IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	Chapter 11
	§	
PILGRIM'S PRIDE CORPORATION, *et al*.,	§	Case No. 08-45664-DML-11
	§	
Debtors.	§	Jointly Administered

OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION (INCLUDING MEMORANDUM OF LAW) TO MOTION FOR ORDER DIRECTING APPOINTMENT OF EQUITY COMMITTEE PURSUANT TO 11 U.S.C. § 1102(A)(2)

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TO THE HONORABLE D. MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE:

The Official Committee of Unsecured Creditors (the "Committee"), for its Objection to the Motion of Ad Hoc Shareholders Group (the "Ad Hoc Group") for Order Directing the Appointment of an Official Committee of Equity Security Holders Pursuant to 11 U.S.C. § 1102(a)(2) (the "Motion"), respectfully represents:

I. PRELIMINARY STATEMENT

1. In mid-December, just two weeks after the Debtors filed for Chapter 11, Brown Rudnick LLP set the wheels in motion in an attempt to organize a group of shareholders to push for the formation of an official committee of equity security holders which, presumably, Brown Rudnick would represent. As discussed in detail below, over the course of the next few months, Brown Rudnick - - with the assistance of an individual who was acting as a "capper" and looking for a paying role for himself - - formed the so-called Ad Hoc Group and petitioned the United States Trustee for Region 6 (the "U.S. Trustee") to appoint an official committee of equity security holders. The U.S. Trustee denied such requests on the ground that the Debtors' stockholders were "adequately represented." Brown Rudnick filed the present Motion under section 1102(a)(2) of the Bankruptcy Code on behalf of the Ad Hoc Group.

2. Courts have consistently maintained that the appointment of an equity committee is an extraordinary remedy, *In re Nat'l R.V. Holdings, Inc.*, 390 B.R. 690, 695 (Bankr. C.D. Cal. 2008), which "should be the rare exception." *In re Williams Commc'ns Grp., Inc.*, 281 B.R. 216, 223 (Bankr. S.D.N.Y. 2002) An equity committee should be appointed only when it is "necessary to assure adequate representation of stockholders." 11 U.S.C. § 1102(a)(2); *In re Wang Laboratories, Inc.*, 149 B.R. 1, 2 (Bankr. D. Mass. 1992). The Ad Hoc Group bears the burden of establishing that the Debtors' stockholders are not adequately represented by the

Debtors' board of directors (the "Board") and/or management ("Management"). *R.V. Holdings*, 390 B.R. at 695; *see also Albero v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 68 B.R. 155, 158 (S.D.N.Y. 1986); *In re Dana Corp*., 344 B.R. 35, 38 (Bankr. S.D.N.Y. 2006); *In re Enron Corp.*, 279 B.R. 671, 685 (Bankr. S.D.N.Y. 2002).

3. As discussed in detail below, the Ad Hoc Group has not demonstrated, and cannot demonstrate, that the Debtors' stockholders are not adequately represented in these cases. Rather, the Ad Hoc Group relies on conclusory and self-serving statements that equity holders are not adequately represented and that "conflicts" exist such that the Board and Management cannot adequately represent stockholders. All of the Ad Hoc Group's allegations are contradicted by the evidence - - members of the Board and Management indisputably testified that they are eminently aware of their fiduciary duties to stockholders and presently are, and believe that they will continue to, adequately represent stockholders throughout the Debtors' reorganization. Further, there exist no conflicts whatsoever which would in any way disable the Board and Management from adequately representing the Debtors' stockholders. If there is one thing that the Debtors' Chief Restructuring Officer (the "CRO"), William Snyder, is vehement about, it is that Bo Pilgrim is focused and determined to maximize value and return for PPC stockholders.

4. The Ad Hoc Group's "fall back position" is akin to the approach a third grader might take: because creditors have their own official committee, stockholders should have an official committee, too. The Ad Hoc Group's flawed "reasoning" has no legal support and the case law under section 1102(a)(2) is clear that such fallacious "reasoning" is not, and cannot be, a basis for the appointment of an equity committee under section 1102(a)(2) of the Bankruptcy

Code. *See Williams*, 281 B.R. at 222 (shareholders need not be "exclusively represented," just adequately represented).

5. The present Motion is not about "adequate representation" of stockholders. Rather, Brown Rudnick and certain individuals and/or "representatives" of the Ad Hoc Group engaged in illegal, unethical, and improper actions to attempt to form and solicit support for an official equity committee for the principal purpose of generating fees and income for themselves - - ***not*** because stockholders were not "adequately represented." Their actions have tainted, undermined the integrity of, and made an utter mockery of the committee formation process. It also seems clear from the evidence that Bo Pilgrim was actively involved in the formulation of the Ad Hoc Group and the pursuit of an official equity committee. Effectively, Mr. Pilgrim seeks two official "seats at the table" for stockholders when he knows full well that they are adequately represented in these chapter 11 cases.

6. For all of the reasons set forth herein, the Motion must be denied in all respects.

II. BACKGROUND

7. On December 1, 2008, Pilgrim's Pride Corporation ("PPC") and its subsidiaries (collectively, the "Debtors") filed petitions for relief under chapter 11 of title 11, United States Code (the "Bankruptcy Code"). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. The Committee was appointed on December 7, 2008. Neither an examiner nor a trustee have yet to be appointed under section 1104 of the Bankruptcy Code.

9. On February 10, 2009, M&G Investment Management Ltd. ("M&G"), a British holder of the Debtors' common stock (the "PPC Common Stock"), requested that the U.S. Trustee appoint an official committee of equity security holders. The U.S. Trustee denied that

request on March 16, 2009 because it believed that the Debtors' stockholders were adequately represented. On March 20, 2009, Brown Rudnick filed the Motion on behalf of the so-called Ad Hoc Group. The details of the solicitation process that led to the filing of the Motion are set forth below and in the Committee's evidentiary submissions.

III. ARGUMENT AND AUTHORITIES

A. Appointment of an Equity Committee is An Extraordinary Remedy and Not Warranted Here

10. Section 1102(a)(2) of the Bankruptcy Code provides, in pertinent part, 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 equity security holders***" 11 U.S.C. §1102 (a)(2) (emphasis added).

