The following constitutes the ruling of the court and has the force and effect therein described.

Harlin DeWayne Hale

Signed September 18, 2020

United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
	§	
Tuesday Morning Corporation, *et al.*,[1]	§	Case No. 20-31476
	§	
Debtors.	§	Jointly Administered

ORDER DIRECTING THE APPOINTMENT OF A COMMITTEE OF EQUITY SECURITY HOLDERS

In the above-captioned cases, this Court has considered and denied a request for the appointment of an official committee of equity security holders on two occasions. At the conclusion of the second ruling, the Court noted that it would *sua sponte* reconsider the ruling and appoint an equity committee to represent the interests of shareholders if subsequent events changed the analysis. For the reasons discussed herein, the Court now believes it is appropriate to order the appointment of an equity committee.

[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Tuesday Morning Corporation (8532) ("TM Corp."); TMI Holdings, Inc. (6658) ("TMI Holdings"); Tuesday Morning, Inc. (2994) ("TMI"); Friday Morning, LLC (3440) ("FM LLC"); Days of the Week, Inc. (4231) ("DOTW"); Nights of the Week, Inc. (7141) ("NOTW"); and Tuesday Morning Partners, Ltd. (4232) ("TMP").

Background

On June 12, 2020, a shareholder named Kevin Barnes filed his *Motion for an Order Appointing an Official Committee of Equity Security Holders Pursuant to Section 1102 of the Bankruptcy Code* [Docket No. 229] (the "First Equity Committee Motion"). Several shareholders filed joinders supporting the request for an equity committee,[2] and the Court held a hearing on the First Equity Committee Motion on July 8, 2020. At the conclusion of the hearing, the Court denied the First Equity Committee Motion without prejudice in an oral ruling.[3] In that ruling, the Court noted that there was not much evidence offered in support of the First Equity Committee Motion. In addition, the tasks suggested for an equity committee seemed duplicative of what the Official Committee of Unsecured Creditors (the "Creditors' Committee") was already doing, and the Board of Directors appeared to be fulfilling its fiduciary duties by working for all constituencies to maximize the value of the estates.

Two days after the ruling on the First Equity Committee Motion, another shareholder named Jeremy Blum filed a motion to form an ad hoc equity committee,[4] which Mr. Blum amended on August 17, 2020 to be a request for the appointment of an official equity committee.[5] Once again, a number of shareholders filed joinders supporting the request for an equity committee,[6] and the Court held a hearing on the Second Equity Committee Motion on September 8, 2020. In

[2] *See* Docket Nos. 289, 360, and 373.

[3] *See Transcript of Hearing Held July 8, 2020* at 87:15-89:18 [Docket No. 468]. The oral ruling was later memorialized in a written ruling. *See Order Denying Motion for an Order Appointing an Official Committee of Equity Security Holders Pursuant to Section 1102 of the Bankruptcy Code [Docket No. 229] and Letters Supporting and Joining the Motion [Docket Nos. 289, 360, and 373]* [Docket No. 455].

[4] *Motion to Form an Ad Hoc Equity Committee* [Docket No. 433].

[5] *Motion for an Order Appointing an Official Committee of Equity Security Holders Pursuant to Section 1102 of the Bankruptcy Code, and (II) All Letters Supporting and Joining the Motion* [Docket No. 616] (the "Second Equity Committee Motion").

[6] *See* Docket Nos. 620, 720, 726, 735, 736, 737, 766, 782, 783, 793, 794, and 873.

the Second Equity Committee Motion, Mr. Blum stated that he had significant new information to support his request, but Mr. Blum and the joining parties once again offered very little by way of evidence at the hearing. In the Court's oral ruling denying the Second Equity Committee Motion, which was issued on September 14, 2020 based on the record created at the hearing on September 8, 2020, the Court reserved the right to *sua sponte* reconsider the ruling and appoint an equity committee to represent the interests of shareholders if subsequent events change the analysis.

After the conclusion of the hearing on September 8, 2020, the Debtors filed a stipulation (the "Milestone Stipulation") extending the deadline by which they are required to file with the Court either (a) a chapter 11 plan, a corresponding disclosure statement, and a motion seeking approval of same or (b) a motion to approve a sale of substantially all of the Debtors' assets.[7] The deadline was extended from September 9, 2020 to September 17, 2020.

The Creditors' Committee swiftly filed an objection to the Milestone Stipulation.[8] In the Stipulation Objection, the Creditors' Committee noted that during the months of July and August, multiple parties expressed interest in purchasing all or substantially all of the Debtors' assets and that as of the end of August, there were at least three proposals from potential purchasers, each of which would appear to provide a significant and meaningful recovery to the Debtors' unsecured creditors.[9] The Creditors' Committee further stated that one proposal, if closed, would result in an "extremely favorable" return for unsecured creditors.[10] The Creditors' Committee also expressed concern that offers for the purchase of the Debtors' assets will become progressively

[7] *Second Stipulation and Notice Regarding Amendment of the Final ABL DIP Order to Extend the Plan/APA Milestone Date* [Docket No. 796].

