

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

RIVERSIDE DIVISION

In re:) Case No. 6:07-17941-PC
)
NATIONAL R.V. HOLDINGS, INC., a) Chapter 11
Delaware corporation; and)
NATIONAL R.V., INC., a) Jointly Administered with
California corporation,) Case No. 6:07-17937-PC
)
) Date: February 19, 2008
) Time: 10:30 a.m.
) Place: United States Bankruptcy Court
) Courtroom # 303
Debtors.) 3420 Twelfth Street
Riverside, CA 92501

MEMORANDUM DECISION

The Ad Hoc Committee of Equity Holders (the “Ad Hoc Committee”)¹ seeks an order directing the United States trustee to appoint an Official Committee of Equity Security Holders pursuant to § 1102(a)(2) of the Code.² National R.V. Holdings, Inc. (“NRVH”), National R.V., Inc. (“NRV”), the Official Committee of Unsecured Creditors (the “Creditors’ Committee”), and the United States trustee (“UST”) oppose the request on the grounds that the appointment of such a committee is not necessary to assure adequate representation of the equity security holders. At the hearing, Ali M.M. Mojdehi appeared for the Ad Hoc Committee; Jonathan S. Shenson and David M. Guess appeared for NRVH and NRV; Hamid R. Rafatjoo appeared for the Creditors’ Committee; and Timothy J. Farris appeared for the UST. The court, having considered the Ad

¹ The Ad Hoc Committee consists of Milfam II, L.P., Miller Irrevocable A-4, Millennium Partners, LLC, Michael Cooney, and Barry A. Shaw, Jr., who collectively hold 19% of the common stock of National R.V. Holdings, Inc.

² Unless otherwise indicated, all “Code,” “chapter” and “section” references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 after its amendment by the Bankruptcy Abuse and Consumer Prevention Act of 2005, Pub. L. 109-8, 119 Stat. 23 (2005). “Rule” references are to the Federal Rules of Bankruptcy Procedure (“Fed. R. Bankr. P.”), which make applicable certain Federal Rules of Civil Procedure (“Fed. R. Civ. P.”).

Hoc Committee's motion and the opposition thereto, the evidentiary record, and arguments of counsel, makes the following findings of fact and conclusions of law³ pursuant to Fed. R. Civ. P. 52, as incorporated into Fed. R. Bankr. P. 7052 and made applicable to contested matters by Fed. R. Bankr. P. 9014(c).

I. STATEMENT OF FACTS

On November 30, 2007, NRVH, a Delaware corporation, and NRV, a California corporation, filed voluntary petitions for relief under chapter 11 of the Code. NRVH is a holding company whose principal asset is 100% of the equity in NRV, the operating entity. For approximately 48 years prior to the filing of the petitions, NRVH and NRV (collectively, "the Debtors") designed, manufactured, and marketed "Class A" gas and diesel recreational vehicles ("RVs") at their facility in Perris, California, under various product names, including Dolphin, Pacifica, Sea Breeze, Surf Side, Tradewinds, and Tropi-Cal. At the time of bankruptcy, the Debtors were the ninth largest manufacturer of "Class A" RVs in the country distributing 1,500 RVs annually through 75 dealer locations in the United States and Canada. Shortly before the petition date, the Debtors succumbed to a liquidity crisis which resulted in a 90% workforce reduction and termination of continued operations. Debtors commenced the cases to preserve the value of their remaining assets. The cases have been jointly administered since December 12, 2007.

Debtors do not intend to reorganize. Their objective is to maximize the value of their assets through an orderly and expeditious liquidation. Debtors believe that value for the benefit of the estate can be derived from three sources: (1) the sale of inventory, both finished and unfinished RVs, parts and replacements; (2) the collection of accounts receivable and the sale of furniture, fixtures, and equipment ("FF&E"), intellectual property, and other assets; and (3) the

³ To the extent that any finding of fact is construed to be a conclusion of law, it is hereby adopted as such. To the extent that any conclusion of law is construed to be a finding of fact, it is hereby adopted as such. The court reserves the right to make additional findings and conclusions as necessary or as may be requested by any party.