11. As discussed above, the appointment of an equity committee is "an extraordinary remedy" and should be "the rare exception." *R.V. Holdings*, 390 B.R. at 695; *Williams*, 281 B.R. at 223. As observed by the court in *Williams*, "the statutory focus of section 1102(a)(2) is not whether the shareholders are "exclusively" represented, but whether they are "adequately" represented." 281 B.R. at 222. The Ad Hoc Group cannot meet its burden to demonstrate that the Debtors' stockholders are not adequately represented.[1]

[1] An extraordinary remedy - - the appointment of an official equity committee - - is unnecessary here because stockholders are already well represented in these cases. In the absence of the appointment of an official equity committee funded by the Debtors' estates, stockholders such as the members of the so-called Ad Hoc Group, maintain the right to be heard pursuant to section 1109(b) of the Bankruptcy Code on any issue in this case. To the extent the so-called Ad Hoc Group chooses such course and provides a "substantial contribution" to these cases, it may be reimbursed for its legal fees and costs pursuant to section 503(b)(3)(D) of the Bankruptcy Code. *See* 11 U.S.C. § 503(b)(3)(D); *See also R.V. Holdings*, 390 B.R. at 700 (stating, after denying motion to appoint an equity committee, that the Ad Hoc Group could continue to appear and be heard on any issue in the case, and if the court determined that its work resulted in any substantial contribution to the estate, its actual, necessary expenses could be reimbursed); *Williams*, 281 B.R. at 223-24.

1. *The Shareholders Are Adequately Represented Because The Economic Interests Of The Shareholders, The Board Of Directors, And Management Are Aligned*

12. The interests of PPC stockholders are more than adequately represented by the Board and by Management, which have a fiduciary responsibility to PPC stockholders. *See Commodities Future Trading Comm'n v. Weintraub*, 471 U.S. 343, 355 (1985) (noting that once a company becomes insolvent, the directors still owe a fiduciary duty to the shareholders and that for debtors in possession, the officers of the company are expected to carry out the fiduciary responsibilities of a trustee); *see also R.V. Holdings*, 390 B.R. at 699 (management already owed fiduciary duties to both creditors and equity holders, precluding the need for an equity committee); *In re Leap Wireless Int'l, Inc.*, 295 B.R. 135, 140 (Bankr. S.D. Cal. 2003) (same).

13. The Ad Hoc Group cannot produce any evidence that PPC stockholders are not being adequately represented, and instead relies solely on supposition and insinuation. M&G's 30(b)(6) witness, Joel Klein, testified that he advised M&G, which has virtually no bankruptcy experience,[2] that they were not being adequately represented.[3] Yet, in his deposition, Klein conceded that he had no knowledge whatsoever of the actual facts surrounding the Pilgrim's Pride business or reorganization. Klein was unfamiliar with any of PPC's officers or directors, and knew of no facts that would indicate that Bo Pilgrim, Management and the Board did not want to maximize shareholder value or were not adequately representing stockholders.[4] Mr. Klein had no knowledge of basic, fundamental information concerning the Debtors.[5] Likewise, Michael Willingham - - who (i) posted numerous false and materially misleading statements on

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[2] Deposition Transcript of Joel Klein, April 20, 2009 ("Klein Tr."), 25:13-26:9

[3] *Id.* 28:20-29:18; 32:13-33:16

[4] *Id.* 33:17-36:1

[5] Klein Tr., 11:14-14:6, 29:5-18, 32:13-36:1.

the Debtors' Yahoo message or "chat" board and (ii) wrote a false and misleading letter to the editor of *The Pittsburg Gazette* in an effort to further his own pecuniary interest (and not as a PPC stockholder) - - also could not identify any conflicts or breaches of fiduciary duty by the Board or Management.[6]

14. In their deposition testimony, the Debtors' Board and Management unequivocally stated that they believe that they are presently fulfilling, and can continue to fulfill, their fiduciary duties to stockholders. For example, Dr. Don Jackson (the Debtors' Chief Executive Officer or "CEO") recognized that he owes a continued duty to shareholders, and he is committed to furthering that duty.[7] William Snyder testified that he owed a fiduciary duty to all stakeholders, including stockholders.[8] Keith Hughes (an independent director and member of the audit committee) stated that "every director has a responsibility to represent all shareholders of the company in everything we do."[9] The testimony of the officers and directors has been clear: they understand their duties and can adequately represent the stockholders' interests.[10]

15. In its Motion, the Ad Hoc Group proclaims that the "outside" stockholders should have a committee dedicated "solely" to them because of the likelihood of substantial equity value

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[6] Deposition Transcript of Mike Willingham, April 23, 2009 ("Willingham Tr."), 62:8-10, 62:23-63:24, 84:3-18.

[7] Deposition Transcript of Don Jackson, April 21, 2009 ("Jackson April Tr."), 18:2-14, 20:15-21:20, 23:16-25:7, 29:22-30:4, 39:4-6. Additionally, Dr. Jackson owns over 3 million shares of PPC Common Stock (representing over 4 percent of the outstanding shares). *Id.* at 14:16-19. His stock ownership gives him a strong financial incentive to ensure that equity holders retain value. *Id.* at 18:2-14. Bo Pilgrim confirmed that Dr. Jackson is doing an "excellent job," in part because he is incentivized to retain value in his stock. Deposition Transcript of Lonnie "Bo" Pilgrim, April 24, 2009 ("Pilgrim Tr."), 16:2-8.

[8] Deposition Transcript of William Snyder, April 20, 2009 ("Snyder Tr."), 15:20-16:24, 17:10-12, 17:25-18:15.

[9] Deposition Transcript of Keith Hughes, April 22, 2009 ("Hughes Tr."), 5:23-25, 7:9-12, 11:9-16.

[10] Jackson, Synder, Hughes and Bo Pilgrim all confirm that the officers' and directors' interests are aligned with shareholders. Jackson Tr., 18:2-14; Snyder Tr., 59:20-61:23; Hughes Tr., 14:9-15:8. Pilgrim Tr., 15:13-16:8, 28:17-30:11; 31:16-21, 39:7-16, 44:5-46:5

and conflicts of interest. However, a mere allegation that a conflict exists - - which does not - - is not sufficient to warrant the appointment of an equity committee. As discussed in *Edison*, the appointment of an additional committee under section 1102(a)(2) of the Bankruptcy Code dedicated solely to one interest group is not mandatory and is not what the law requires or fosters. *See In re Edison Bros. Stores, Inc.,* 1996 WL 534853 at *4 (D. Del. Sept. 17, 1996) (stating that "based on the legislative history [of chapter 11 of the Bankruptcy Code], it is clear that Congress recognized the vulnerability of public shareholders in reorganization proceedings and intended to protect them with legislation. Despite this recognition, Congress declined to provide for the mandatory appointment of equity committees in §1102, instead leaving the appointment decision within the discretion of bankruptcy courts based on a case-by-case determination").

