Holland Neff O'Neil (TX 14864700)
Thomas C. Scannell (TX 24070559)
GARDERE WYNNE SEWELL LLP
3000 Thanksgiving Tower
1601 Elm Street
Dallas, TX 75201-4761
Telephone: (214) 999-3000
Facsimile: (214) 999-4667
honeil@gardere.com
tscannell@gardere.com

COUNSEL TO THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS

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

In re:	§	**Chapter 11**
	§	
EASTERN 1996D LIMITED PARTNERSHIP, *et al.*,	§	**Case No. 13-34773-HDH-11**
	§	
	§	**Jointly Administered**
Debtors.	§	

MOTION TO APPOINT A CHAPTER 11 TRUSTEE

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 1100 COMMERCE ST., RM. 1254, DALLAS, TX 75242-1496 BEFORE CLOSE OF BUSINESS ON JUNE 30, 2014, WHICH IS AT LEAST 24 DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

The Official Committee of Equity Security Holders (the "**Committee**") appointed in the jointly administered cases of Eastern 1996D Limited Partnership, *et al.*, (the "**Debtors**") hereby files this *Motion to Appoint a Chapter 11 Trustee* (the "**Motion**"). In support of this Motion, the Committee respectfully represents the following:

I.
PRELIMINARY STATEMENT

1. The appointment of a Chapter 11 trustee is necessary in these bankruptcy cases. As will be discussed in more detail herein, the Committee has concluded that the Debtors' management has irreconcilable conflicts and cannot fulfill its fiduciary duties impartially and independently. The Debtors' general partner, PDC, not only handpicked the Debtors' "Responsible Party," but they are apparently so interrelated that PDC is refusing to produce certain communications with the Responsible Party and Debtors' counsel under the claim of attorney-client privilege. Further, PDC has not only significantly delayed document production, thus hampering the Committee's investigation of claims, but is refusing to produce thousands of partnership documents. Despite having attempted to abdicate to the Responsible Party, yet not resigning as general partner, PDC has endeavored to concoct an impenetrable barrier to the Committee's efforts to obtain vital partnership information. Make no mistake – PDC is the management of the Debtors – and based on the Committee's findings to date, PDC has breached its fiduciary duties to the partnerships. The Committee has no confidence that the best interests of the estates are being protected. Accordingly, grounds exist under 11 U.S.C. §§ 1104(a) (1) and (2)[1] for the appointment of a chapter 11 trustee in these bankruptcy cases. The appointment of a trustee is in the best interests of the estates to ensure that control of the Debtors is vested in a completely independent party.

II.
JURISDICTION AND VENUE

2. The Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 1334 and 157. This matter concerns the administration of the bankruptcy estates; accordingly, the matter

[1] The Committee has likewise concluded that grounds exist for the appointment of a chapter 11 trustee pursuant to 11 U.S.C. § 1104(e), but any such motion is within the sole purview of the Office of the U.S. Trustee.

is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief requested herein are 11 U.S.C. § 1104 and Federal Rule of Bankruptcy Procedure (the "**Bankruptcy Rules**") 2007.1

III.
BACKGROUND

3. On September 26, 2013 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under Title 11 of the United States Code (the "**Bankruptcy Code**").

4. The Debtors have continued in possession of their properties and are operating and managing their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. Prior to the bankruptcies, Petroleum Development Corporation (now doing business as PDC Energy, Inc.) ("**PDC**") formed PDC 1996-D Limited Partnership (now known as Eastern 1996D Limited Partnership) ("**PDC 1996-D**"). In order to raise capital for PDC 1996-D, PDC solicited investors and offered them equity interests in the partnership. Under the terms of the partnership agreement, PDC retained 20% of all partnership profits earned, with the remaining 80% to be distributed to the limited partners based on their pro rata share of PDC 1996-D. On October 24, 1995, PDC, through its filing entity 1996-1997 Drilling Fund, filed a Form S-1 Registration Statement under the Securities Act of 1933 with the Securities and Exchange Commission ("**SEC**") to register the limited partnership units.

6. PDC created PDC 1996-D as part of a larger and more ambitious plan to form numerous limited partnerships to raise funds to explore oil and gas throughout the regions of Appalachia, Colorado, and the upper Midwest. Between 1997 and 2002, PDC formed the other Debtors in substantially the same structure as PDC 1996-D, with PDC as the sole managing

general partner of each. The Debtors have approximately 8,500 limited partners in the aggregate. Upon information and belief, each limited partner's initial contribution was $25,000, thereby making the investment in the Debtors by those acquiring limited partnerships interests an estimated $212,500,000, in the aggregate.

