment of an equity committee . . . [because] the appointment of an equity committee will obviously add to the administrative expenses in these cases, but it could also streamline the efforts of the shareholders and make them more efficient.” *Tuesday Morning Corp.*, No. 20-31476-hdh (Bankr. N.D. Tex. Sep. 18, 2020), Order Directing the Appointment of a Committee of Equity Security Holders, Docket No. 892 at p.6.

36. The NRA's members are effectively the only unrepresented parties here, and while concerns regarding the additional expense associated with the formation of an official committee are worth consideration, “[c]ost alone cannot, and should not, deprive . . . security holders of representation.” *In re McLean Indus., Inc.*, 70 B.R. 852, 860 (Bankr. S.D.N.Y. 1987). Instead, the Court should employ a balancing test to weigh the cost of an equity committee against concerns regarding adequate representation. *See, e.g., In re Pilgrim's Pride*, 407 B.R. at 221. Once the need for adequate representation is established, “the burden shifts to the opponent of the motion [to appoint an official committee] to show that the cost of the additional committee sought significantly outweighs the concern for adequate representation and cannot be alleviated in other ways.” *In re Beker Indus. Corp.*, 55 B.R. 945, 949 (Bankr. S.D.N.Y. 1985).

37. Nevertheless, the Court can certainly impose such conditions it deems necessary to avoid any unnecessary duplication of work and to quell any concerns about rampant billing by any counsel or professionals to the equity committee. That was the approach adopted in *Pilgrim's*

Pride. See *Pilgrim's Pride*, 407 B.R. at 221-222 (court's ability to limit functions of an equity committee, request a budget, and review retention and fee application satisfied concerns regarding cost associated with equity committee). Here, the benefits of a Member Committee to protect the unique residual interests of the NRA's membership clearly outweigh the cost.

F. The Broad Reach of the NRA's Membership and Advocacy Merits a Committee.

38. The fifth factor lends support for the appointment of a Member Committee. The NRA is a nationally prominent non-profit organization that directly represents over 5 million individuals across the United States and its advocacy reaches even more. The wide extent of its membership and the NRA's role in both local and national policy-making therefore provides strong rationale for the formation of a Member Committee.

VI.
RESERVATION OF RIGHTS

39. Movants reserve all of their rights, claims, defenses, and remedies, including, without limitation, the right to amend, modify, or supplement this Motion, to seek discovery, and to raise additional statements at the hearing on this Motion.

VII.
CONCLUSION

40. Movants respectfully request that the Court enter an order, substantially in the form attached hereto: (i) directing the UST to form an official committee of members of the NRA and appoint representatives to serve on the Members Committee in order to adequately represent the NRA's membership; and (ii) granting Movants such other and further relief as is just and proper.

Dated: March 26, 2021

Respectfully submitted by,

/s/ M. Jermaine Watson

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**ATTORNEYS FOR THE HONORABLE
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OWEN MILLS**

CERTIFICATE OF CONFERENCE

I hereby certify that on March 25, 2021, I contacted counsel to the Debtors and counsel to the UCC to discuss this Motion. I was informed by counsel to the Debtor that the Debtor is considering the relief requested in the Motion and takes no position at this time. As of the time of filing of the Motion, the UCC had not responded with respect to the Motion.

/s/ Joshua N. Eppich

I hereby certify that on March 25, 2021, we contacted Lisa Lambert of the United States Trustee's office to discuss this Motion. On March 26, 2021, Ms. Lambert informed us that the United States Trustee declined to direct a member committee at this juncture.

/s/ Clay M. Taylor and M. Jermaine Watson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 26, 2021, a copy of the foregoing document was served on all parties requesting service via the Court's ECF system.

/s/ J. Robertson Clarke
J. Robertson Clarke