16. The district court in Edison affirmed the bankruptcy court's ruling that shareholders' interests would be adequately represented without an equity committee where the debtor's management collectively held 35% of the outstanding shares, which represented a "substantial interest" in the company and incentivized management to maximize the share value. *See Edison*, 1996 WL 534853 at *5 (noting that "[t]he bankruptcy court characterized management's 35% equity interest as a 'substantial interest', which is just as interested in maintaining value as the smallest public investor"). Given these facts and that there are "no facts to suggest that management [was] not aligned with non-insider shareholders," the district court in *Edison* affirmed the bankruptcy court's decision denying the request to appoint an equity committee. *Id.*

17. The facts in the present case go well beyond the facts in *Edison.* Here, the members of the Board and Don Jackson, the Debtors' CEO, collectively own approximately 40%

of the outstanding shares of PPC Common Stock and control over 62% of the voting power.[11] The evidence regarding Bo Pilgrim's alignment of interest with stockholders is undeniably clear. Bo Pilgrim, Senior Chairman of the Board, beneficially owns approximately 25 million shares of PPC Common Stock[12] or approximately 34.2% of the outstanding shares and, pursuant to a voting trust agreement, controls over 60% of the voting power of PPC Common Stock.[13] Mr. Pilgrim testified that his holdings of PPC Common Stock comprise 90% of his net worth and as result, it is in his best economic interest for PPC Common Stock to have value upon emergence from bankruptcy.[14] Mr. Pilgrim stated that the stockholders bought stock because they believed in *him*, and he wanted to see them recover value.[15] Mr. Pilgrim's goal is to see the Debtors turned around so that, in his words, "everybody will win."[16]

18. Further, Don Jackson's bonus and stock grants plainly align him with existing stockholders. On January 27, 2009, this Court entered an Order approving the Debtors' employment agreement with Don Jackson as the new CEO of PPC. Pursuant to this employment agreement, Don Jackson will receive, among other things, (i) an annual salary for each of three years, (ii) a grant of 3,085,656 shares of existing PPC Common Stock (the "Stock Grant"), which represents approximately 4% of the issued and outstanding shares of PPC Common Stock and (iii) a reorganization bonus of $2,000,000. Both the vesting of the Stock Grant and the bonus are

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[11] Dr. Jackson "owns" 4% of the outstanding shares of PPC Common Stock, and Bo Pilgrim beneficially owns in excess of 34% of the outstanding shares of PPC Common Stock. *See* Jackson April Tr., 14:16-19, 18:2-14; Hughes Tr., 14:9-15:8. Bo Pilgrim himself owns 25 million shares of stock. Pilgrim Tr., 10:11-14.

[12] Pilgrim Tr., 8:19-11:11.

[13] Snyder Tr., 59:20-60:7.

[14] Pilgrim Tr., 39:7-39:16.

[15] Pilgrim Tr., 29:2-30:11.

[16] *Id.*

very closely tied to maximizing the value of PPC Common Stock. One half of the Stock Grant will vest upon the occurrence of: (a) the confirmation of a plan of reorganization, and (b) meeting prescribed EBITDAR targets for 2009. Then the other half of the Stock Grant will vest upon: (a) the confirmation of a plan of reorganization, and (b) meeting certain prescribed EBITDAR targets for the last 12 months ending on the last day of the fiscal month of PPC immediately preceding substantial consummation of such plan of reorganization. Mr. Jackson will receive a reorganization bonus of $2,000,000 if PPC meets the following conditions: (a) confirmation of a plan of reorganization, (b) meeting certain prescribed EBITDAR targets for 2009, and (c) annualized operational improvements of PPC and its subsidiaries meet certain financial targets. Clearly, Mr. Jackson's bonus and Stock Grant are closely aligned with and tied to the financial performance of and ultimately, the value of PPC Common Stock, a fact which he acknowledged in his deposition.[17]

19. Given (i) the amount of the ownership stake in PPC Common Stock directly represented on the Board and (ii) that the CEO has a large potential stake, it is indisputable that the Board and Management's economic interests are aligned with stockholders and that they will work to maximize values and recoveries for stockholders. There is no evidence to suggest otherwise or to the contrary.

[17] *See* Jackson April Tr., 14:16-19, 18:2-14. *See also* Pilgrim Tr., 16:2-8.

2. *There Are No Disabling Conflicts Of Interest*

20. In its Motion, the Ad Hoc Group alleges that the Board and Management have various and competing fiduciary duties and conflicts of interest resulting from their respective duties and obligations to various constituencies - - creditors, stockholders, employees, etc. The Ad Hoc Group argues that such alleged "conflicts" prevents them from adequately representing the interests of PPC stockholders. The Ad Hoc Group, however, does not and cannot demonstrate that any actual conflict of interest exists in these cases, nor does it show how the fiduciary duties which exist in all chapter 11 cases are so unique as to create a genuine conflict in these cases. There exists no evidence as to any conflict of interest that would disable the Board or Management from representing stockholders. In fact, the evidence demonstrates that the contrary is true and that the Board and Management (including Bo Pilgrim and Mr. Jackson) are more than adequately representing the Debtors' stockholders.[18]

21. The evidence shows that Bo Pilgrim does not have any disabling conflicts. Nearly all of his net worth is derived from his ownership of PPC Common Stock, not any other contractual relationships with PPC. Mr Snyder testified that he had spoken with "Bo about . . . he different hats he wears . . . [a]nd he feels very strongly that he . . . represents the largest shareholders and that is by far his biggest stake in the game. More than his salary, more than … the fees he gets from … growing the chickens … he believes his greatest value to the company is representing shareholders today."[19] Snyder stated that Bo Pilgrim doesn't consider any of his

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[18] Jackson April Tr., 24:17-28:3; Hughes Tr., 12:2-13:4, 14:16-15:8; Pilgrim Tr., 29:2-30:11.

[19] Snyder Tr., 60:13-61:7

ancillary relationships with PPC to be material and that Bo "would give everything away to keep his shares in the money. . . ."[20]

3. *The Tangible Value Of The Debtors' Equity Is Negative*

22. While the initial bankruptcy schedules showed the possibility that shareholder equity would exist, the situation significantly changed over the subsequent months. William Snyder, the CRO, testified that total shareholder equity declined from $123 million to $34.2 million between December 27, 2008 and March 31, 2009. He also stated that, as of March 31, 2009**,** the actual tangible net worth of the Debtors' equity is negative $110 million.[21] Further, significant liabilities for pending lawsuits, rejection claims, and cure claims could put the estate even further under water. The plant closures announced by the Debtors may likewise result in material claims being asserted which would be senior to stockholders.[22] Regardless of the scheduled value of equity as of the time of the chapter 11 filing, or the book value of the Debtors' assets and liabilities as reported on their filings with the SEC, valuation of the Debtors and whether or not the Debtors can offer a meaningful distribution to stockholders is premature. One thing is certain: the interests of stockholders are already being well represented in these cases.