7. Once the limited partnership units were registered with the SEC, the Debtors were required to comply with certain financial reporting requirements promulgated by the SEC. Regular financial reporting occurred from March 25, 1997 to November 10, 2004; however, on March 29, 2005, PDC submitted form 12b-25 to the SEC on behalf of the Debtors, stating that the Debtors would not timely file forms 10-K and 10-Q. *See* Form 12b-25, SEC Filing Number 033-63635-05, attached hereto as **Exhibit A** and incorporated herein for all purposes. PDC submitted substantially the same form or similar forms 12b-25 on behalf of each of the other Debtors as well. PDC thereafter cured this reporting delay.

8. However, within one year later, beginning on March 31, 2006, PDC commenced seriatim filings of forms 12b-25 stating ongoing delays in SEC financial reporting. Initially, PDC's Chief Financial Officer, Darwin L. Stump, represented that the Debtors were unable to complete current financial reporting because previously filed financial statements could no longer be relied upon due to accounting errors. A true and correct copy of the form 12b-25, filed on behalf of PDC 1996-D, is attached hereto as **Exhibit B** and incorporated herein for all purposes.[2] PDC represented that it would undertake to correct its previously filed financial statements and complete its non-compliant reporting "by the end of August 2006." *See* **Exhibit B** at p. 3. PDC further represented that it was "committed to devoting all resources necessary to complete the restatement [of such financial reporting] as expeditiously as possible." *Id.* Yet,

[2] PDC filed substantially similar forms 12b-25 on behalf of each of the other Debtors on the same dates as the forms 12b-25 filed on behalf of PDC 1996-D.

PDC never completed the Debtors' SEC reporting requirements. Instead, PDC continued to submit a form 12b-25 each year for the Debtors, citing numerous reasons for non-compliance, e.g., discovery of previous errors, change in financial auditors, etc. What remains to date is PDC's wholesale failure to complete the Debtors' financial reporting requirements with the SEC since 2006.

9. During this time, the Debtors continued to operate, and PDC provided periodic, non-specific correspondence to the individual limited partners related to the Debtors' operations.

10. At least as early as December 2012, PDC commenced discussions about a bankruptcy of the Debtors and started conversing with Karen Nicolaou ("**Nicolaou**") regarding serving as a chief restructuring officer for the Debtors in a bankruptcy proceeding, which PDC was aiming to file in January or February 2013. *See* **Exhibit C** attached hereto and incorporated herein for all purposes. However, PDC decided to delay the bankruptcy filings. *See* **Exhibit D** attached hereto and incorporated herein for all purposes.

11. For reasons still unclear, it was not until July 26, 2013, that PDC formally engaged Nicolaou to serve not as a chief restructuring office, but as the "Responsible Party" to the Debtors and an "independent fiduciary." A true and correct copy of the Engagement Agreement (the "**Engagement Agreement**") between Atropos, Inc.[3] and the Debtors is attached hereto as **Exhibit E** and incorporated herein for all purposes.[4]

12. Notably, the Debtors' partnership agreements do not provide for a "responsible party" or an "independent fiduciary" to manage or otherwise control the partnerships. The partnership agreements provide for management only through the general partner. If the general partner no longer intended to manage the Debtors, its option was to resign. *See* **Exhibit F**

[3] Although the parties to the Engagement Agreement are Atropos, Inc. and the Debtors, the principals executing the agreement were Karen Nicolaou and PDC as managing general partner of the Debtors.
[4] This Court approved Nicolaou (via Atropos, Inc.) as the Debtors' responsible party on October 22, 2013 [Docket No. 106].

(Limited Partnership Agreement) attached hereto and incorporated herein for all purposes.[5] To date, PDC has never resigned as managing general partner of the Debtors' partnerships.

13. Nonetheless, in an apparent attempt to abdicate its responsibilities to Nicolaou, PDC engaged her to act as the Responsible Party for each of the Debtors to:

(a) "analyze all options available to resolve the SEC compliance issues,"

(b) "including analyzing all potential restructuring options (which include, but are not limited to bankruptcy)," and

(c) "serve as the authorized representative for each of the Partnerships with authority to oversee the Partnerships in determining the best course of action to resolve the compliance issues, including overseeing all actions in connection with a potential bankruptcy filing, or an auction and sale of the Partnerships' assets."