1 successful prosecution of the Kemlite Litigation.⁴

2 On December 14, 2007, the UST appointed the Creditors' Committee in the NRV case
3 pursuant to § 1102(a)(1). No committee was appointed in the NRVH case. By letter dated
4 January 15, 2008, Mr. Mojdehi, on behalf of the Ad Hoc Committee, asked the UST to appoint
5 an Official Committee of Equity Security Holders in the NRVH case reasoning that NRVH was
6 solvent, the equity security holders were unique and unrepresented, and the cost of an equity
7 security holders' committee would not be unduly burdensome. On January 23, 2008, the
8 Creditors' Committee advised the UST that it opposed the appointment of an equity security
9 holders' committee primarily because the equity security holders were, in the Creditors'
10 Committee's opinion, "out of the money." After considering the Ad Hoc Committee's reply, the
11 UST advised the Ad Hoc Committee, the Creditors' Committee, NRVH, and NRV on January
12 30, 2008, of his decision not to appoint an equity security holders' committee.⁵

13
14 ⁴ On July 28, 2006, NRV filed a complaint against Crane Co. and Crane Composites, Inc., a/k/a
15 Kemlite Company, Inc., seeking not less than \$8 million in compensatory damages, plus punitive
16 damages, attorneys fees and costs, for alleged breach of contract, breach of warranty,
17 misrepresentation, and other causes of action in Case No. EDCV 06-00803 SGL PJWx, styled
18 National R.V., Inc. v. Crane Co., et. al., in the United States District Court, Central District of
19 California, Eastern Division (the "Kemlite Litigation"). Trial of the case commenced on January
20 15, 2008.

21 ⁵ Peter C. Anderson, United States Trustee for Region 16, arrived at his decision in the
22 following manner:

23 In making my decision, I took into account into account the six factors set forth in
24 Mr. Mojdehi's initial letter. I took into account that, at the present time, there is evidence
25 that [NRVH] appears to be insolvent. I took into account that the interests of
26 shareholders appear to be adequately represented at this time by four separate entities: the
27 board of directors, who owe them a fiduciary duty; the insiders, especially those who are
shareholders themselves, who owe equity a fiduciary duty as well; the Official Creditors'
Committee, who has every reason to seek a maximum return on the assets of [NRV] as
well as [NRVH]; and by the efforts of the Ad Hoc Committee itself. I determined that
the case is not large or complex when compared to the reported cases in which equity
security holders' committees have been previously appointed. Further, the cases involve
a liquidation and prosecution of a lawsuit, not a reorganization. I considered that
[NRVH]'s stock is not widely held as there are only "well over 100" shareholders, not the

1 On February 4, 2008, the Ad Hoc Committee moved for an order directing the immediate
2 appointment of an official equity security holders' committee in the NRVH case "to provide
3 equity holders with adequate representation in the chapter 11 process."⁶ The Ad Hoc
4 Committee's Motion was heard on shortened notice and opposed by the Debtors,⁷ Creditors'
5 Committee, and UST. After a hearing on February 19, 2008, the matter was taken under
6 submission.

7 II. DISCUSSION

8 This court has jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 157(a) and
9 1334(b). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O). Venue is
10 appropriate in this court. 28 U.S.C. § 1409(a).

11 Section 1102(a)(1) directs the UST to appoint an unsecured creditors' committee as soon
12 as practicable after entry of the order for relief in a chapter 11 case, and authorizes the UST in its
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15 thousands and tens of thousands of holders in those reported cases in which an equity
16 security holders' committee has been appointed, and almost half of the shares are
17 reported to be owned by approximately six holders. I received no information as to how
18 actively the shares are traded. I concluded that it was at least premature to consider the
19 appointment of an equity security holders' committee in [NRVH] at this time, as given
20 the present status of the case, equity is "still out of the money." I concluded that the cost
21 and delay associated with the appointment of an equity security holders' committee
22 outweighed the cost of exclusive representation for equity security holders. For all of the
23 foregoing reasons, I decided not to appoint an equity security holders' committee at this
24 time.