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[20] *Id*. at 61:8-61:23. Moreover, even assuming that there exists a potential conflict of interest between these parties - - a hypothetical assumption for which no basis in fact exists - - courts have repeatedly held that the presence of a potential conflict of interest does not always require a separate committee. *See Mirant Americas Energy Marketing, L.P. v. Official Committee of Unsecured Creditors of Enron Corporation*, 2003 WL 22327118 at *7 (S.D.N.Y. Oct. 10, 2003) (citing In re McLean Industries, Inc., 70 B.R. 852 (S.D.N.Y. 1987)).

[21] Snyder Tr., 145:23-147:1; 165:7-9

[22] Michael Willingham, an individual who was soliciting clients for Brown Rudnick to form an equity committee, himself believed, as of January 5, 2009, that "[t]he value of the company at this point is zero to negative." *See* Exhibit 7(a) attached hereto (Yahoo chat room posting by "hammr6," January 5, 2009, "the Stock" discussion).

4. *The Debtors' Case Is Not Complex*

23. In determining whether or not the stockholders are being adequately represented, one of the factors reviewed by the courts is the complexity of the case. This "complexity" factor addresses the complexity of the capital structure rather than the complexity of the case in general terms. *See Edison*, 1996 WL 534853 at *5 (referring to the lower's court's decision in stating that the "complexity of capital structure is more relevant than the complexity of the debtor's affairs"). In *Edison*, the district court affirmed the lower court's finding that the capital structure of the case was not complex because the debtors did not have any different levels of debt or different classes of equity. *Id.* In this case, there is only one class of outstanding stock - - PPC Common Stock.[23] Because there are not different classes of equity in PPC, this factor weighs in favor of not appointing an equity committee. In paragraph 45 of the Motion, the Ad Hoc Group contends that the capital structure is complex because PPC has several million shares of outstanding stock. The sheer number of shares cannot serve to "complicate" a capital structure. In fact, William Snyder (the Debtors' CRO) testified that the capital structure of PPC is not complex when compared to other bankruptcies in which he has been involved, such as Mirant.[24] The lack of complexity of the Debtors' debt and equity structures makes clear that no basis exists for the appointment of an equity committee.

B. The Acts Of The Ad Hoc Group Have Tainted The Process and Demonstrate that the Motion is a Charade

24. Beyond the fact that stockholders are more than adequately represented in these cases, the circumstances surrounding the efforts to obtain the appointment of an official equity

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[23] Jackson April Tr., 25:8-21.

[24] Snyder Tr., 86:7-18.

committee are disturbing. Remedial action is likely necessary to address illegal, unethical and improper conduct employed in connection therewith. As the Court may recall, Michael Willingham played an interesting role in the Mirant Corporation reorganization before this Court. He was able, through the use of internet message boards or chat rooms, to generate enough proxy votes to force his way onto the equity committee appointed in Mirant. An Atlanta newspaper even printed a front-page article regarding his exploits:

> Houston accountant Mike Willingham doesn't own enough stock to sit on the stockholder committee for Atlanta's bankrupt Mirant Corp. But he's on it, thanks to an unusual campaign he launched when the struggling energy company filed for Chapter 11 protection this summer. Willingham, known as Hammr6 on the Internet, holds the committee's Yahoo seat. He represents Westlurker, JohnGalt, Arizzzona, Oledude and hundreds of other Mirant stockholders who frequent a Yahoo Internet chat room now banished in post-bankruptcy ignominy to a Web site location only the already initiated can find. Through proxies from more than 400 of those Yahoo-ers, Willingham now controls 23 million shares of Mirant stock, enough to wedge himself onto the committee appointed to represent the company's stockholders' interests --- or to stir up mischief at its next annual meeting, for that matter, although Willingham isn't talking about that.[25]

25. Mike Willingham is back, and the evidence clearly shows that he was, in substance, working for Brown Rudnick as a "capper" to recruit and enlist shareholders for Brown Rudnick's proposed equity committee.[26] Willingham testified that, prior to his antics on the Yahoo Finance Message Board for Pilgrim's Pride (hereinafter "Yahoo"), the PPC stockholders who were making posts in the chat room clearly believed that they were adequately represented

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[25] Margaret Newkirk, *Yahoo-ers Muscle onto Mirant Panel*, Atlanta Journal and Constitution, Oct. 28, 2003, at A1.

[26] A "capper" is "a lure, decoy, or steerer esp. in some illicit or questionable activity." *Webster's Third New International Dictionary* 333 (10th ed. 1993), as cited by Kenneth L. Jorgensen, *In Person Solicitation: Not for Lawyers*, Bench & Bar of Minnesota, Sept. 2004 edition (available online at http://www.mncourts.gov/lprb/04bbarts/bb0904.html); *Pietsch v. Minnesota Bd. Of Chiropractic Examr's*, 683 N.W. 2d 303, 304-05 (Minn. 2004) (describing the improper use of cappers). Willingham's activities may also make him a "runner" for Brown Rudnick. A "runner" is a person whose business it is to solicit patronage or trade. *Id.*

by Bo Pilgrim and others on the Board and in Management.[27] As a result, it is Willingham and Brown Rudnick who are the architects of an equity committee here and not because the debtors' stockholders needed better representation; but rather, because of their respective pecuniary interests.

1. *Chat Room Recruiting*

26. With knowledge of Willingham's experience in Mirant, Brown Rudnick sought out Willingham for assistance in the Pilgrim's Pride bankruptcy. On December 14, 2008, Brown Rudnick e-mailed Willingham to discuss Willingham's ability to organize shareholders.[28] They spoke on the phone the next day (December 15) and they formulated a plan of action.[29] Almost immediately after they spoke, Willingham entered the Yahoo message board or chat room for Pilgrim's Pride. Going by his old handle of "hammr6," his introductory message to the chat room participants was as follows:

> Guys,
>
> I have never posted on this board before...I resolved to give up message boards after the last bankruptcy situation I was involved in. However, since I know so many people affected by Pilgrim's bankruptcy event I thought I would provide the shareholders with some simple advice that will serve you well in the coming months. I recommend that you diligently attempt to pursue the formation of a shareholder's committee that can represent your interests in the bankruptcy proceedings in Fort Worth. There are several things that need to happen for that to transpire, which would take a while for me to explain. If a sale happens or not, or if the company simply restructures and reduces debt, you will not receive any value generated absent excellent representation in the bankruptcy. ***I can assure you that if you do not have your own committee your interests will not be defended***, even though the stock currently still trades.

