IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re SCRIPSAMERICA, INC.,[1] Debtor.	Chapter 11 Case No. 16-11991 (LSS) **Related D.I.: 75**

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTOR'S MOTION FOR ORDER PURSUANT TO 11 U.S.C. §[§] 105(A) AND 1102 DIRECTING THE DISBANDMENT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OR, ALTERNATIVELY, THE REMOVAL OF IRONRIDGE GLOBAL PARTNERS, LLC AND ROBERT SCHNEIDERMAN FROM THE COMMITTEE

The Official Committee of Unsecured Creditors (the "**Committee**") of ScripsAmerica, Inc. (the "**Debtor**"), by and through its proposed undersigned counsel, respectfully submits this objection (the "**Objection**") to the *Debtor's Motion for Order Pursuant to 11 U.S.C. §[§] 105(a) and 1102 Directing the Disbandment of the Official Committee of Unsecured Creditors or, Alternatively, the Removal of Ironridge Global Partners, LLC and Robert Schneiderman from the Committee* [D.I. 75] (the "**Motion to Disband**"). In support of its Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

The Motion to Disband is designed to intimidate the duly-appointed Committee, which was properly formed pursuant to the United States Trustee's statutory mandate. In fact, the Debtor has used the Motion to Disband as an excuse not to provide discovery to the Committee, writing that it is:

> premature to provide "informal discovery" when it is unclear whether the current committee will be disbanded and in light of the fact that you are

[1] The last four digits of the Debtor's federal tax identification number are 8594. The location of the Debtor's corporate headquarters is 1094 Main Ave., Suite A, Clifton, NJ 07011.

> seeking to block us from taking discovery on very important transparency issues including non-privileged communications between Ironridge and Schneiderman concerning their ability to serve.

Nov. 16, 2016 Email from Daniel K. Astin to Scott D. Cousins (attached hereto as Exhibit "A"). Since November 16, 2016, teleconferences between the Committee's financial advisor EisnerAmper LLP and the Debtor's investment advisor Heritage Equity Partners have been scheduled but subsequently cancelled because the "Debtor has not authorized [Heritage Equity Partners] to discuss the matter with [EisnerAmper] at this time." *See* Nov. 21, 2016 Email from Hank Waida to Edward Phillips (attached hereto as Exhibit "B"). Such a strategy raises questions as to whose interests are being served by the Debtor's professionals, particularly since as near as the Committee can tell, the Debtor has no operations, no employees and no on-going business activities.

The Committee believes that this case is being run for the sole benefit of the Debtor in order to protect the Debtor's executives Brian Ettinger and Jeffrey Andrews (together, the "**Debtor's Executives**") and others. The Debtor has no incentive to act for the benefit of its creditors and, as indicated by its Motion to Disband, has not done so throughout this case. To be sure, the Debtor has not filed any budgets or operating reports, rendering it impossible for the Committee or this Court to determine whether the case is administratively solvent.[2] At this point it looks like the Debtor is using chapter 11 as a tool to wash assets and flush potential litigation, but that comes with a cost that the

[2] The Debtor did file a report under Bankruptcy Rule 2015.3 showing the income statements and balance sheets of the Debtor's non-debtor subsidiaries Main Avenue Pharmacy Inc. ("**Main Avenue**"), Pharmacy Administration, Inc. ("**Pharmacy Administration**") and P.I.M.D. International LLC ("**PIMD**"). Other than its ownership interests in its non-debtor subsidiaries, the Debtor possesses no additional assets other than the potential avoidance actions. Likewise, the Debtor's liabilities are simple and consist only of trade debt and the Debtor's guaranty of Main Avenue's financing obligations to Triumph Community Bank, N.A. d/b/a Triumph Healthcare Finance. Stated another way, there is little remaining to do in the Debtor's case other than the pursuit of the potential avoidance actions and the payment of its creditors in accordance with the priority schemes under the Bankruptcy Code.