21 Declaration of United States Trustee, Peter C. Anderson in support of United States Trustee's
22 Opposition to Motion of Ad Hoc Committee for Appointment of Official Committee of Equity
23 Security Holders, p.16, l.15 to p.17, l.6.

24 ⁶ Motion of Ad Hoc Committee of Equity Holders for Appointment of Official Committee of
25 Equity Holders ("Motion"), p.13, l.18-19.

26 ⁷ Debtors requested that the Ad Hoc Committee's Motion be continued for 30 days insisting that
27 the critical question of whether equity was "in the money" hinged upon the outcome of the
Kemlite Litigation.

1 discretion to “appoint additional committees of creditors or of equity security holders as [it]
2 deems appropriate.”⁸ If the UST does not appoint a committee of equity security holders, the
3 court, on the request of a party in interest, may exercise its discretion to order the appointment of
4 an equity security holders’ committee, but only if the appointment of such a committee is
5 “necessary to assure adequate representation . . . of equity security holders” under the facts and
6 circumstances of the case.⁹ The UST insists that its discretionary decision not to appoint an
7 equity security holders’ committee in the NRVH case must be reviewed under an abuse of
8 discretion standard. The court disagrees.

9 Section 1102(a)(2) states plainly that “the court may order the appointment of additional
10 committees . . . if necessary to assure adequate representation” without reference to a standard of
11 review applicable to any prior decision by the United States trustee. See In re Enron Corp., 279
12 B.R. 671, 685 (Bankr. S.D.N.Y. 2003) aff’d sub nom. Mirant Americas Energy Mktg, L.P. v.
13 Official Comm. of Unsecured Creditors of Enron Corp., 2003 WL 22327118 (S.D.N.Y. Oct. 10,
14 2003) (“There is no indication, upon review of the plain language of the statute, that the court is
15 constrained in making such a determination.”); In re McLean Indus., Inc., 70 B.R. 852, 857-58

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17 ⁸ Section 1102(a)(1) states:

18 Except as provided in paragraph (3), as soon as practicable after the order for relief under
19 chapter 11 of this title, the United States trustee shall appoint a committee of creditors
20 holding unsecured claims and may appoint additional committees of creditors or of
equity security holders as the United States trustee deems appropriate.

21 11 U.S.C. § 1102(a)(1) (emphasis added).

22 ⁹ Section 1102(a)(2) provides:

23
24 On 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
25 representation of creditors or of equity security holders. The United States trustee shall
26 appoint any such committee.

27 11 U.S.C. § 1102(a)(2) (emphasis added).

1 (Bankr. S.D.N.Y. 1987) (“Congress sought primarily to take bankruptcy judges out of the
2 appointment process and Congress expressly retained in the bankruptcy courts the ability to
3 decide de novo the question of whether additional committees are necessary to assure adequate
4 representation.”). As the court explained in In re Texaco, Inc.,

5 The issue of adequate representation is one which is ultimately entrusted to the
6 courts to decide upon an application made by a party in interest. This issue is determined
7 on a de novo basis after the administrative task of appointing committees is performed by
8 the United States Trustee. An abuse of discretion standard does not apply with respect to
9 the United States Trustee’s initial exercise of discretion because the concept of adequate
10 representation is a legal issue which must be resolved judicially. Hence, the court’s
11 determination as to the adequacy of representation within the meaning of 11 U.S.C. §
12 1102(a)(2) is not an administrative review because this decision is committed to the court
13 on a de novo basis. There is no requirement under 11 U.S.C. § 1102(a)(2) that an
14 interested party must first submit such a request to the United States Trustee. Therefore,
15 whether or not such a request was first submitted to the United States Trustee, the court
16 must arrive at its own judgment, although the court may consider reasons advanced by
17 the United States Trustee in the event that such a request was previously submitted to the
18 United States Trustee.