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[27] *See* Exhibits 7(h), (g) and (f), respectively (Yahoo posting by "browildman, " December 15, 2008, 6:12 pm., "Bankruptcy" discussion; posting by "muffler.bearings" on Yahoo, December 17, 2008, 11:03pm, "Dr. Jackson" discussion, and December 17, 2008, 10:22pm. "For you …" discussion). The Yahoo chat room sentiments are discussed in detail below.

[28] E-mail from Howard Siegel to Mike Willingham, December 14, 2008 (AHG000815).

[29] E-mail from Howard Siegel to Mike Willingham, December 16, 2008 (AHG000814).

> I know you don't know me from adam, but I am willing to assist anyone in understanding what is about to transpire, as well as help you understand who I am and what kind of situation you are facing.[30] (emphasis added)

27. At the time of Willingham's December 15th posting, he did not own any PPC Common Stock. He purchased a *de minimus* amount of PPC Common Stock in January 2009, about a month ***after*** his first chat room posting.[31] The question thus arises: if Willingham did not own stock in PPC, why does he care about PPC shareholders? Answer: Because, as his testimony reveals, he was looking for a job to generate income for himself.[32] Willingham continued his chat room postings over the next few weeks. The common theme was that the PPC stockholders' interests would be completely wiped out unless they organized an equity committee.[33] Willingham pounded that theme home through his messages, which essentially said that shareholders could not count on anyone else to look out for their interests.

2. *The Stockholders Push Back*

28. Willingham and Brown Rudnick soon realized they were fighting an uphill battle, and they discussed the problems over e-mail. "Mike - I'm following the PGPDQ message board with interest - a tough crowd you're dealing with; seems like they have 'savior' complex in that Bo will solve everything for them . . ."[34]

29. While Willingham recruited on the internet and in the Pittsburg area, Brown Rudnick focused on institutional shareholders. Joel Klein is the Executive Vice President and

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30 Posting by Willingham on Yahoo, December 15, 2008, 6:06 p.m., "Bankruptcy" discussion, attached hereto as Exhibit 7(h). Spelling and grammar errors are pervasive throughout the chat messages referred to in this brief, necessitating the omission of "[sic]" from quotes containing errors in the original sources.

31 Willingham Tr., 42:22-43:6

32 Willingham Tr., 13:2-14:18, 20:4-21:8

33 *See generally* Exhibits 7(a)-(h) attached hereto.

34 E-mail from Howard Siegel to Mike Willingham, December 18, 2008 (AHG000813), attached hereto as Exhibit 9..

Head of Debt Restructuring at PPM America (which owned no PPC Common Stock). After he spoke with Brown Rudnick, he contacted an institutional investor (M&G Investment Management Limited) which is somehow affiliated with PPM America, on Brown Rudnick's behalf.[35] Despite his complete lack of knowledge regarding PPC's situation, he advised M&G that they were not adequately represented and needed to support an equity committee.[36]

30. Brown Rudnick had limited success with its own recruiting efforts, admitting that there was scant support even among the institutional stockholders: "We're continuing to work on the institutional front - slow going so far but hope to have a breakthrough or two soon."37

31. The "slow going" was due to a key fact: Willingham and Brown Rudnick were the only people that wanted an equity committee, and were being confronted with the belief among actual stockholders that their interests were being adequately represented. For example, the first reply to Willingham's initial posting stated: "HAMM: Do some DUE DIL... PLEASE!!! The Pilgrim interests own CONTROL of the Voting stock in PPC...DIG???? 25 MILL. + 'VOTING' shares...."38 Later, during a discussion regarding Dr. Jackson's compensation package, another poster said, "Now, there is 3,085,656 more reasons to solidify the FACT that the commons will be there in the end. There's [ ] a $90 million dollar carrot to Dr. Jackson if he can keep the common shares and get the stock back to $30/share as it was one year ago."[39]

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35 Klein Tr., 13:9-13.

36 *See, e.g.*, Klein Tr., 11:14-14:6, 29:5-18, 32:13-36:1.

37 E-mail from Howard Siegel to Mike Willingham, December 17, 2008 (AHG000813), attached hereto as Exhibit 9.

38 Posting by "browildman" on Yahoo, December 15, 2008, 6:12 p.m., "Bankruptcy" discussion, attached hereto as Exhibit 7(h). Bo Pilgrim confirmed the accuracy of this posting in his deposition. Pilgrim Tr., 10:11-14.

39 Posting by "muffler.bearings" on Yahoo, December 17, 2008, 11:03 p.m., "Dr. Jackson" discussion, attached hereto as Exhibit 7(g). The same poster elaborated on that sentiment in another discussion: "If you think the 'plan' is to cancel the common shares and totally forfiet any control of ownership of the

32. Over the next few weeks, Willingham made repeated postings about the need for stockholders to organize and pursue appointment of an equity committee. Despite what appeared as a nearly universal sentiment among stockholders that an equity committee was not necessary and despite the fact that Willingham was not a stockholder, he pursued the same road: "You should be arguing strenuously for a committee. The people who own the stock, read this board, and would like a chance to recover some of what they have already lost should be looking into forming an equity committee."40

33. The chat room messages clearly show that Willingham had an agenda despite his protestations to the contrary and despite the fact the he did not own PPC Common Stock.

> Short answer - ***no one will speak for the stockholder unless a committee is formed***. Rest assured the creditors will not give stockholders anything out of kindness. Unless Bo is going to write a check to pay off the debt, and by doing so giving you and all the other stockholders an ill-advised gift, there will be no battle for the stockholders.
>
> Also, Bo did not create the new CEO's pay package, the creditors did.
>
> ***I suggest stockholders on this message board and everywhere else on the planet petition the trustee to form an equity committee, and do it now***. The longer you wait listening to pie in the sky and hoping for the white knight, the faster your ship sinks. Trust me (or simply read some bankrupt company message boards during bk and after emergence), in every major bankruptcy you get the same party of optimists singing the same "everything is gonna be alright" song until they get wiped out. Then they spend the next year or so threatening everyone who calls them out. The common theme - they all talk but they don't act. It's too easy to sit in front of the computer screen and type all day (larger societal problem, but we can talk about that later).[41] (emphasis added)

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company he built, then you just may be RETARDED. People, listen up, Bo Pilgrim, like him or not, is NO WAY IN HELL CANCELLING THE COMMON SHARES. The Pilgrim Family would be better served with Chapter 7 bankruptcy with the positive net worth,,,,at least they may could salvage $3-5 a share." Yahoo, December 17, 2008, 10:22 p.m., "For you…" discussion, attached hereto as Exhibit 7(f).