Committee is not sure the Debtor is able to pay. As such, the Committee intends to separately move for the appointment of an independent fiduciary so as to maximize recoveries for the Debtor's creditors.[3]

This isn't the first chapter 11 debtor that is displeased with the U.S. Trustee's appointment of a statutory committee of unsecured creditors. What is unprecedented, however, is the Debtor's unilateral attempt to block the Committee's fiduciary obligation to assess the scope of the Debtor's estate, monitor its financial affairs and locate and marshal the Debtor's assets in an efficient manner by barring the Committee from proceeding with discovery, informal or otherwise. If this Court were to allow such improper conduct to continue, the Debtor here would be sending a message to all creditors' committees in this District—early on in the case, move to disband the committee, deny their access to information and confirm a sale or a plan before the judge confirms the committee's right to exist. The Debtor's strategy in this case to preclude the Committee's active participation in this case would "send a message" to other chapter 11 debtors as to how to frustrate and muzzle a statutory committee. Of course, in chapter 11 cases, a statutory committee is part of paying the freight as a result of choosing this forum to commence a chapter 11 case. Such a strategy is improper and, accordingly, the Committee objects to the Motion to Disband.

[3] It is abundantly clear to the Committee that the purpose of the Debtor's management remaining in possession is for the benefit of its non-debtor subsidiaries Main Avenue, Pharmacy Administration and P.I.M.D. and to ensure that potential avoidance actions are not pursued. Allowing current management to remain in place for the purposes of discharging the potential avoidance actions and protecting the Debtor's Executives through confirmation of a chapter 11 plan is not *valid* reorganizational purpose. Because of clear, absolute and irreconcilable conflicts of interest of the Debtor's Executives and the Debtor, the Debtor's Executives need to be displaced by a chapter 11 trustee who will act as an independent fiduciary. Only a chapter 11 trustee can prevent further erosion of value to the Debtor's estate and maximize its value by investigating and vigorously pursuing the potential causes of action against the Debtor's Executives.

BACKGROUND

1. On September 7, 2016, the Debtor filed a petition with this Court under chapter 11 of The Bankruptcy Reform Act of 1978, as codified in title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**"). On the *List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders* (the "**Top 20 List**") submitted with the Debtor's petition form, Robert Schneiderman ("**Schneiderman**") is listed as the fifth, sixth, and seventh largest holder of unsecured claims against the Debtor's estate. Ironridge Global Partners, LLC ("**Ironridge**", and together with Schneiderman, the "**Committee Members**") is not listed on the Top 20 List, but as the Debtor readily admits in the Motion to Disband and its Schedules (as defined below), Ironridge holds unsecured claims against the estate.[4]

2. On October 7, 2016, the Debtor filed its Statement of Financial Affairs [D.I. 38] ("**SOFA**") and Schedules of Assets and Liabilities [D.I. 37] (collectively, the "**Schedules**"). Schneiderman and Ironridge are both listed on Schedule E/F as nonpriority unsecured creditors.

3. On November 3, 2016 the Office of the United States Trustee (the "**U.S. Trustee**") appointed the Committee, comprised of the Committee Members. One day later, on November 4, 2016, the Debtor filed the Motion to Disband, seeking to disband the Committee or, alternatively, the removal of Schneiderman and Ironridge from the Committee.

OBJECTION

4. Once selected by the U.S. Trustee, an unsecured creditors' committee has

[4] In any event, both Committee Members have filed proofs of claim. *See* Claim Nos. 1 (filed 9/30/2016) and 2 (filed 10/17/2016).

a statutory right to exist and represent its constituency. *See* 11 U.S.C. § 1102(a)(1). The importance of an unsecured creditors committee's role in a bankruptcy case—and this case in particular—cannot be overstated. *In re ABC Auto. Prod. Corp.*, 210 B.R. 437, 441 (Bankr. E.D. Pa. 1997) (primary function of a creditors' committee is to advise the creditors of their rights and proper course of conduct in the bankruptcy proceedings) (*quoting In re Subpoenas Duces Tecum Dated Mar. 16, 1992*, 978 F.2d 1159, 1161 (9th Cir. 1992); Harvey Miller, *The Changing Face of Chapter 11: A Reemergence of the Bankruptcy Judge as Producer, Director and Sometimes Star of the Reorganization Passion Play*, 69 Am. Bankr. L.J. 431, 449 (1995) ("The mandatory appointment of a creditors' committee was intended to provide dynamic tension with the debtor that would stimulate the reorganization process through effective and efficient oversight and negotiation."); 7 COLLIER ON BANKRUPTCY ¶1102.02[1], p. 1102-6 (Alan N. Resnick & Henry J. Somme reds., 16th ed.) ("Appointment of unsecured creditors' committee is mandatory and the United States trustee must appoint one in all chapter 11 cases, assuming that there are creditors willing to serve.").

