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MAR 13 2007

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

ALLIED HOLDINGS, INC., *et. al.*

Debtors.

CASE NOS. 05-12515 through 05-12526
and 05-12528 through 05-12537
Jointly Administered

CHAPTER 11

JUDGE MULLINS

ORDER

THIS MATTER is before the Court on the Renewed Motion for Order Directing the Appointment of an Official Committee of Equity Security Holders Pursuant to Section 1102(a)(2) of the Bankruptcy Code (“the Motion”, Doc. No. 2143) filed by Virtus Capital LP, Hawk Opportunity Fund, LP, Aspen Advisors, LP, Sopris Capital Advisors, LLC, and Armory Advisors (collectively, the “Movants”). On January 24, 2007 and February 5, 2007, the Court conducted an evidentiary hearing regarding the Motion (the “Hearing”).

The Movants seek the appointment of an official committee of equity security holders (an “Equity Committee”) in these cases to represent the interests of the holders of publicly traded shares of Allied Holdings, Inc. (collectively, the “Shareholders”). The Motion is supported by Guy W. Rutland, III; Guy W. Rutland, IV; and Robert J. Rutland (collectively, “the Rutland Family”). The Motion is opposed by Yucaipa American Alliance Fund I, LP, Yucaipa American Alliance (Parallel) Fund I LP, and certain of their respective affiliates (collectively, “Yucaipa”), the Official Committee of Unsecured Creditors (the “Creditors’ Committee), and the United States Trustee. While Allied Holdings, Inc. (“AHI”) and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”) have taken a neutral position to the appointment of an Equity Committee, they deny Movants’ claim that Debtors are not adequately represented and further consider it premature to evaluate whether Debtors are

“hopelessly insolvent”. This is Movants second motion seeking the appointment of an Equity Committee. A motion seeking such relief was filed by the Rutland Family on August 30, 2005 (the “First Motion”). The Movants filed joinders with respect to the First Motion and the Court conducted an evidentiary hearing on January 24, 2006. On February 28, 2006, the Court entered its Order denying the First Motion (the “February Order”, Doc. No. 1176).

The Bankruptcy Code provides that “[o]n request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders.” 11 U.S.C. section 1102(a)(2). However, the appointment of an official equity committee “should be the rare exception.” In re Williams Communs. Group, Inc., 281 B.R. 216, 223 (Bankr. D.N.Y. 2002). Proponents of an equity committee have the burden of proof to show that equity holders are not adequately represented and that the costs of the equity committee do not significantly outweigh the benefit. In re Johns-Manville Corp., 68 B.R. 155, 158 (S.D.N.Y 1986). Further, proponents of an equity committee must show that the debtor is not “hopelessly insolvent” because “neither the debtor nor the creditors should have to bear the expense of negotiating over the terms of what is in essence a gift.” In re Emons Industries, Inc., 50 B.R. 692, 694 (Bankr. D.N.Y. 1985). As stated in the February Order, the Court is willing to revisit the appointment of an Equity Committee “if additional evidence supports the conclusion that Debtors are not ‘hopelessly insolvent’ and there are additional indications that the Shareholders are no longer being adequately represented.”

At the Hearing, counsel for all interested parties presented arguments and evidence in support of their respective positions. Movants called Robert Jackson Rutland (“Mr. Rutland”), chairman of AHI’s board of directors and officer of AHI, to testify on the issue of “lack of adequate representation”. The Rutland family founded AHI more than 70 years ago and collectively own approximately 30% of AHI outstanding common stock. According to his