40 Posting by Willingham on Yahoo, December 18, 2008, 12:44 a.m., "For you…" discussion, attached hereto as Exhibit 7(f).

41 Posting by Willingham on Yahoo, December 21, 2008, 12:39 a.m, "Hare Wynn" discussion, attached hereto as Exhibit 7(e).

3. *The Steering Of Shareholders To Brown Rudnick*

34. A few days later, Willingham transitioned to the next phase of his plan: referring shareholders to Brown Rudnick for representation. He began gradually with, "What would help is shareholders like you and others to show your support by writing a letter to the US Trustee and ask him to appoint a committee. ***Hell, my lawyer would even write the letter for you . . . for free.***" (emphasis added).[42] He continued to layer his messages with assertions that he was just a helpful stranger, but he eventually transitioned into the "hard sell."

> The best way to get as many shareholders on the same page as possible is to have one focal point. ***That focal point should be Brown Rudnick Berlack Israels (BRBI) and the person to contact is Howard Siegel.***
>
> His link is below:
>
> http://www.brownrudnick.com/bio/bio.asp?...
>
> I have worked with him and his team before on a bankruptcy case ten times this size. BRBI is your best shot. You have nothing to lose...no cost for a committee. Like I said before...I don't have an axe to grind here. I'm not on anyone's dole and it will make no difference to me if a committee is formed or not. However, there are so many people hurting on this thing the stockholders should wake up and make a move here...now.
>
> ***Giving Howard a call is your best and probably your only move.*** (emphasis added).[43]

35. In his deposition, Mr. Willingham admitted that this was a "pretty good" advertisement for Brown Rudnick.[44] At the time, he claims he was not represented by counsel,[45]

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[42] Posting by Willingham on Yahoo, December 18, 2008, 12:01 p.m., "For you…" discussion, attached hereto as Exhibit 7(f).

[43] Posting by Willingham on Yahoo, December 21, 2008, 12:39 a.m., "Hare Wynn" discussion, attached hereto as Exhibit 7(e).

[44] Deposition Transcript of Mike Willingham, April 23, 2009 ("Willingham Tr."), 98:6 - 22.

[45] Willingham Tr., 55:4-57:22, 97:14-22.

yet he had been in contact with Brown Rudnick regarding equity committee formation efforts and admitted he wanted Brown Rudnick to represent the equity committee. The "my lawyer" comment in Mr. Willingham's message above, can refer to none other than Brown Rudnick. Not owning any PPC Common Stock at this point, and not yet having become a "consultant" for the Savings Plans, Willingham could only have been "steering" or "capping" for Brown Rudnick with the expectation of compensation or remuneration at a later point in time.[46]

4. *Willingham Expands His Efforts*

36. Unlike Mirant, Willingham did not confine himself to the PPC internet chat rooms. In fact, he began an in-person PR campaign on behalf of Brown Rudnick, or as he described it, "a local network established to gather shareholders."[47] For example, he had already contacted William Snyder (whom he knew from the Mirant bankruptcy).[48] He arranged to have his name referred to Bo Pilgrim and around the Debtors' corporate headquarters.[49] According to Snyder, Willingham contacted him on multiple occasions in search of information and connections to other members of management.[50] At the behest of Bo Pilgrim, Snyder was also in contact with Buzz Rochelle (Bo Pilgrim's attorney), who was working with Brown Rudnick.[51] In furtherance of these efforts, Snyder began actively soliciting for formation of an equity

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46 Willingham testified that his position on the board of the Mirant post-confirmation entity accounted for approximately 30% of his household's income last year. *See* Willingham Tr., 20:4-15.

47 E-mail from Mike Willingham to Howard Siegel, December 17, 2008 (AHG000813), attached hereto as Exhibit 9.

48 Snyder Tr., 74:13-79:20.

49 Snyder Tr., 74:13-79:20; Willingham Tr. 27:14-28:18, 30:20-32:14. Willingham admitted in an e-mail that he did not know any major shareholders. *See also* e-mail from Howard Siegel to Mike Willingham, December 14, 2008 (AHG000815), attached hereto as Exhibit 9.

50 Snyder Tr., 74:24-77:8;96:14-101:20; Willingham Tr., 31:14-32:4.

51 Snyder Tr., 99:7-14.

committee.[52] He sent e-mails encouraging formation, and he forwarded form letters drafted by Mr. Rochelle to stockholders for them to sign and send to the U.S. Trustee in support.[53] Mr. Rochelle reported to Willingham that "we have the letters requesting the creation of a Committee now orchestrated."[54]

37. Willingham relayed the result of their efforts to Howard Siegel: "Just got off the phone with Bo Pilgrim. He is interested in forming an equity committee. I told him that Brown Rudnick is the firm to go with."[55] Two days later, Willingham continued his efforts with Bo. "Spoke with Bo again. May head to his house today sometime."[56]

38. Willingham went so far as to submit for publication a letter to the editor of the local paper, *The Pittsburg Gazette*. Entitled "Stand up, be counted," the letter includes the following advice:

> Pilgrim's Pride shareholders don't have to lose their stock because the company filed for bankruptcy. Pilgrim's Pride shareholders will lose their stock if they do nothing. Pilgrim's shareholders, large and small, every one of them, should write or call the US Trustee in charge of the case and request that he appoint an Equity Committee for Pilgrim's Pride shareholders. ***If shareholders do not have a committee there will be no one to fight for them in court. Make no mistake, vulture hedge funds and New York lawyers want to make sure Pilgrim's Pride shareholders receive nothing for their shares***. I say this because I know these people. I have fought against them before as I have served on equity committees in cases that were many times larger than Pilgrim's. By standing together as a community of shareholders right here in Pittsburg and the surrounding areas the people have a powerful, and sometimes loud voice. They should not be silent. They can turn this terrible situation into something folks can be proud of.

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52 Snyder Tr., 96:14-101:20.

53 *Id.*

54 E-mail from Buzz Rochelle to Mike Willingham, January 30, 2009 (AHG000977), attached hereto as Exhibit 10.

55 E-mail from Mike Willingham to Howard Siegel, January 6, 2009 (AHG000818), attached hereto as Exhibit 9.

56 E-mail from Mike Willingham to Howard Siegel, January 8, 2009 (AHG000819), attached hereto as Exhibit 9.

> Shareholders of Pilgrim's must stand up and be counted in front of the US Trustee; otherwise it's all but guaranteed New York will own their piece of east Texas. Time is short. ***The vultures have already made their intentions known in court***.[57] (emphasis added)

39. At his deposition in connection with this matter, Mr. Willingham conceded that no basis in fact existed for many of the statements in his letter to the editor.[58] This was nothing other than a blatant attempt to lure local Pittsburg shareholders into signing up for an equity committee which, once formed, would hire Brown Rudnick. The day after this editorial was published, Willingham entered into the consulting agreement with the Savings Plans.