5. Congress gave discretion to the U.S. Trustee to determine that committee formation is appropriate, and it is questionable whether the Court has authority to disband (as opposed to reconstitute) a properly formed committee. To the extent that this Court has authority to overrule the U.S. Trustee's determination to form a committee, the Debtor faces a heavy burden in proving disbandment is appropriate. For the reasons that follow, the Debtor has failed to meet its burden.

A. Section 1102 Does Not Allow the Court to Disband the Committee

6. Pursuant to section 1102(a) of the Bankruptcy Code, "as soon as practicable after the order for relief under chapter 11 of this title, the United States trustee ***shall*** appoint a committee of creditors holding unsecured claims and may appoint additional committees of creditors or of equity security holders as the United States trustee deems appropriate." 11 U.S.C. § 1102 (emphasis added). Thus, "Congress directed that the UST shall appoint a creditors committee as early in the case as is practical, and . . . [the] UST is also given both statutory direction and discretion as to who should populate the committee." *In re JNL Funding Corp.*, 438 B.R. 356, 360–61 (Bankr. E.D.N.Y. 2010).

7. Notably, nothing in section 1102(a) "confers on the court the power to disband a committee the U.S. Trustee has appointed under section 1102(a)(1)." *In re Caesars Entm't Operating Co.*, 526 B.R. 265, 268 (Bankr. N.D. Ill. 2015) (*citing In re Dewey & Leboeuf LLP*, No. 12–12321 MG, 2012 WL 5985325, at *3 (Bankr. S.D.N.Y. Nov. 29, 2012); *In re Pacific Ave., LLC*, 467 B.R. 868, 870 (Bankr. W.D.N.C. 2012) ("There is no specific statutory provision for disbanding a creditors' committee."); *JNL Funding*, 438 B.R. at 361 ("Section 1102 is silent as to this Court having power to order a committee to be disbanded. . . ."); *In re Texaco, Inc.*, 79 B.R. 560, 565 (Bankr. S.D.N.Y. 1987) ("The Bankruptcy Code is silent as to the elimination or merger of creditors' committees that were previously appointed by the United States Trustee"); 1 Robert E. Ginsberg & Robert D. Martin, *Ginsberg & Martin on Bankruptcy* § 4.02[B][1] at 4–46 to 47 (Susan V. Kelley, ed. 2013–1 Supp.) ("There is no statutory authority to disband a committee. . . ."). The Federal Rules of Bankruptcy Procedure "likewise do not empower

a court to disband a committee appointed under section 1102(a)(1)," aside from an exception inapplicable to these facts. *Caesars*, 526 B.R. at 271. As such, at least some courts have held that, "[b]ecause section 1102(a) grants specific powers, and because the power to disband a committee is not one of them, the only fair reading of the statute is that there is no such power." *Id.* at 268-69 (denying motion to disband committee) (*citing In re New Life Fellowship, Inc.,* 202 B.R. 994, 996 (Bankr. W.D. Okla. 1996) (finding "the specific language . . . of section 1102(a)(1) compel[s] the conclusion that the court . . . is without power to abolish the committee"); *Dewey*, 2012 WL 5985325, at *3 (suggesting in dictum that the language of section 1102(a)(1) "would seem to leave little or no role" for the court)).

8. At a very fundamental level, then, the Debtor's request for disbandment is statutorily baseless and should be denied.

B. The Debtor's Reliance on Section 105 for Disbandment is Inappropriate and Should Be Denied

9. In light of the statutory absence of any mandate permitting the disbandment of unsecured creditors' committees, the Debtor unsurprisingly seeks to circumvent the issue by basing its relief request on other grounds—specifically, (i) 11 U.S.C. § 105, (ii) the United States Trustee Program Policy and Practices Manual (the "**Manual**"), and (iii) the Committee Information Sheet ("**CIS**"). Such attempts are also baseless and should be denied.

i. Section 105 is Not a Mechanism to Circumvent Clear Statutory Provisions

10. Section 105(a) of the Bankruptcy Code allows the court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). As the *Caesars* court holds, however, section 105(a)

