

**IN THE UNITED BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

NJOY, INC.,¹

Debtor.

Chapter 11

Case No. 16-12076 (CSS)

Hearing Date: TBD

Objections Due: TBD

**JOINT MOTION FOR ENTRY OF AN ORDER
PURSUANT TO 11 U.S.C. §§ 1104 AND 1106 AUTHORIZING THE APPOINTMENT
OF THE CHAPTER 11 TRUSTEE**

NJOY, Inc. (the “Debtor”), the debtor and debtor in possession in the above-captioned chapter 11 case, and the Official Committee of Unsecured Creditors of NJOY, Inc. (the “Committee”), hereby file this joint motion (the “Motion”) pursuant to sections 1104 and 1106 of title 11 of the United States Code (the “Bankruptcy Code”) for entry of an order authorizing and appointing Alfred T. Giuliano, CPA, CIRA as the chapter 11 trustee (the “Trustee”). In support of this Motion, the Debtor and Committee respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. ¶1409. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (G). The statutory predicates for the relief sought in this Motion are sections 105(a), 1104, 1107 and 1108 of the Bankruptcy Code.

BACKGROUND

2. On September 16, 2016, the above-captioned Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the

¹ The last four digits of the Debtor’s federal tax identification number are 6013. The Debtor’s mailing address and principal place of business is 15211 N. Kierland Blvd., Suite 200, Scottsdale, Arizona 85254.

District of Delaware (the “Court”). No trustee has been appointed and the Debtor continues to oversee its businesses affairs and manage its liquidation as a debtor in possession pursuant to Bankruptcy Code sections 1107(a) and 1108

3. On September 28, 2016, the United States Trustee appointed the Committee as the statutory fiduciary for the Debtor’s unsecured creditors pursuant to section 1102(a)(1) of the Bankruptcy Code [D.I. 64].

4. On October 26, 2016, an order was entered approving Fox Rothschild LLP as counsel to the Committee.

5. On September 20, 2016, Debtor filed its Motion For Sale of Property Free and Clear of Liens Pursuant to §363(f) (the “Sale Motion”) [D.I. 18]. The Sale Motion sought to sell substantially all of Debtor’s assets.

6. After negotiations with a number of parties, and an auction held on November 2, 2016 (the “Auction”), Homewood NJOY Acquisition LLC was deemed the successful bidder [D.I. 218].

7. On November 15, 2016, the Asset Purchase Agreement between the Debtor and Homewood NJOY Acquisition (the “APA”) and the Sale to Homewood NJOY Acquisition (“Homewood”) was approved by the Court [D.I. 259].

8. Closing on the Sale took place on February 16, 2017 [D.I. 399].

9. As of Closing, the Debtor had only one remaining officer and employee, Jeffrey Weiss, the Debtor’s Interim President and General Counsel. Prior to Closing, Mr. Weiss committed to staying until the confirmation of the liquidating plan and the effective date thereof as the Debtor’s representative.

10. Apparently, at some point after Closing, Mr. Weiss was employed by Homewood.

11. Since the Closing, the Committee and the Debtor have prepared a combined chapter 11 liquidating plan and disclosure statement and anticipate are prepared to file it shortly. The jointly proposed plan contemplated the appointment of Alfred Giuliano as the liquidating trustee.

12. In addition, the Committee has commenced its investigation regarding potential claims against the Debtor's officers and directors, including Mr. Weiss and others.

13. On March 28, 2017, after securing employment with Homewood, Mr. Weiss informed Debtor's counsel that he was no longer willing to remain as an employee of the Debtor and resigned.

14. The Debtor and the Committee reached out to Mr. Weiss requesting that he stay on to complete the minimal tasks to get to the end of this case, but Mr. Weiss refused.

15. The Debtor then reached out to the Debtor's majority shareholder, Mr. Teitelbaum, who is also the majority shareholder of Homewood, to request that he appoint a director for the Debtor to facilitate the remaining duties needed to complete the chapter 11 process, including the filing of the chapter 11 liquidating plan. The Debtor and the Committee were willing to appoint a CRO to make the business decisions for the Debtor and Mr. Giuliano agreed to be engaged by the Debtor for that purpose.

16. Although there was no downside in doing so, Mr. Teitelbaum refused to take any action.

17. The Debtor is without a representative to shepherd it through the confirmation process because Mr. Weiss has resigned and Mr. Teitelbaum, indicated he is unwilling to take the steps necessary to provide an authorized officer.