19 79 B.R. 560, 566 (Bankr. S.D.N.Y. 1987). Therefore, the court will review the UST’s decision
20 not to appoint an official equity security holders’ committee in the NRVH case, as requested by
21 the Ad Hoc Committee, de novo.

22 The appointment of an additional committee is an extraordinary remedy. In re Dana
23 Corp., 344 B.R. 35, 38 (Bankr. S.D.N.Y. 2006); In re Winn-Dixie Stores, Inc., 326 B.R. 853, 857
24 (Bankr. M.D. Fla. 2005); Enron Corp., 279 B.R. at 685. The party moving for an order directing
25 the appointment of an additional committee has the burden of establishing that it is not
26 adequately represented.¹⁰ Dana Corp., 344 B.R. at 38; Winn-Dixie, 326 B.R. at 857; Enron

27 ¹⁰ The Ad Hoc Committee’s Motion is not supported by a declaration or other evidence. The Ad
Hoc Committee simply requests that the court “take judicial notice of all matters of public record
in the Debtors’ above-captioned chapter 11 cases, including the Debtors’ schedules and
statement of financial affairs.” Motion, p.2, n.2. A court has discretion to take judicial notice of
adjudicative facts, but judicial notice is mandatory “if requested by a party and supplied with the
necessary information.” Fed. R. Evid. 201(c) & (d). In this case, the Ad Hoc Committee did not
supply the necessary information in conjunction with its request for judicial notice.
Furthermore, the court notes that, as of the date of the hearing, there were 54 docket entries in
the NRV case and 258 docket entries in the NRVH case. The Debtors’ schedules and statements
alone exceed 2,700 pages. NRVH’s schedules and statement of financial affairs are 193 pages in

1 Corp., 279 B.R. at 685.

2 “Adequate representation” is not defined by the Code. Winn-Dixie, 326 B.R. at 857; In
3 re Leap Wireless Int’l, Inc., 295 B.R. 135, 137 (Bankr. S.D. Cal. 2003); In re Williams
4 Commc’ns Group, Inc., 281 B.R. 216, 220 (Bankr. S.D.N.Y. 2002). Courts addressing the issue
5 of adequate representation generally consider the following non-exclusive factors: (1) the
6 number of shareholders; (2) the complexity of the case; and (3) whether the cost of the additional
7 committee significantly outweighs the concern for adequate representation. Leap Wireless, 295
8 B.R. at 137; Williams Commc’ns, 281 B.R. at 220; In re Wang Laboratories, Inc., 149 B.R. 1, 2
9 (Bankr. D. Mass. 1992). Other factors that may be considered by the court in determining
10 adequacy of representation include:

- 11 1. Whether the shares are widely held and publicly traded;
- 12 2. The size and complexity of the chapter 11 case;
- 13 3. The delay and additional cost that would result if the court grants the motion;
- 14 4. The likelihood of whether the debtors are insolvent;
- 15 5. The timing of the motion relative to the status of the chapter 11 case; and
- 16 6. Other factors relevant to the adequate representation issue.

17 Matter of Kalvar Microfilm, Inc., 195 B.R. 599, 600 (Bankr. D. Del. 1996). “No one factor is
18 dispositive, and the amount of weight that the court should place on each factor may depend on
19 the circumstances of the particular Chapter 11 case.” Id. at 600-601; see Dana Corp., 344 B.R.
20 at 38. In the final analysis, a court’s decision to order the appointment of an equity security
21 holders’ committee is discretionary and turns on the facts of each case. See Dana Corp., 344

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24 length, and NRV’s schedules and statement of financial affairs total 2,549 pages. “While the
25 court may, in its discretion, take judicial notice of matters of public record, it is not the
26 responsibility of the court to scour the record to make a party’s case for it.” Krol v. North Shore
27 Holdings, Ltd. (In re Sorci), 315 B.R. 723, 728 (Bankr. N.D. Ill. 2004). Therefore, the Ad Hoc
Committee’s request for judicial notice is denied.