40. Willingham thus immediately stood to profit if an equity committee were to be appointed. He admitted in his deposition that under his "consulting agreement" with the Pilgrim's Pride Corporation Retirement Savings Plan and the To-Ricos Employee Retirement and Savings Plan (collectively the "Savings Plans"), he is to be paid a $12,000 retainer upon successful formation of an equity committee and his appointment thereto, and will thereafter be paid $250 per hour thereafter for his committee service.[59]

5. *Bo Pilgrim's Attempts to Gain Two Seats at the Table*

41. It is clear from the evidence that, after meeting with Willingham, Bo Pilgrim became actively involved in the formation of the Ad Hoc Group and the pursuit of an official equity committee.[60] Mr. Pilgrim must have realized he would benefit from having two official "seats at the table" for stockholders. Willingham's efforts to garner interest from Pittsburg locals were successful in bringing him to the attention of Bo Pilgrim. Soon Mr. Pilgrim personally

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[57] Mike Willingham, *Stand up, be counted*, *The Pittsburg Gazette*, January 22, 2009, letters to the editor, attached hereto as Exhibit 11.

[58] Willingham Tr., 108:11-113:10.

[59] Willingham Tr., 40:20-41:2; *see also* Willingham Deposition Exhibit 4, attached hereto as Exhibit 12.

[60] Pilgrim Tr., 22:20-24; 25:11-15; Willingham Tr., 34:19-25.

provided Willingham with stockholder lists and instructed his counsel, Mr. Rochelle, and the Debtors' CRO, Mr. Snyder, to work with Willingham and Brown Rudnick to "orchestrate" the appointment of an Ad Hoc Committee.[61] First, Bo's children Greta Pilgrim and Patrick Pilgrim, wrote letters which were transmitted to the U.S. Trustee by Mr. Rochelle, asking to sit on an official equity committee.[62] What they needed, however, was a large institutional holder of stock, thus making M&G's role in the process critical. In an internal e-mail of M&G, Randeep Somel in London wrote: "Matthew Beardmore-Gray and I spoke to Michael Rochelle of Rochelle McCullough LLP, the Pilgrims families (who have 62% of the equity) legal council [sic] on 9th January. Bo Pilgrim (Chairman) and Ken Pilgrim (Vice-Chairman) would like to form an Equity Committee that would represent the shareholders in front of the judge."[63]

42. As indicated above, shortly thereafter, the Savings Plans, which are controlled by the Debtors' CFO and two other members of the Debtors' management, negotiated a contract with Willingham under which Willingham will ONLY be paid if an equity committee is appointed and the Savings Plans get a seat on the committee.[64] Further, Rick Cogdill, PPC's CFO, inserted a provision into Mr. Willingham's contract which requires Mr. Willingham to use his best efforts to become Chairman of an official equity committee.[65]

43. The third member of the Ad Hoc Group, Michael Cooper, is likewise beholden to PPC and Bo Pilgrim. Cooper is a shareholder in Kincannon Reed, an executive search firm

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61 *See* Exhibit 10 attached hereto.

62 *See* Exhibit 13 attached hereto.

63 *See* Exhibit 14 attached hereto.

64 Willingham Tr., 3610-12; 40:20-41:11; Willingham consulting agreement, attached hereto as Exhibit 12.

65 Willingham Tr., 38:25-39:21; *see also* Exhibit 12 attached hereto.

"focused exclusively on the interrelated realms of food, agribusiness and life science.[66] Cooper has "completed many executive level searches for Pilgrim's Pride and [has] one current active confidential project."[67] Cooper was encouraged by CFO Cogdill to assist Willingham in his efforts to form an equity committee.[68] The last, but not least, "member" of the Ad Hoc Group, James Schwertner, is the owner of Capitol Land and Livestock located in Schwertner, Texas. Mr Schwertner's cattle business - - like Pilgrim's Pride - - also suffered from escalating corn prices. As a consequence, Schwertner and Bo Pilgrim worked closely together to actively lobby Texas Governor Perry to ask the Administrator of the EPA to waive by 50% the Renewable Fuel Standards on ethanol derived from grain believing that if the waiver was granted speculation on corn would decrease and prices would normalize.[69] Schwertner bought the majority of his stock less than one month before the Petition Date.[70] Whether he purchased PPC Common Stock as a speculator, a favor to Bo Pilgrim or both is irrelevant. Either would argue against his appointment to an equity committee and make any allegation of "adequate representation" on his part highly suspect.

44. The circumstances under which all four members of the Ad Hoc Group came onto the scene - - (i) M&G (ii) The Pilgrim's Pride Retirement Plans, represented by Willingham (iii) Michael Cooper and (iv) James Schwertner - - make clear that "adequate representation" of the stockholders was not driving these efforts.

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66 *Id.*; *see also* www.krsearch.com.

67 AHG 000018, attached hereto as Exhibit 16.

68 AHG 000016, attached hereto as Exhibit 17.

69 *See* Exhibit 15 attached hereto.

70 *See* Docket No. 1448 (Amended Rule 2019 statement) ¶3.

6. *The Solicitation Efforts Have Tainted The Proposed Equity Committee*

45. As shown above and below, the improper solicitation of stockholders has made a mockery and charade of this entire process. The assertions by the Ad Hoc Group that PPC stockholders need an official committee are bogus.