18. As the Court may recall, the Committee has been granted standing to bring certain D&O actions against the Debtor's officer and directors [D.I. 437]. It is clear that both Mr. Weiss

and Mr. Teitelbaum, for whom Mr. Weiss is now employed, are obstructing the chapter 11 process by failing to perform their duties in order to hobble the Committee in executing its duties to the unsecured creditors.

19. The Debtor cannot move forward with the required next steps of plan confirmation without an authorized person at its helm, therefore the Debtor is left in the difficult position of having to ask for a chapter 11 trustee in this case, a result we assume is not lost on Mr. Teitelbaum or Mr. Weiss. Because Mr. Giuliano is somewhat familiar with the posture of the case as he is to be the liquidating trustee, and for purposes of reducing the costs going forward, the Committee and the Debtor request that Mr. Giuliano be appointed the chapter 11 trustee.

RELIEF REQUESTED

20. Section 1104 of the Bankruptcy Code provides for the appointment of a Chapter 11 trustee after notice and a hearing if it is in the interest of creditors, equity security holders and other interests of the estate. 11 U.S.C. § 1104(a). Section 1106 of the Bankruptcy Code enumerates the powers, duties and rights of a Chapter 11 trustee. 11 U.S.C. § 1106.

21. In this case, after extensive discussion among and between counsel for the Debtor and counsel for the Committee, the Debtor and Committee have concluded that it is in the best interests of creditors and other interests of the estate, that an order directing the appointment of a Chapter 11 trustee, with all of the duties provided under §1106 of the Bankruptcy Code be entered forthwith.

22. Section 1104 (d) provides that once an order directing appointment of a chapter 11 trustee is entered, the United States Trustee shall consult with the parties in interest, appoint a suitable person to serve as trustee, and submit such appointment for the approval of the Court. 11 U.S.C. §1104(d).

23. The Debtor and the Committee have consulted and believe that Mr. Giuliano has the talents and experience to be appointed the chapter 11 Trustee in this case. First, the parties thought Mr. Giuliano would be both a competent and qualified CRO and liquidating trustee for the case. Moreover, Mr. Giuliano has significant experience as a trustee in chapter 7 cases, including operating chapter 7 cases. Lastly, Mr. Giuliano is also currently a panel chapter 7 trustee in the District of Delaware and well-known by the United States Trustee's office.

24. Appointing Mr. Giuliano as the chapter 11 trustee will result in the least amount of disruption and expense in the case as Mr. Giuliano is already somewhat familiar with the procedural posture of the case.

25. The Debtor and the Committee agree that Alfred T. Giuliano, whose business address is Giuliano Miller & Company, Berlin Business Park, 140 Bradford Drive, West Berlin, NJ 08091, is an acceptable candidate to serve as the Chapter 11 trustee over the debtor and its estate and hereby consents to his appointment if so appointed by the Office of the United States Trustee.

26. Because the Debtor currently has no officer to make decisions effecting it, the Debtor and the Committee have requested that this motion be heard on an expedited basis.

WHEREFORE, for all of the foregoing reasons, the Debtor and the Committee respectfully request that this Court enter an Order granting this Motion, appointing Mr. Giuliano as chapter 11

trustee in this proceeding, and for such other and further relief as the Court deems proper.

FOX ROTHSCHILD LLP

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Date: April 25, 2017

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Exhibit “A”

**IN THE UNITED BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

NJOY, INC.,¹

Debtor.

Chapter 11

Case No. 16-12076 (CSS)

Related to Docket No. __

**ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 1104 AND 1106
GRANTING THE DEBTOR'S AND COMMITTEE'S MOTION TO APPOINT
ALFRED T. GIULIANO AS THE CHAPTER 11 TRUSTEE**

Upon the motion (the "Motion") of NJOY, Inc. (the "Debtor"), the debtor and debtor-in-possession in the above-captioned case, and the Official Committee of Unsecured Creditors (the "Committee"), and pursuant to sections 1104 and 1106 of the Bankruptcy Code, for entry of an order appointing Alfred T. Giuliano ("Giuliano"), CPA, CIRA, as the Chapter 11 trustee in the case; and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion as set forth therein is sufficient under the circumstances, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtor and its estate and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is GRANTED as set forth herein; and it is further

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ORDERED that the United States Trustee shall consult with parties in interest, appoint Alfred T. Giuliano to serve as the chapter 11 trustee, and submit such appointment for the approval of the Court.

Dated: _____, 2017
Wilmington, DE

The Honorable Christopher S. Sontchi
United State Bankruptcy Judge