

Wanting a Seat at the Table: The Rise of Equity Committees

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Standards for Appointment

Statutory Authority – 11 U.S.C. § 1102

- U.S. Trustee has discretion to appoint equity committee
- On request of a party in interest, a Bankruptcy Court may order appointment of an equity committee “if necessary to assure adequate representation of . . . equity security holders”

Standards for Appointment

In *Pilgrim's Pride*, the Bankruptcy Court identified following factors:

- whether the debtors are likely to prove solvent
- whether equity is adequately represented by stakeholders already at the table
- the complexity of the debtors' cases
- the likely cost to the debtors' estates of an equity committee

In *SandRidge Energy*, the Bankruptcy Court articulated a practical fifth factor:

- whether appointment of an equity committee would add anything to the case

Compensation of Equity Committee Professionals

Official Equity Committee's Professionals

- Paid by debtor's estate
- Fee applications reviewed under section 330(a)

Ad Hoc Equity Committee's Professionals

- Not appointed by the U.S. Trustee or Bankruptcy Court
- Not paid by debtor's estate absent Bankruptcy Court approval (e.g., in connection with restructuring support agreement)
- May also seek a substantial contribution claim under section 503(b)(3)(D)
 - If claim allowed, professional fees incurred allowed under section 503(b)(4)

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