See **Exhibit E** at pp. 1-2.

14. Approximately sixty (60) days after her Engagement Agreement was executed, Nicolaou filed the bankruptcy cases. It is apparent that before and after Nicolaou's engagement, substantially all of the substantive bankruptcy planning was undertaken by PDC and its counsel or, via "group-think" comprised of PDC, its counsel, Nicolaou and Debtors' counsel. Clearly, Nicolaou merely implemented PDC's strategy.

15. There were effectively no creditors of the Debtors. The Debtors' assets had been yielding profits. That Nicolaou "independently" concluded that bankruptcies should be filed is not supported by the evidence. Clearly, PDC handpicked Nicolaou in an attempt to artificially manufacture the appearance of impartiality. Before Nicolaou was engaged, it was PDC's plan to take over the remainder of the Debtors' assets. Nicolaou apparently acted as merely a conduit to fulfilling PDC's plan.

[5] The Debtors' respective limited partnership agreements are identical in all material respects.

IV.
THE COMMITTEE'S EFFORTS TO INVESTIGATE`

16. On December 20, 2013, the Committee was appointed in these cases. *See Order Granting Emergency Motion to Appoint an Official Committee of Limited Partners* [Docket No. 150].[6] On February 3, 2014, the Court approved the employment of Gardere Wynne Sewell LLP ("**Gardere**") as counsel to the Committee. *See* Docket No. 213. In the fulfillment of its duties, the Committee instructed Gardere to undertake an investigation into potential causes of action of the Debtors and to advise the Committee regarding the viability of pursuing any such potential causes of action for the benefit of the estates.[7]

17. As a part of the Committee's investigation, it was determined that certain discovery utilizing Rule 2004 was necessary. Specifically, Gardere undertook negotiations with the Debtors' counsel and with PDC's counsel regarding discovery and the scope of the Rule 2004 requests.

18. The negotiations with the Debtors' counsel, Gray Reed, was fairly routine, resulting in an *Agreed Order Granting the Official Committee of Equity Holders' Unopposed Motion for Rule 2004 Examination of Karen Nicolaou* [Docket No. 210] (the "**2004 Order**") being entered on February 3, 2014. Notably, however, the Debtors' counsel had represented that Nicolaou had very few documents and that the bulk of the partnerships' documents would have to come from PDC. In fact, only 1,343 documents were produced by Nicolaou (a little over 100 documents per partnership on average).

19. By contrast, the negotiations of the scope of the Rule 2004 requests were much more protracted with PDC. Between January 27, 2014 and February 17, 2014, PDC's counsel

[6] Although the Court ordered the appointment of an equity committee seven (7) days before the sale hearing, the Committee was not formed until after the sale of certain of the Debtors' assets to PDC had been approved.
[7] The concept of such investigation was included in the order retaining Gardere.

heavily negotiated the topics, dates, and related terms of the Rule 2004 requests. The parties exchanged five (5) drafts of the proposed Rule 2004 order and held numerous conference calls to discuss the same. Finally, on February 19, 2014, the Court entered its *Agreed Order Granting the Official Committee of Equity Holders' Unopposed Motion for Rule 2004 Examination of PDC Energy, Inc.* [Docket No. 220].

20. Contemporaneously with these negotiations, the parties were negotiating various exclusivity and plan-related deadlines in the case intended to coincide with the Committee's discovery efforts. On February 12, 2014, the Court entered its *Order (I) Extending Period Within Which the Debtors Have the Exclusive Right to Propose a Chapter 11 Plan and Solicit Acceptances Thereof and (II) Establishing Certain Plan-Related Deadlines* [Docket No. 217], which established various deadlines, including that the Committee's Investigation Deadline would expire April 30, 2014. This deadline was specifically agreed to by the Debtors, the Committee and PDC, and was premised on the timely production of the documents negotiated in the scope of the 2004 Orders.

21. On March 6, 2014, the Debtors produced their documents. PDC began its rolling production on March 4, 2014. Since then, PDC has produced four (4) supplemental sets of production. The original deadline for PDC to complete production was March 31, 2014. The Committee accommodated PDC's request to extend this deadline to April 21, 2014. Almost a month tardy on its production deadline, PDC represented to the Committee on May 20, 2014 via electronic mail that additional document production was expected.