[8] *Objection of the Official Committee of Unsecured Creditors to the Debtors' Purported Amendment to DIP Financing Order* [Docket No. 797] (the "Stipulation Objection").

[9] Stipulation Objection at ¶ 7.

[10] Stipulation Objection at ¶ 23.

less valuable as the closing date is delayed and that the Debtors may be ignoring potential purchasers.[11]

The Debtors filed a response to the Stipulation Objection in which they denied several of the Creditors' Committee's allegations but acknowledged that there is a high level of interest from potential purchasers of the Debtors' assets.[12] The Debtors explained that in order to comply with their fiduciary duty to maximize the value of their estates for all constituents, they have been engaged in the parallel processes of seeking to formulate a plan while at the same time pursuing a marketing process to determine whether a sale will bring greater value to the Debtors and their estates than a plan of reorganization.[13] The Debtors further disclosed that they have entered into non-disclosure agreements with forty prospective buyers who have been granted access to a data room, provided substantial follow-up information to facilitate due diligence requests, and held management presentations with certain of the potential acquirers and that the Debtors have received indications of interest and non-binding letters of intent from a number of parties.[14]

At a hearing held on September 16, 2020, the Debtors announced their intention to file a motion for the approval of bid procedures no later than September 23, 2020 and to request consideration of that motion on an expedited basis in anticipation of a final sale hearing to occur during the last week of October. The Debtors also anticipate filing a plan and disclosure statement by September 23, 2020 that will serve as an alternative to the sale process.

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[11] Stipulation Objection at ¶ 2.

[12] *Debtors' Response to Objection of the Official Committee of Unsecured Creditors to the Second Stipulation and Notice Regarding Amendment of the Final ABL DIP Order to Extend the Plan/APA Milestone Date* [Docket No. 805] (the "Response to Stipulation Objection").

[13] Response to Stipulation Objection at ¶ 4.

[14] Response to Stipulation Objection at ¶ 5.

Analysis

The Court believes the information disclosed in the Stipulation Objection, the Response to Stipulation Objection, and the hearing held on September 16 are relevant to the decision of whether to appoint an equity committee in these cases.

Bankruptcy Code section 1102(a)(2) provides that 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 representation of creditors or of equity security holders. Courts have applied the following factors in determining whether to appoint an equity committee under section 1102(a)(2): (i) whether the debtors are likely to prove solvent; (ii) whether equity owners are adequately represented by stakeholders already at the table; (iii) the complexity of the debtors' cases; and (iv) the likely cost to the debtors' bankruptcy estates of an equity committee. *In re Pilgrim's Pride Corp.*, 407 B.R. 211, 216 (Bankr. N.D. Tex. 2009).

The Court previously found the evidence submitted by the parties to be inconclusive on the issue of whether the Debtors are likely to prove solvent and whether there is a substantial likelihood that equity will receive a meaningful distribution in these cases. The disclosures in the Stipulation Objection and the Response to Stipulation Objection regarding the level of interest in the purchase of the Debtors' assets and the quality of the offers that are being received—even prior to a formal sale process being approved—give the Court greater confidence that there is a substantial likelihood that equity will receive a meaningful distribution in these cases.

With regard to whether the equity owners are adequately represented by stakeholders already at the table, the Court previously found that the Board of Directors appears to be fulfilling its fiduciary duties to the constituencies in these cases. This finding has not changed, but the speed with which the process is now moving and the evolving relationship between the Debtors and the

Creditors' Committee suggest to the Court that having a committee with a singular focus on the interests of shareholders involved in the process would be beneficial, both for the shareholders and for the Court.

Similarly, the Court's finding regarding the complexity of the Debtors' cases has not changed, but the timeframe in which the parties must evaluate and negotiate the range of exit strategies that may be available to the Debtors has been compressed. The Court finds that the complexity of the cases now leans in favor of the appointment of an equity committee.

The final factor, the likely cost to the Debtors' estates of an official equity committee, does not lean heavily for or against the appointment of an equity committee. As explained in the Court's ruling on the Second Equity Committee Motion, the appointment of an equity committee will obviously add to the administrative expenses in these cases, but it could also streamline the efforts of the shareholders and make them more efficient.

Conclusion

Given the speed with which the Debtors plan to move forward with both a plan and sale process and the level of interest that there appears to be from potential bidders for the Debtors' assets, the Court believes it is necessary to appoint an equity committee at this time to ensure that equity holders are able to participate meaningfully in the sale and plan processes in a streamlined and efficient way.

IT IS THEREFORE ORDERED that the Second Equity Committee Motion is **GRANTED**; and it is further

ORDERED that the United States Trustee is directed to immediately appoint a committee of equity interest holders.

END OF ORDER