1 B.R. at 38; Williams Commc'ns, 281 B.R. at 220; Wang Laboratories, 149 B.R. at 2.

2 The following factors are relevant to the court's analysis in this case: (1) the likelihood of
3 whether the Debtors are insolvent; (2) the size and complexity of the cases; (3) whether the
4 shares are widely held and publicly traded; (4) whether the cost of the additional committee
5 significantly outweighs the concern for adequate representation; and (5) other factors relevant to
6 adequate representation.

7 There is a Likelihood that the Debtors are Insolvent.

8 The principal issue on any motion for the appointment of an equity security holders'
9 committee is whether the debtor is solvent or it appears likely that there will be a substantial
10 return for equity. See Williams Commc'ns, 281 B.R. at 223 ("Such committees should not be
11 appointed unless equity holders establish that (i) there is a substantial likelihood that they will
12 receive a meaningful distribution in the case under a strict application of the absolute priority
13 rule, and (ii) they are unable to represent their interests in the bankruptcy case without an official
14 committee"); In re Emons Indus., Inc., 50 B.R. 692, 694 (Bankr. S.D.N.Y. 1985) (opining that
15 "no equity committee should be appointed when it appears that a debtor is hopelessly insolvent
16 because neither the debtor nor the creditors should have to bear the expense of negotiating over
17 the terms of what is in essence a gift").

18 The Ad Hoc Committee asserts that NRVH's schedules alone indicate equity of at least
19 \$42 million and therefore, a substantial likelihood of a meaningful distribution to equity security
20 holders in the case. In its schedules filed on January 14, 2008, NRVH disclosed personal
21 property valued at \$53,876,748¹¹ and debts totaling \$10,397,395. However, the schedules do not
22 tell the whole story. NRVH's schedules do not accurately identify NRVH's assets or the fair
23 market value of its assets. First, the information contained in NRVH's schedules appears to have

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25 ¹¹ This valuation includes an "Intercompany Receivable from National R.V., Inc." in the amount
26 of \$45,101,873 (the "Inter-company Claim"), but does not include either NRVH's contingent
27 and unliquidated claim made the basis of the Kemlite Litigation or NRVH's patents and
trademarks which were each listed in Schedule B as having an "unknown" value.

1 been drawn from a consolidated balance sheet dated September 30, 2007, which commingled the
2 assets and liabilities of NRV and NRVH. Second, NRVH revealed in paragraph 3(a) of a
3 statement preceding the schedules entitled “Global Notes and Statement of Limitations,
4 Methodology, and Disclaimer Regarding Debtors’ Schedules and Statements” that the property
5 identified in the schedules was valued at “book value” or NRVH’s cost basis for the assets, not
6 market value.¹² Finally, NRVH’s schedules do not accurately reflect the prepetition claims that
7 may ultimately be allowed against NRVH’s assets. For example, Schedule E disclosed 15
8 holders of unsecured priority tax claims totaling \$6,185, but identifies another 89 holders of
9 contingent, unliquidated, and disputed unsecured priority tax claims of an unknown amount.
10 Schedule F lists 12 holders of unsecured nonpriority claims totaling \$747,635, but an additional
11 20 holders of contingent, unliquidated, and disputed unsecured nonpriority claims are scheduled
12 in an unknown amount. The deadline to file proofs of claim does not expire until May 28, 2008.