C. The Solicitation Efforts Were Illegal

46. Willingham's actions can be considered illegal proxy solicitations under applicable securities and bankruptcy laws. The case law has broadly defined a proxy in the bankruptcy context as including "a power of attorney, proof of claim, or other writing authorizing any person who does not then own a claim to vote the claim or otherwise act as the owner's attorney in fact in connection with the administration of an estate of bankruptcy." *Matter of W.T. Grant Co.*, 6 B.R. 762, 766 (Bankr. S.D.N.Y. 1980). Here, Willingham solicited stockholders to allow Willingham to act on their behalf in connection with this bankruptcy, which falls squarely within this definition. Under the Securities and Exchange Act of 1934, which also governs the solicitation of proxies from holders of registered securities, a proxy solicitation may not include misleading statements or material omissions. *Id.* In *W.T. Grant*, certain debenture holders drafted a letter seeking support from other debenture holders for their opposition to a settlement between the debtor and the debenture holders. The court found that this letter contained false and misleading communications in violation of both bankruptcy and securities laws. Specifically, the letter claimed, *inter alia*, that the debenture holders could recover more than contemplated in the settlement, but did not provide any basis for this conclusion. *Id.*

47. Likewise, in *In re First Home Inv. Corp. of Kansas, Inc.*, 368 F. Supp. 597 (D. Kan. 1973), the former president of the debtor addressed groups of the debtor's investors seeking

funds to retain legal representation for them. The former president also distributed a "position paper" stating that Trustee planned to install a new management group which would operate the company as it saw fit while ignoring and obviating the rights and privileges of the stockholders. *Id*. The court found that these activities constituted proxy solicitation under the Securities and Exchange Act of 1934, and were in fact in violation of such Act and accompanying regulations because such proxies were not filed with the SEC and were false and misleading. *Id.* at 602.

48. Here, Willingham is not only soliciting proxies without any of the required SEC filings, but is promulgating false and misleading information about the likely recovery of PPC equity security holders without any factual basis. His false statements include, but are not limited to, the fact that (i) creditors drafted Don Jackson's compensation package - - the opposite is true;[71] (ii) creditors must be paid in full in cash before equity can get paid, yet, he knows that "payment in full" can occur with consideration other than cash;[72] (iii) stockholders would receive no recovery without a committee; and (iv) vulture hedge funds in New York want to make sure stockholders receive nothing.[73]

D. The Solicitation Efforts Violate Ethical Rules

49. Brown Rudnick has engaged in an unethical campaign designed to persuade holders of PPC Common Stock to form an equity committee. Brown Rudnick's blatant recruitment efforts of potential (and actual) clients located in the state of Texas violate the Texas Disciplinary Rules of Professional Conduct.

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[71] Pilgrim Tr., 14:20-15;20. It is clear from the docket and the record in these cases that the Committee did not construct or create the Jackson compensation package. As the Court is aware it was foisted upon the Committee by the Debtors with only 5 days' notice, which is why the Committee objected to the retention and ultimately negotiated incentive benchmarks for the various stock and cash awards (other than the sign-on bonus and salary).

[72] Willingham Tr., 17:25-18:10, 129:20-130:9

[73] *Id.* 108:11-113:10.

50. Rule 7.03(a) of the Texas Disciplinary Rules of Professional Conduct prohibits a lawyer or any person acting on behalf of a lawyer from contacting, either in-person or by certain electronic means, a prospective client who has not sought the lawyer's advice regarding employment or with whom the lawyer has no family or past or present attorney-client relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. Tex. Disciplinary R. Prof'l Conduct 7.03(a). In addition to the ethical rules, the Texas legislature has forbidden attorneys or their agents from soliciting clients either in person or by phone. *Lopez v. State*, 846 S.W.2d 90, 95 (Tex. App. 1992) (referencing barratry). The barratry statute is informative because it and Rule 7.03(a) serve a similar purpose to protect individuals from overreaching or improper behavior on the part of lawyers. Likewise, Rule 7.03 prohibits "cold call" solicitations (whether by phone, internet, or in-person) by a lawyer. Tex. Disciplinary R. Prof'l Conduct 7.03, comment 1 (also stating that soliciting business in "chat rooms" is prohibited).

51. As demonstrated above, Brown Rudnick contacted Willingham about "exploring the prospect of having an equity committee formed" and inquired whether he had "contacts with stockholders." Brown Rudnick wanted Willingham to contact stockholders - - potential clients of Brown Rudnick - - to persuade them to join forces in support of an equity committee. Within two days, Willingham began communicating with PPC stockholders through an internet chat room or message board. Willingham used the same handle ("hammr6") in his message board posts as he did several years before when communicating on the Mirant message board. Willingham touted Brown Rudnick as the firm to represent an equity committee, posted Howard Siegel's contact information, and even volunteered that Brown Rudnick would provide initial services for free. Brown Rudnick monitored Willingham's posts on the Pilgrim's Pride message

board and any responses. After Willingham met some resistance on the message board, he then resorted to face-to-face meetings with stockholders to solicit support for an equity committee. Willingham even personally solicited Bo Pilgrim.[74] Willingham's actions fall squarely under the prohibited use of "cappers."[75] Brown Rudnick would not have been able to button-hole Bo Pilgrim on the street and solicit his business nor could it solicit business in the Yahoo chat rooms. Delegating that task to a non-lawyer does not cure the ethical violation. By "contracting out" the solicitation to Willingham (a local resident and supposed disinterested party) Brown Rudnick sought to make it appear that the referral to their firm was coming from a friend and neighbor, and to obscure the fact that it was actually an advertisement. It is for this exact reason that the use of "runners" and "cappers" is forbidden.

52. Brown Rudnick had no prior attorney-client relationship with any PPC stockholder and no stockholder sought out the advice of Brown Rudnick on any matter related to this bankruptcy. In addition, Brown Rudnick's motivation was pecuniary gain as Brown Rudnick would stand to benefit if Siegel secured representation of an equity committee for his firm.

53. The combined actions of Brown Rudnick and Willingham cast a dense shadow of doubt on their efforts to obtain appointment of an equity committee. They were acting for their own pecuniary interests, not as true "saviors" of the Debtors' stockholders.

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[74] *See* email from Mike Willingham to Howard Seigel, January 6, 2009 (AHG000818).

[75] *See* Jorgensen, supra note 23 (stating that "Investigators, interpreters, or other nonlawyer associates should not be allowed the autonomy to supplant or circumvent the lawyer's involvement at crucial states of the representation.)

IV. CONCLUSION

54. The evidence makes clear that stockholders' interests are being adequately - - indeed well - - represented by the Board, Management and the Debtors' CEO and CRO. The Ad Hoc Group cannot meet its burden of proving that the interests of PPC stockholders are not being adequately represented. The evidence overwhelmingly suggests otherwise. Indeed, the Board, Management and the CRO and CEO are trying to maximize shareholder value because, among other things, the members of the Board and Management own a very significant equity stake.

WHEREFORE, the Committee respectfully requests that the Motion be denied and that the Court grant such other and further relief as is just and proper.

Respectfully submitted, this 27th day of April, 2009.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27th day of April, 2009, he caused a true and correct copy of the foregoing document to be served on the parties appearing on the attached Service List via first class U.S. Mail, postage prepaid, as well as on counsel for the Ad Hoc Shareholders Group and the Securities and Exchange Commission.

/s/ Jason S. Brookner
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