confers no power to disband a committee, as that section "gives bankruptcy courts the power only to implement existing Code provisions." *Caesars*, 526 B.R. at 269. It is neither an "independent source of rights," nor a source of "substantive authority." *Id.* (*citing Village of Rosemont v. Jaffe*, 482 F.3d 926, 935 (7th Cir. 2007); *In re UAL Corp.*, 412 F.3d 775, 778 (7th Cir. 2005)). As such, section 105(a) "does not allow bankruptcy courts to contradict the Code . . . such as by exercising powers the Code does not confer." *Caesars*, 526 B.R. at 269 (*citing Law v. Siegel*, 134 S. Ct. 1188, 1194 (2014)). Other courts have held that their ability to "review" the U.S. Trustee's committee appointments pursuant to equitable powers conferred under section 105(a) are no longer valid since The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 revisions were passed in 2005. *In re ShoreBank Corp.*, 467 B.R. 156, 162–63 (Bankr. N.D. Ill. 2012) (holding that section 1102(a)(4) renders "judicial review of the U.S. Trustee's decision . . . not only unnecessary, [but also] prohibited under the doctrine that 'when a specific Code section addresses an issue, a court may not employ its equitable powers to achieve a result not contemplated by the Code'"). In light of the Bankruptcy Code's defined parameters for amending a committee's composition and the utter dearth of references to disbandment, any attempt to disband the Committee under section 105(a) should be denied. *See In re Combustion Eng'g, Inc.*, 391 F.3d 190, 236 (3d Cir. 2004) ("The general grant of equitable power contained in section 105(a) . . . must be exercised within the parameters of the Code itself."); *Matter of Gates Eng'g Co., Inc.*, 104 B.R. 653, 654 (Bankr. D. Del. 1989) (holding that the court cannot under the provisions of § 105 circumvent the unambiguous language of section 1102 of the Bankruptcy Code).

11. The Debtor also relies upon section 105(d)(2) of the Bankruptcy Code as a basis for its requested relief. As an initial matter, the Motion to Disband's citation to this section is misleading by its brevity, and unavailing in any event. Section 105(d) provides that the Court may "hold such status conferences as are necessary to further the expeditious and economical resolution of the case." 11 U.S.C. § 105(d)(1). Furthermore, "***unless inconsistent with another provision of this title*** or with applicable Federal Rules of Bankruptcy Procedure . . . [the Court may] issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically." 11 U.S.C. § 105(d)(2) (emphasis added).

12. The Debtor omitted the text "*unless inconsistent with another provision of this title*" in its Motion, *see* Motion at ¶23, but that text provides critical context to the section as a whole. Granting the disbandment request here would be precisely the type of inconsistency contemplated by section 105(d)(2) of the Bankruptcy Code, for the reasons more fully elucidated above. *See, e.g.*, *Caesars*, 526 B.R. at 269. In that respect, the analysis with respect to section 105(a) of the Bankruptcy Code *supra* applies with equal force to section 105(d) of the Bankruptcy Code. Accordingly, the Motion to Disband must be denied.

ii. Even if Section 105(d) Provided the Court With Authority to Disband an Unsecured Creditors Committee, It Should Not Do So Here

13. The Committee strongly disagrees that section 105(d) grants the Court any authority to review appointments of commitments, but even if it did, the Debtor's Motion does not establish that disbandment is appropriate here. The standard of review among the courts holding that they have authority to review a U.S. Trustee's decision to form a

committee is "abuse of discretion," by which the courts determine whether such decision was made in an "arbitrary and capricious" manner. *See, e.g., In re Barney's, Inc.*, 197 B.R. 431, 439-40 (Bankr. S.D.N.Y. 1996). A decision is not "arbitrary and capricious" unless "it is based on an erroneous conclusion of law, a record devoid of evidence on which the decision maker could rationally have based its decision, or is otherwise patently unreasonable, arbitrary or fanciful." *Id.*

14. As an initial matter, it is worth noting that the one case the Debtor cites in support of using section 105(d), *In re Pacific Ave.*, LLC, 467 B.R. 868 (Bankr. W.D.N.C. 2012), is factually distinguishable and legally inapplicable. In *Pacific*, a creditors committee was properly formed within a month of the petition date; over a year later, a chapter 11 trustee was appointed, and within a few months the trustee moved to disband the creditors committee (which by that point had been in existence for more than a year and a half). Finding that the chapter 11 trustee had "[1] a statutory fiduciary duty to the same unsecured creditors represented by the Committee . . . [and 2,] is capable of and required to adequately represent the interests of unsecured creditors in these cases . . . the Committee's representation is duplicative and unnecessary." *Pacific*, 467 B.R. at 870. Moreover, the court there noted that "the only economically disinterested party, the Bankruptcy Administrator, has supported disbanding the Committee." *Id.* (adding that "the Bankruptcy Administrator's 'Handbook For Creditors' Committees' provides that a committee should cease to act upon appointment of a trustee").