22. Because of PDC's delays, the Committee could not possibly conclude its investigation by the original Committee Investigation Deadline. The parties thus agreed to extend the deadlines contained in the Exclusivity Order. *See Amended Notice of Revised*

Exclusivity Order and Plan-Related Deadlines [Docket No. 262] (the "**Second Exclusivity Order**"). In the Second Exclusivity Order, the Committee Investigation Deadline was reset to May 28, 2004. Due to further delays by PDC, the parties acknowledged that this new deadline would need to be extended.

23. The Committee's investigation of PDC's pre-petition conduct has been frustrated by delay in production and extensive redaction of produced documents and correspondence. Because all responsive documents have not been produced, depositions have been postponed. Further, many of the documents produced are so heavily redacted that after examination, Gardere could not discern the nature, content, or identification of such documents.

24. On May 2, 2014, Gardere received PDC's initial privilege log (the "**Privilege Log**") corresponding to PDC's third set of production dated April 21, 2014. A true and correct copy of the Privilege Log is attached hereto as **Exhibit G** and incorporated herein for all purposes. Not only does PDC assert privilege as to obvious partnership documents, strikingly PDC claims attorney-client privilege for correspondence among various combinations of PDC, Andrews Kurth, Nicolaou and Debtors' counsel, Gray Reed, *before* and *after* the filing of the bankruptcy cases.

25. The Committee has specifically asked Debtors' counsel for Nicolaou's position on the claim of privilege by PDC. It has been over two weeks since that request was made and, to date, there has been no response.

26. There is, without question, a clear conflict of interest. The evidence gathered to date firmly supports, and the Committee believes necessitates, the appointment of a chapter 11 trustee.

27. A Chapter 11 trustee will hold the attorney-client privilege on behalf of the Debtors and PDC's discovery antics, obviously intended to thwart the Committee's investigation, will be curtailed.

V.
RELIEF REQUESTED AND BASIS THEREFOR

28. The Committee respectfully submits that the appointment of a chapter 11 trustee is appropriate in this case pursuant to sections 1104(a)(1), 1104(a)(2), and 1104(e) of the Bankruptcy Code. For the reasons set forth herein, cause exists for such appointment because of the conflicts of interest of the Debtors' management.

29. Additionally, the appointment of a Chapter 11 trustee would clearly be in the best interests of the estate. As an independent party that will hold the partnerships' attorney-client privilege, a Chapter 11 trustee will have the power to waive such privilege and facilitate the Committee's investigation into potential valuable causes of action of the estates. *See U.S. v. Campbell*, 73 F.3d 44, 47 (5th Cir. 1996) (the bankruptcy trustee of the debtor-partnership holds the attorney-client privilege and the corresponding authority to waive the attorney-client privilege on behalf of the debtor); *see also In re: Royce Homes, LP*, 449 B.R. 709, 732 (Bankr. S.D. Tex. 2011) (Bohm, J.) ("It is well settled that a debtor-partnership's trustee holds the partnership's attorney-client privilege and has the power to waive the privilege with respect to ***pre-bankruptcy*** communications.") (emphasis added).

30. Section 1104(a) of the Bankruptcy Code provides that, after the commencement of the bankruptcy case but before the confirmation of a plan, on request of a party in interest, the bankruptcy court *shall* appoint a trustee "(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case… or… (2) if such appointment is in the best

interests of creditors, any equity holders, and other interests of the estate…." *See* 11 U.S.C. §§ 1104(a)(1), (a)(2).

A. Cause Exists to Appoint a Trustee Under 11 U.S.C. § 1104(a)(1).

31. It is undisputed that courts generally favor allowing a debtor to remain in possession of the estate absent a showing that there is a need for the appointment of a trustee. *See, e.g., In re Intercat, Inc.*, 247 B.R. 911, 920 (Bankr. S.D.Ga. 2000). However, a court's willingness to allow a debtor to remain in possession and control of the estate is premised upon an assurance that the debtor will carry out the fiduciary responsibilities of a trustee. *See In re Ionosphere Clubs, Inc.*, 113 B.R. 164, 169 (Bankr. S.D.N.Y. 1990) ("a debtor-in-possession must act as a 'fiduciary of his creditors' to 'protect and conserve property in its possession for the benefit of creditors,' and to refrain [ ] from acting in a manner which could damage the estate ..." (*citing In re Sharon Steel Corp.*, 86 B.R. 455, 457 (Bankr. W.D. Pa. 1985)). Where, as here, the debtors' management is inherently incapable of fulfilling its fiduciary responsibilities to the estates, "the stewardship of the reorganization effort must be turned over to an independent trustee." *See In re V. Savino Oil & Heating Co.*, Inc., 99 B.R. 518, 526 (Bankr. E.D.N.Y. 1989) (holding debtor's pre-petition actions represented calculated and calibrated effort in contemplation of the Chapter 11 filing to place debtor's operations beyond the reach of creditors and constituted sufficient "cause" for the appointment of a Chapter 11 trustee).