testimony, Mr. Rutland has been affiliated with AHI for over 42 years. As will be discussed, Mr. Rutland testified that he supported the appointment of an Equity Committee because he thought such a committee could help in maximizing Debtors' value. Movants also called Michael Jonathon Henkin, managing director in the investment banking department of Jefferies Group, Inc., ("Mr. Henkin") to testify on the issue of whether Debtors were "hopelessly insolvent". Mr. Henkin testified that he believed that Debtors were not hopelessly insolvent based on his expert opinion of Debtors' future value which he projected using the standard valuation methodologies of: (1) comparable company analysis, (2) comparable merger and acquisition analysis, and (3) discounted cash flow analysis with respect to Debtors' November 2006 projections, which assumed certain labor concessions by the International Brotherhood of Teamsters (the "IBT"). The Creditors' Committee and Yucaipa called James Leeland Doak, a director at Miller Buckfire & Company, ("Mr. Doak") to testify on the issue of hopeless insolvency and his opinion of Mr. Henkin's analysis. Mr. Doak expressed concerns with Mr. Henkin's analysis. In addition to concerns regarding Mr. Henkin's application of the standard valuation methodologies and his accompanying sensitivity analysis, Mr. Doak testified that it was premature to value the Debtors before a plan of reorganization was drafted that considered whether the Debtors and the IBT had agreed to reduce labor costs under the subject collective bargaining agreement (the "CBA").

At this time, Movants have failed in their burden to prove that Shareholders are not being adequately represented. In determining whether shareholders are being adequately represented, courts look to factors such as: (1) the number of shareholders, (2) the complexity of the case, and (3) whether the cost of an additional committee significantly outweighs the concern for adequate protection of the equity holders. Johns-Manville, 68 B.R. at 159-60. Overall, Movants offer insufficient support that the costs of an Equity Committee will not outweigh the benefits. Mr. Rutland testified that he supported the appointment of an Equity Committee because: (i) he thought it would be helpful regarding "deliberations of value" and (ii)

he was concerned that Yucaipa, the Creditors' Committee and the IBT were not interested in protecting the interests of old equity. However, Mr. Rutland did not testify that he believed that Debtors' management and professionals have been stymied in fulfilling their duties to Shareholders or that Debtors have abdicated their responsibilities to manage the Debtors' reorganization to Yucaipa as charged by Movants. A thorough review of Mr. Rutland's testimony reveals that Mr. Rutland understands that one of his primary responsibilities as a member of the board of directors is to "protect" Shareholders. Mr. Rutland further testified that he believes that other members of the board understand this responsibility. In fact, upon direct examination, Mr. Rutland stated that the board regularly meets about once a month to discuss AHI, and it was his belief that the board was doing a "good job" of representing Shareholders. Mr. Rutland also testified on cross-examination that the members of the board of directors have full access to financial information regarding AHI, and that he and the rest of the board of directors have been taking into account the interests of Shareholders in making decisions.

Further, AHI's board of directors collectively hold over 39% of AHI's outstanding shares. While Movants argued that the Rutland Family members serving on the board were potentially conflicted in their fiduciary duties to Shareholders, case law has held that insider-shareholders are "just as interested in maintaining value as is the smallest public investor." Victor v. Edison Bros. Stores (In re Edison Bros. Stores), 1996 U.S. Dist. LEXIS 13768, at *15 (D. Del. 1996) (affirming the order of the bankruptcy court denying the appointment of an equity committee because, *inter alia*, the court found that shareholders interests were adequately represented by a board of directors that held a 35% equity interest). The Court cannot conclude that Shareholders are not being adequately represented by AHI's board of directors, the Debtors' officers, the Debtors' attorneys and the Debtors' other professionals.

Because Movants have failed to show that Shareholders are not being adequately represented, it is not necessary at this time for the Court to evaluate the issue of whether Debtors

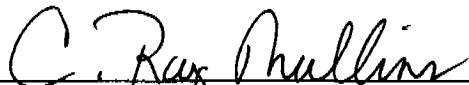
are not “hopelessly insolvent”.

IT IS ORDERED that the Motion be and is hereby **DENIED**.

The Court reserves the right to enter supplemental findings regarding this matter.

The Clerk’s Office is directed to serve a copy of this Order upon the Debtors, Debtors’ Counsel, the United States Trustee, and all other parties in interest.

IT IS SO ORDERED, this 13 day of March, 2007.



C. RAY MULLINS
UNITED STATES BANKRUPTCY JUDGE