15. The facts of *Pacific* are clearly distinct from the instant case. Here, the Committee was only just formed and has not (and will not) duplicated any other party's efforts in representing the interests of unsecured creditors. In addition, the U.S. Trustee

supports the formation and existence of the Committee. Lastly, the Committee has done nothing to suggest its existence will be counter-productive to the process of this case. Thus, even if there were any basis for applying section 105(d)(2) of the Bankruptcy Code to disbandment requests, the request fails on the merits.[5]

16. The Debtor further argues that the Committee should be disbanded due to (i) its size and (ii) what can only be characterized as alleged conflicts of interest. To the former point, the Debtor relies upon the Manual and the CIS, both of which are intended simply as guideposts, and obviously represent no binding authority on the U.S. Trustee. The Debtor's own citations confirm this point. *See* Motion, ¶ 26 (section 1102(b) of the Bankruptcy Code "indicates that an official committee shall ***'ordinarily'*** consist of seven members. . . .") (emphasis added); *see id.* (*citing* Manual Section 3-4.3.1) ("Although section 1102(b)(1) suggests a committee should ***'ordinarily'*** consist of seven members, ***it is certainly not a statutory or Program requirement***.") (emphasis added). In the absence of any statutory or legal mandate, the Debtor apparently concludes that disbandment is warranted because a two-person unsecured creditors committee is simply "unheard of." *See* Motion, ¶ 26. Respectfully, the Debtor's desire to silence the Committee and to unilaterally stop the Committee's investigation of the Debtor should not serve as a substitute for the U.S. Trustee's decision to form the Committee.

17. With respect to any alleged conflicts of interest involving the Committee Members, the Debtor again resorts to hyperbole and speculation in the absence of

[5] As an aside, the *Pacific* court cites to no other authority that has endorsed the use of section 105(d) for disbanding an unsecured creditors committee.

supporting law or facts. Regardless of whether Ironridge holds equity in[6] or causes of action against the Debtor, and regardless of whether Schneiderman "is the target of estate claims,"[7] the Debtor offers no authority in support of its contention that such issues warrant disbandment of the Committee. Any suggestion that either Committee Member is "hell-bent on destroying the Debtor's business" is at best, entirely baseless and premature, and at worst, inappropriate. *See also ShoreBank*, 467 B.R. at 164 (denying motion to change membership of unsecured creditors committee, as the "movants' argument is wholly speculative, and mere speculation that a committee member's conflict of interest might one day ripen into an outright breach of fiduciary duty and a lack of adequate representation is not enough to warrant reconstituting a committee."). The Committee Members are valid unsecured claimholders in this case, as reflected by the Debtor's own timely filed documentation and suitable candidates to serve on the Committee.[8] *See, e.g.*, *JNL Funding*, 438 B.R. at 363 (finding it "not improper" for the UST to have chosen contingent claimants for the committee).

18. In sum, the Debtor identifies nothing that would suggest the U.S. Trustee abused his discretion or otherwise acted in an arbitrary and capricious manner in forming the Committee. Therefore, the Committee should be permitted to proceed with fulfilling their fiduciary obligations on behalf of the estate's unsecured creditors. The Motion should be denied.

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[6] While the Debtor alleges Ironridge is a "substantial equity security holder", Motion at ¶30, Ironridge is not listed on the Debtor's *List of Equity Security Holders* submitted with its Petition. *See* D.I. 1 at p. 23-37.

[7] The Debtor also asserts that Schneiderman's status as a potential purchaser taints his ability to sit on the Committee. This argument is now moot, as Schneiderman has withdrawn his interest in participating in the Debtor's pending sale process.

[8] *See, e.g.*, Top 20 List, Schedules.

C. <u>There is No Need to Reconstitute the Committee Under Section 1102(a)(4)</u>

19. Section 1102(a)(4) provides that on "request of a party in interest and after notice and a hearing, the court may order the United States trustee to change the membership of a committee appointed under this subsection, if the court determines that the change is ***necessary to ensure adequate representation of creditors***." 11 U.S.C. § 1102(a)(4) (emphasis added). Courts have suggested that the ordinary meaning of "necessary" requires that the requested relief be "'absolutely required,' 'essential,' or 'indispensable'" for adequate representation. *In re Eastman Kodak Co.*, 2012 WL 2501071, *2 (Bankr. S.D.N.Y. June 28, 2012) (*quoting ShoreBank*, 467 B.R. at 164–65). In addition, adequate representation "does not require proportionate representation of distinct groups of creditors on a committee of unsecured creditors." *In re New Century TRS Holdings, Inc*, 2013 WL 5377962, *4 (Bankr. D. Del. Sept. 26, 2013) (quoting *In re Residential Capital, LLC*, 480 B.R. 550, 559 (Bankr. S.D.N.Y. 2012)). The "determinative factor is whether the official committee is serving their interests as unsecured creditors." *Id.*