32. In this case, the Debtors' management's conflicts of interest demand the immediate appointment of a chapter 11 trustee. The language of § 1104(a)(1) of the Bankruptcy Code does not contain an exclusive list of causes mandating the appointment of a trustee. Rather, courts have considerable discretion to decide whether cause exists, such that a trustee must be appointed under § 1104(a)(1) based on the specific facts and circumstances of each case. *See In re G-I Holdings, Inc*., 385 F.3d 313 (3d. Cir. 2004)*; In re Marvel Entm't Group, Inc.*, 140

F.3d 463, 473 (3d Cir. 1998); *In re Sharon Steel Corp.*, 871 F.2d 1217, 1228 (3d Cir. 1989); *Comm. of Dalkon Shield Claimants v. A.H. Robins Co., Inc.*, 828 F.2d 239, 242 (4th Cir. 1987). In addition to fraud, dishonesty, incompetence and gross mismanagement, factors that have been used by courts to determine that cause exists include, but are not limited to: (i) materiality of the misconduct of the debtor's management, (ii) *evenhandedness or lack of same in dealings with insiders or affiliated entities vis-à-vis other interested parties*, (iii) existence of pre-petition voidable preferences or fraudulent transfers, (iv) *unwillingness or inability of management to pursue estate causes of action*, (v) *conflicts of interest on the part of management interfering with its ability to fulfill fiduciary duties to the debtor*, and (vi) *self-dealing by management or waste or squandering of corporate assets*. *See In re Marvel Entm't Groups, Inc.*, 140 F.3d at 472-473; *In re Sharon Steel Corp.*, 871 F.2d at 1228; *In re* Intercat, 247 B.R. at 920-21 (emphasis added).

33. It is axiomatic that a debtor-in-possession is a fiduciary. Like a trustee, the fiduciary duties of a debtor-in-possession extend to creditors and equity holders. *See Commodity Futures Trading Comm. v. Weintraub*, 47, U.S. 343, 354-355 (1985). *See also In re Savino Oil & Heating Co.*, 99 B.R. 518, 525 (Bankr. E.D.N.Y. 1989) (noting that the concept of leaving a debtor-in-possession is premised on the belief that current management will carry out the fiduciary responsibilities of a trustee). Hence, "cause may exist pursuant to §1104(a)(1) for the appointment of a trustee when the debtor in possession breaches this duty." *See In re SRJ Enterprises, Inc.*, 151 B.R. 189, 194-195 (Bankr. N.D. Ill. 1993).

34. As a fiduciary, the debtor-in-possession does not act in its own interest but must act in the best interest of the estate. *See In re J.T.T. Corp.*, 958 F.2d 602, 604-05 (4th Cir. 1992) (*citing Wolf v. Weinstein*, 372 U.S. 633, 649-50, 83 S.Ct. 969, 979-80, 10 L.Ed.2d 33 (1963)).

The fiduciary duties of a debtor-in-possession include a duty to protect the assets of the estate, a duty of loyalty and a duty of care. *See In re Bowman*, 181 B.R. 836 (Bankr. D. Md. 1995). The duty of loyalty encompasses a duty to avoid self-dealing, the appearance of impropriety, conflict of interest and the duty of impartiality. *See In re Herberman*, 122 B.R. 273 (Bankr. N.D. Ga. 1990).

35. For the reasons set forth herein, it is apparent that cause exists to appoint a chapter 11 trustee under the parameters set forth in Section 1104(a)(1). The Committee's investigation has been thwarted by PDC's discovery antics. By nature of her engagement by PDC, Nicolaou has an inherent conflict of interest. Nicolaou lacks the necessary impartiality to protect the estates' interests.