13 At this time, there is no evidence that Debtors’ collection of accounts receivable and
14 liquidation of its inventory, FF&E, intellectual property, and other assets will put the equity
15 security holders “in the money.” Since the commencement of the case, the Debtors have worked
16 closely with the Creditors Committee to liquidate the assets of the estate expeditiously but in a
17 manner that maximizes value for the estate. A substantial portion of the Debtors’ accounts
18 receivable were collected prior to the creditors’ meeting and used to pay secured creditors and
19 operating expenses. Debtors sold their South Coast Reactive Organic Gas Emission Reduction
20 Credits for approximately \$1.6 million. Nearly \$14.5 million is expected from the sale of the
21 Debtors’ finished and built-out RVs, but the estate may net only \$2.6 million due to claims
22 secured by the RVs and costs associated with the sales. Over \$2.4 million of the sale proceeds
23 will be used to reduce the secured claim of Wells Fargo Bank, N.A. and another \$8.0 million
24 must be set aside to satisfy claims of chassis vendors pending further order of the court.

25
26 ¹² NRVH included a footnote to the total asset value disclosed on the Summary of Schedules
27 which states: “This amount does not include the items where no book value has been liquidated.”

1 Furthermore, the estate has incurred administrative expenses in conjunction with the sale,
2 including nearly \$1.0 million for labor and materials to complete the build-out of at least 61RVs.
3 With respect to the FF&E and raw materials, the Creditors' Committee reports that the highest
4 minimum guaranteed bid secured by the Debtors for the sale of the assets was only \$1.6 million.

5 On the expense side, the Debtors estimate at least \$7 million in administrative claims.
6 And there are a number of unresolved issues. On December 12, 2007, a class action was
7 commenced in Adversary No. 07-01305, styled Henry Caouette v. National R.V. Holdings, Inc.,
8 et. al., in the United States Bankruptcy Court, Central District of California, Riverside Division,
9 for recovery of damages by Henry Caouette and other similarly situated employees of the
10 Debtors in the amount of 60 days' pay and ERISA benefits for alleged violation of the Worker
11 Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101, et. seq., and California Labor
12 Code §§ 1400, et. seq. (the "WARN Act Litigation"). The Creditors' Committee estimates that
13 the Debtors' potential liability in the WARN Act Litigation is \$4 million. Reclamation claims
14 must be resolved and the claims of the chassis vendors must be adjudicated. The Debtors also
15 face a continuing administrative claim for rent in excess of \$258,500 per month if they are
16 unable to exit their leased space in Perris, California, by April 30, 2008.

17 At the time of submission, the issue of whether equity was "in the money" boiled down
18 to whether (and to what extent) the Debtors would be successful in the Kemlite Litigation. On
19 February 26, 2008, the jury returned a verdict in favor of the Debtors for \$3.5 million in damages
20 - \$21.5 million short of the amount sought by the Debtors. Even assuming the verdict is reduced
21 to judgment and paid in full, equity security holders will not be "in the money" given the slim
22 recovery and the contingent fees and costs payable to Debtors' special litigation counsel,
23 O'Melveny & Myers LLP. Based on the foregoing, there is a substantial likelihood that the
24 Debtors are insolvent and that equity security holders will not receive a meaningful distribution
25 in the NRVH case.

1 Debtors' Cases are Not Large or Complex.

2 The jointly administered cases are not large or complex, nor are the interests of creditors
3 and equity security holders so conflicting as to require the appointment of an equity security
4 holders' committee to assure adequate representation. See Williams Commc'ns, 281 B.R. at 222
5 (concluding that "the Creditors' Committee has sufficiently aligned or parallel interests with the
6 Shareholders to preclude the need for an additional committee"). The cases are focused on the
7 expeditious liquidation of assets. Since the commencement of the case, the Debtors have taken
8 action to collect accounts receivable, sell emission credits, and liquidate the inventory of RVs
9 and replacement parts. The sale of substantially all of the Debtors' remaining RVs should be
10 completed in approximately 45 days. Debtors intend to sell the FF&E, excess raw materials, and
11 intellectual property through a liquidator within the next 60 days. The Kemlite Litigation should
12 conclude shortly in view of the \$3.5 million verdict in favor of the Debtors. Once the auction is
13 completed, the attention will turn to claims adjudication and a plan for distribution on account of
14 allowed claims. Equity security holders may receive a distribution if, and only if, funds remain
15 after the payment of administrative expenses and allowed claims.