20. The rationale of the party seeking reconstitution should not be based on speculation, assumptions, or hypothetical actions of the targeted committee members. *See Shorebank*, 467 B.R. at 164 (denying reconstitution where the movants' argument was "wholly speculative, and mere speculation that a committee members conflict of interest might one day ripen into an outright breach of fiduciary duty and a lack of adequate representation is not enough to warrant reconstituting a committee"); *see also In re Penn–Dixie Indus., Inc.*, 9 B.R. 936, 940 (S.D.N.Y. 1981) (affirming decision not to remove a committee member where no evidence was produced that charges of the

member's future misconduct "were anything more than speculative"); *In re Richmond Tank Car Co.*, 93 B.R. 504, 507-08 (Bankr. S.D. Tex. 1988); *In re Walat Farms, Inc.*, 64 B.R. 65, 70 (Bankr. E.D. Mich. 1986) (calling the objecting creditors' concerns "real" but "premature"); *In re Enduro Stainless, Inc.*, 59 B.R. 603, 605 (Bankr. N.D. Ohio 1986) (refusing to change committee composition "based on mere assumptions"). To the contrary, "there must be specific evidence that the committee member or members with the conflict have breached or are likely to breach their fiduciary duties." *Shorebank*, 467 B.R. at 161.

21. If a committee ultimately takes some action with which the movant disagrees, "section 1109(b) of the Code will allow the [movant] to object and be heard." *Id.* at 164. If the conflict of interest the movant has identified "prevents the committee from functioning effectively or causes possible breaches of fiduciary duty to become probable or actual, the movants will have section 1102(a)(4) as a remedy." *Id.* Until that time, however, such concerns are premature.

22. It is clear that the draconian relief the Debtor seeks in the Motion to Disband is entirely premature. Indeed, the Committee was formed for less than a day when the Motion to Disband was filed. Furthermore and as noted above, the Debtor's challenge to the Committee's composition is rooted not in facts, but in false accusations and perceived conflicts of interest. Even if everything the Debtor alleges were true, however, the Committee has taken no action that warrants objection or that suggests it cannot (or will not) fulfill its fiduciary obligations. If or when the Committee takes such

an action, the Debtor is within its rights to object at that time, but those are not the facts presently before the Court.[9] As such, there is no need for reconstituting the Committee.

23. As a practical matter, unsecured creditors' committees are routinely comprised of claimants with a litigious history vis-à-vis a debtor. That, however, is not the U.S. Trustee's concern. The U.S. Trustee "is not engaged either in a fact finding mission, nor deciding issues of law, in appointing a committee"; the U.S. Trustee "is, instead, making an . . . assessment under Section 1102(a)(1) of who may hold significant unsecured claims, not who holds allowable unsecured claims." *JNL Funding*, 438 B.R. at 362. Said differently, because each Committee Member was a "creditor prior to appointment to the Committee, each was a creditor who could be selected by the [U.S. Trustee] to serve." *Id.* at 364.

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[9] Indeed, the Debtor's own argument seems to agree with this position. *See* Motion, ¶29 ("***[w]hen*** the status of a committee member changes to the point that it can no longer fulfill the fiduciary duty, that member should be removed from the Committee.") (emphasis added). Clearly, the Committee Members' statuses have not changed since appointment, thus rendering the Debtor's request premature at best.

CONCLUSION

WHEREFORE, for the reasons stated herein, the Committee respectfully requests that this Court enter an Order: (i) denying the Motion to Disband; and (ii) granting such other and further relief as this Court deems just and proper.

Dated: November 21, 2016
Wilmington, Delaware

BAYARD, P.A.

/s/ Evan T. Miller

Scott D. Cousins (No. 3079)
Justin R. Alberto (No. 5126)
Evan T. Miller (No. 5364)
222 Delaware Avenue, Suite 900
Wilmington, Delaware 19801
Phone: (302) 655-5000
Facsimile: (302) 658-6395
Email: scousins@bayardlaw.com
jalberto@bayardlaw.com
emiller@bayardlaw.com

Proposed Counsel to the Official Committee of Unsecured Creditors of ScripsAmerica, Inc.