36. Sufficient cause exists under the applicable authorities to appoint a chapter 11 trustee.

B. The Appointment of a Trustee is in the Best Interests of the Estates.

37. Section 1104(a)(2) of the Bankruptcy Code "creates a flexible standard [that] … allows the appointment of a trustee even when no 'cause' exists," but where to do so would be in the best interest of the constituents. *See In re Ionosphere Clubs, Inc.*, 113 B.R. at 168. Even if a court were to determine that the appointment of a trustee is not mandated by the analysis required in § 1104(a)(1) of the Bankruptcy Code, a court may exercise its discretion and still appoint a trustee under § 1104(a)(2) of the Bankruptcy Code if doing so is in the best interest of the parties. *See In re The 1031 Tax Group, LLC,* 374 B.R. 78, 90-91 (Bankr. S.D.N.Y. 2007).

38. The more flexible standard under § 1104(a)(2) requires the court to engage in a cost-benefit analysis to determine whether the appointment of a trustee is in the best interests of the estate. *See In re Microwave Products of America, Inc.*, 102 B.R. 666, 670 (Bankr. W.D. Tenn. 1989); *see also In re Ionosphere Clubs, Inc.*, 113 B.R. at 168. Courts have considered

several factors under its § 1104(a)(2) analysis, including: (i) the trustworthiness of the debtor; (ii) the debtor-in-possession's past and present performance and prospects of the debtor's rehabilitation; (iii) the confidence – or lack thereof – of the business community and of the creditors in present management; and (iv) the benefits derived by the appointment of a trustee, balanced against the cost of appointment. *See In re The 1031 Tax Group, LLC,* 374 B.R. at 91.

39. In determining whether the appointment of a trustee is in the best interest of creditors, a bankruptcy court must utilize its broad equity powers. *See In re Hotel Associates., Inc.*, 3 B.R. 343, 345 (Bankr. E.D. Pa. 1980). "In equity, as nowhere else, courts eschew rigid absolutes and look to the practical realities and necessities inescapably involved in reconciling competing interests." *See Id.* (*citing Lemon v. Kurtzman*, 411 U.S. 192, 200-201 (1973)). Where current management or persons in control of the debtor have engaged in acts that have caused harm to the debtor's estates, the courts often find that appointing a trustee is in the best interest of the estates, and in fact, is the only way to avoid further mismanagement of the debtor's affairs. *See In re North America Communications, Inc.*, 138 B.R. 175 (Bankr. W.D. Pa. 1992); *see also In re United Church of the Ministers of God*, 74 B.R. 271 (Bankr. E.D. Pa. 1987).

40. Here, the appointment of a trustee is in the best interests of all of the Debtors' estates. The Debtors' primary assets left to be administered are estate causes of action. To entrust current management to faithfully, thoroughly and zealously analyze and assert those causes of action is akin to assuming the fox will guard the hen house. Appointing a Chapter 11 trustee at this juncture will ensure that the Debtors' assets are maximized in a manner that yields the best return for the limited partners and is in the best interests of the estates.

VI.
RESERVATION OF RIGHTS

41. The Committee reserves the right to raise further and other bases to support this Motion prior to or at the hearing on this Motion. The Committee reserves the right to supplement the evidentiary record in support of the Motion prior to or at the hearing on this Motion.

VII.
REQUEST FOR RELIEF

WHEREFORE, the Committee respectfully requests that this Court appoint a chapter 11 trustee in these cases for the grounds set forth above and grant the Committee such other and further relief as may be just and proper.

DATED: June 4, 2014

Respectfully submitted,

/s/ Holland O'Neil

Holland Neff O'Neil (TX 14864700)
Thomas C. Scannell (TX 24070559)
GARDERE WYNNE SEWELL LLP
3000 Thanksgiving Tower
1601 Elm Street
Dallas, TX 75201-4761
Telephone: (214) 999-3000
Facsimile: (214) 999-4667
honeil@gardere.com
tscannell@gardere.com

COUNSEL TO THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS

CERTIFICATE OF CONFERENCE

During a meeting on May 21, 2014, I conferred with Ms. Nicolaou and Mr. Brookner regarding the possibility that the Committee might pursue this relief. They were opposed to this course of action

/s/Holland O'Neil
Holland Neff O'Neil

CERTIFICATE OF SERVICE

I certify that on June 4, 2014, a true and correct copy of this document was served via ECF-electronic mail on the parties receiving electronic notice.

/s/ Thomas C. Scannell
Thomas C. Scannell