16 NRVH's Shares are Publicly Traded, But Not Widely Held.

17 NRVH may be a publicly traded company, but it has traded over the counter in the Pink
18 Sheet market since its withdrawal from the OTC Bulletin Board. The Ad Hoc Committee did
19 not provide any evidence establishing that NRVH's shares are actively traded. Nor does it
20 appear that NRVH stock is widely held. There may be "well over 100" equity holders in NRVH,
21 but it is undisputed that 50% of the 10,339,484 outstanding shares of common stock in the
22 company are held by 6 individuals or entities. "Not every case with public shareholders warrants
23 an equity committee." Emons Indus., 50 B.R. at 694.

24 Whether the Cost of an Equity Security Holders' Committee Significantly Outweighs the
25 Concern for Adequate Representation.

26 The Ad Hoc Committee concedes that the court must balance the potential value of an
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1 equity security holders' committee's representation against the administrative costs associated
2 with appointment of the committee.¹³ Wang, 149 B.R. at 3 (stating that the "equation requires a
3 balancing of the cost of the additional committee against the value of the representation to be
4 provided"); In re Beker Indus. Corp., 55 B.R. 945, 949 (Bankr. S.D.N.Y. 1985) (observing that
5 "the appointment of additional committees is 'closely followed by applications to retain attorneys
6 and accountants.'" (citation omitted)). Having determined that the equity security holders will
7 not be "in the money" and thereby receive a meaningful distribution, this factor weighs heavily
8 against the appointment of an official committee of equity security holders in the NRVH case.

9 Other Factors Relevant to Adequate Representation.

10 The Ad Hoc Committee maintains that Debtors' executive officers and directors have
11 little incentive to adequately represent the interests of equity security holders given the fact that
12 collectively they hold not more than 3% of NRVH's common stock. However, this argument
13 ignores the fiduciary obligations of NRVH and NRV, as debtors in possession, to both creditors
14 and equity security holders.

15 When the debtor is a corporation, the debtor in possession's fiduciary obligations to the
16 corporation, its creditors and shareholders, fall upon the officers and directors. See Commodity
17 Futures Trading Comm'n v. Weintraub, 471 U.S. 343, 355 (1985) (stating that "the debtor's
18 directors bear essentially the same fiduciary obligation to creditors and shareholders as would the
19 trustee for a debtor out of possession"); Holta v. Zerbetz (In re Anchorage Nautical Tours, Inc.),
20 145 B.R. 637, 643 (9th Cir. BAP 1992) ("When the debtor is a corporation, corporate officers
21 and directors are considered to be fiduciaries both to the corporate debtor in possession and to the
22 creditors.").

23 Corporate officers, as fiduciaries, must protect and preserve estate assets held in trust for
24 the benefit of creditors. Holta, 145 B.R. at 643; Hirsch v. Penn. Textile Corp. (In re Centennial
25 Textiles, Inc.), 227 B.R. 606, 612 (Bankr. S.D.N.Y. 1998) ("As fiduciaries, the debtor in

26 ¹³ Motion, p.12, l.28 to p.13, l.2.
27

1 possession and its managers are obligated to treat all parties to the case fairly, maximize the
2 value of the estate, and protect and conserve the debtor's property" (internal citations omitted)).
3 In this regard, the Ninth Circuit holds the debtor in possession's corporate officers to the
4 standards of "officers of the court because of their responsibility to act in the best interests of the
5 estate as a whole and the accompanying fiduciary duties." Gumport v. China Int'l Trust & Inv.
6 Corp. (In re Intermagnetics Am., Inc.), 926 F.2d 912, 917 (9th Cir. 1991); see York Int'l
7 Building, Inc. v. Chaney (In re York Int'l Building, Inc.), 527 F.2d 1061, 1068 (9th Cir. 1975)
8 (noting that special masters administering bankruptcy estates "are not acting as private persons,
9 but as officers of the court").

