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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re: THE FALLS AT MCMINNVILLE LLC, Debtor.	Bankruptcy No. 18-25492 Chapter 11 Honorable R. Kimball Mosier
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**JOINDER AND OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF THE FALLS EVENT CENTER LLC TO EVERGREEN AVIATION
AND SPACE MUSEUM AND THE CAPTAIN MICHAEL KING SMITH
EDUCATIONAL INSTITUTE’S MOTION TO DISMISS**

The Official Committee of Unsecured Creditors (the “**Committee**”) appointed in the case of The Falls Event Center LLC (the “**Debtor**”), by and through its counsel, pursuant to § 1109(b), joins in the Chapter 11 Trustee’s objection [Docket No. 58]¹ and objects to Evergreen Aviation and Space Museum and the Captain Michael King Smith Educational Institute’s (the “**Museum**”) Motion to Dismiss Chapter 11 Case (the “**Motion**”) [Docket No. 26]. The Committee objects to the Motion for the following two reasons:

First, the Museum does not have standing to bring the instant Motion. In *Royal Indemnity*

¹ Nothing contained herein is a waiver of any objection the Committee may have to The Falls Event Center LLC moving to substantively consolidate its Chapter 11 case with that of The Falls at McMinnaville, LLC.

Co. v. Amer. Bond & Mortg. Co., 289 U.S. 165 (1933), the United States Supreme Court explained:

Even if the action of directors authorizing the filing of a voluntary petition . . . were in excess of the authority conferred, or otherwise invalid, creditors could not for that reason attack the consequent adjudication. The question is purely one of the internal management of the corporation. Creditors have no standing to plead statutory requirements not intended for their protection. If the stockholders' rights had been infringed, and they chose to waive them, a creditor could not assert them in opposing an adjudication.

289 U.S. at 171. As noted in *Still v. Fundsnet, Inc. (In re Sw. Equip. Rental)*, 152 B.R. 207 (Bankr. E.D. Tenn. 1992), the Supreme Court's subsequent decision in *Price v. Gurney*, 342 U.S. 100 (1945) (holding that an unauthorized filing must be dismissed), did not alter this rule. *See In re Sw. Equip. Rental*, 152 B.R. at 209 ("The failure of the directors to properly authorize the bankruptcy filing was a ground for vacating an adjudication, but it was a ground that the lower courts and the Supreme Court denied to creditors."). Section 1109(b), which allows a party in interest to be heard on any issue, does not alter this rule. *Id.* ("[I]t would be stretching the meaning of § 1109 to say that it overruled the Supreme Court's decision. The statute does not necessarily mean that every party in interest can obtain relief on every issue. In other words, the right to raise an issue and to appear and be heard is not the same as standing."). Courts have explained that the rationale for denying creditors standing to move for dismissal based on inadequate corporate authorization is based on "an underlying practical reason":

A creditor usually does not move for dismissal of a bankruptcy case out of concern for the debtor or other creditors. . . . The defendants want the bankruptcy case and this lawsuit dismissed to protect payments they received. They are not trying to protect the rights of shareholders or other creditors. They don't care.

Id. at 209–10. *See also In re Sterling Mining Co.*, No. 09-20178, 2009 WL 2475302, at

*5–7 (Bankr. D. Idaho Aug. 11, 2009) (same).²

Here, the Museum is not a member of the Debtor. The Museum is not concerned for the debtor or other creditors, and it lacks standing to bring the instant Motion.

Second, the appointment of Michael Thomson as the Chapter 11 Trustee in The Falls Event Center LLC bankruptcy case resolves any issue of authority. As the Museum acknowledges, under Oregon law, if a limited liability company’s operating agreement does not provide otherwise, the consent of a majority of the members of the company is required. *See* Motion, ¶ 17. The Falls Event Center LLC is the sole member of The Falls at McMinnville, LLC, and as the authorized and duly appointed Chapter 11 trustee of The Falls Event Center, LLC, Mr. Thomson can ratify the bankruptcy filing of The Falls at McMinnville, LLC. *See Hager v. Gibson*, 108 F.3d 35, 39–40 (4th Cir. 1997) (applying Virginia law and finding that the unauthorized filing of a voluntary petition can “be ratified in appropriate circumstances by ensuing conduct of persons with power to have authorized it originally”); *In re Alternate Fuels Inc.*, No. 09-20173, 2010 WL 4866690, at *12 (Bankr. D. Kan. Nov. 23, 2010) (“[T]he unauthorized filing of a voluntary petition of a corporation [under Kansas law] may be ratified by subsequent acts of the persons with power to have authorized it originally.”); *Wilmington Trust v. Pinnacle Land Group, LLC (In re Pinnacle Land Group, LLC)*, No. 17-2339-GLT, 2018 WL 4348051, at *9 (Bankr. W.D. Penn. Sept. 10, 2018) (noting that the unauthorized filing of bankruptcy petition can be remedied “if the defective corporate authorization is subsequently ratified in accordance with applicable law”); *In re Sterling Mining Co.*, No. 09-20178-TLM,

² *But see In re Bay Club Partners-472, LLC*, No. 14-30394, 2014 WL 1796688, at *4 (Bankr. D. Or. May 6, 2014) (noting that some courts have applied § 1109(b) to allow a creditor to move for dismissal based on inadequate authorization for a bankruptcy filing, but not addressing the Supreme Court’s decision in *Royal Indemnity*).

2009 WL 2475302, at *5–8 (Bankr. D. Idaho Aug. 11, 2009) (finding that where equity holders were properly notified and remained silent, the unauthorized filing was either ratified or waived). Accordingly, upon ratification by Mr. Thomson of The Falls at McMinnville, LLC’s filing, this Motion is moot.

Accordingly, the Committee requests the Court deny the Museum’s Motion.

DATED: January 29, 2019

HOLLAND & HART LLP

/s/ Ellen E. Ostrow

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*Attorneys for Official Committee of Unsecured
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 29th day of January, 2019 a copy of the foregoing was served as follows:

By Electronic Service: I certify that the parties of record in this case as identified below, are registered CM/ECF users:

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/s/ Ellen E. Ostrow _____