10 The Ad Hoc Committee has the burden to demonstrate the need for adequate
11 representation and there are no facts to suggest that management is not aligned with non-insider
12 equity security holders. The Ad Hoc Committee has not presented any evidence that the
13 Debtors' officers or directors have either breached their fiduciary duties to the equity security
14 holders or are incapable of properly discharging their fiduciary duties in these jointly
15 administered cases.

16 Nor is there evidence to support the Ad Hoc Committee's further contention that the
17 Creditors Committee is bent on disallowing NRVH's Inter-company Claim for the sole purpose
18 of maximizing distributions to the holders of other unsecured nonpriority claims of NRV. The
19 Creditors Committee was appointed by the UST to represent the interests of NRV's unsecured
20 creditors. NRVH is an unsecured creditor of NRV by virtue of the Inter-company Claim. The
21 Creditors' Committee and its members have a fiduciary duty to all creditors represented by the
22 committee, including NRVH. In re Barney's, Inc., 197 B.R. 431, 442 (Bankr. S.D.N.Y. 1996);
23 see Bohack Corp. v. Gulf & Western Indus., Inc., 607 F.2d 258, 262 n.4 (2d Cir. 1979) (stating
24 that a "committee owes a fiduciary duty to the creditors, and must guide its actions so as to
25 safeguard as much as possible the rights of minority as well as majority creditors"). While the
26 committee may be motivated to investigate the inter-company transaction between NRVH and
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1 NRV, there is no evidence that the Creditors' Committee is unable to properly discharge its
2 fiduciary obligations to all of NRV's unsecured creditors, including NRVH, or that the Creditors'
3 Committee has an irreconcilable conflict of interest necessitating the formation of an equity
4 security holders' committee in NRVH for the sole purpose of protecting NRVH's general
5 unsecured claim in the NRV case.

6 III. CONCLUSION

7 In summary, the court finds that the appointment of an official committee under §
8 1102(a)(2) is not necessary at this time to assure adequate representation of NRVH's equity
9 security holders under the specific facts of this case and therefore, the Ad Hoc Committee's
10 Motion should be denied. The Ad Hoc Committee is not without recourse. The Ad Hoc
11 Committee may continue to appear and be heard on any issue in the case. 11 U.S.C. § 1109(b).
12 If the court determines that its work results in a substantial contribution to the estate, the Ad Hoc
13 Committee's actual, necessary expenses may be reimbursed under § 503(b)(3)(D). 11 U.S.C. §
14 503(b)(3)(D); see Leap Wireless, 295 B.R. at 140; Williams Commc'n, 281 B.R. at 223-24.

15 A separate order will be entered consistent with this opinion.

16 Dated: February 29, 2008

17 /s/
PETER H. CARROLL
United States Bankruptcy Judge

NOTE TO USERS OF THIS FORM:

*Physically attach this form as the last page of the proposed Order or Judgment.
Do **not** file this form as a separate document.*

In re NATIONAL R.V. HOLDINGS, INC., Debtor.	CHAPTER <u>11</u> CASE NUMBER RS 07-17941 PC
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**NOTICE OF ENTRY OF JUDGMENT OR ORDER
AND CERTIFICATE OF MAILING**

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

1. You are hereby notified, pursuant to Local Bankruptcy Rule 9021-1(a)(1)(E), that a judgment or order entitled
(*specify*): MEMORANDUM DECISION

was entered on (*specify date*): FEB 29 2008

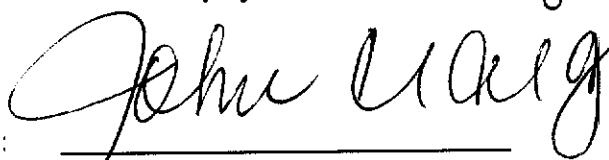
2. I hereby certify that I mailed a copy of this notice and a true copy of the order or judgment to the persons and
entities on the attached service list on (*specify date*):

FEB 29 2008

Dated: FEB 29 2008

JON D. CERETTO
Clerk of the Bankruptcy Court

By:


Deputy Clerk

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