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Counsel for Wilmington Savings Fund Society, FSB, as the Successor Trustee for the 6.500% Senior Notes Due 2026

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

In re:)	
)	Chapter 11
)	
ENVIVA INC., <i>et al.</i> ,)	Case No. 24-10453 (BFK)
)	
Debtors. ¹)	Jointly Administered
)	
)	

MOTION OF THE SUCCESSOR INDENTURE TRUSTEE FOR THE 6.500% SENIOR NOTES DUE 2026 FOR ENTRY OF AN ORDER DIRECTING THE UNITED STATES TRUSTEE TO (I) RECONSTITUTE THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND (II) APPOINT THE SUCCESSOR INDENTURE TRUSTEE TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

Wilmington Savings Fund Society, FSB, as the successor indenture trustee (the “Indenture Trustee”)² for the 6.500% Senior Notes due 2026 (the “2026 Notes”) issued by Enviva Inc. (“Enviva”) and Enviva Partners Finance Corp. (together with Enviva, the “Issuers”) and

¹ A complete list of the Debtor entities may be obtained on the website of the Debtors’ claims and noticing agent at www.kccllc.net/enviva. The location of the Debtors’ corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Declaration of Glenn Nunziata in Support of Chapter 11 Petitions* [D.I. 27] and the *Declaration of Mark Rajcevich in Support of Chapter 11 Petitions and First-Day M*



guaranteed by certain of the Issuers' affiliates, by and through its undersigned counsel, Kilpatrick Townsend & Stockton LLP and Thompson McMullan, P.C., hereby files this motion (the "Motion") for an order directing the United States Trustee (the "UST") to (i) reconstitute the Official Committee of Unsecured Creditors (the "Committee") appointed in the above-captioned bankruptcy cases of Enviva and its debtor affiliates (collectively, the "Debtors"); and (ii) appoint the Indenture Trustee to the Committee. In support of this Motion, the Indenture Trustee respectfully states as follows:

PRELIMINARY STATEMENT³

1. The principal outstanding amount of the 2026 Notes is approximately \$750 million, which totals *approximately 42% of the Debtors' total prepetition funded debt*, and a much larger percentage of the Debtors' total unsecured debt. Moreover, according to the Debtors' consolidated list of creditors who have the thirty (30) largest unsecured claims (the "Top 30 List"), the Indenture Trustee for the 2026 Notes is the largest unsecured creditor *by at least \$400 million*. Despite the Debtors' significant balance of unsecured funded debt, however, not a single Committee member appointed by the UST represents the interests of unsecured funded debt. By this Motion, the Indenture Trustee seeks entry of an order rectifying this inadequacy of representation by directing the UST to reconstitute the Committee and appoint the Indenture Trustee to the Committee.

2. As presently constituted, the three-member Committee, which is comprised of (1) a contract creditor, RWE Supply & Trading GmbH ("RWE"), (2) a litigation creditor, Drax Power Limited ("Drax"), and (3) a service provider, Ryder Integrated Logistics ("Ryder"), fails to adequately represent the Debtors' general unsecured creditor constituency. Specifically, the

³ Capitalized terms used but not otherwise defined in the Preliminary Statement shall have the meanings ascribed to them in the Motion.

Committee fails to include *any* representation (let alone adequate representation) of the Debtors' approximately \$1.1 billion of unsecured funded debt, of which \$750 million is represented by the Indenture Trustee. The UST's decision to exclude the Indenture Trustee from the Committee is perplexing considering that the Indenture Trustee (i) is the largest unsecured creditor by hundreds of millions of dollars; and (ii) timely submitted the UST's Committee solicitation package. Regardless, unless the Committee is reconstituted to include the Indenture Trustee, the Committee's current composition will not reflect the economic realities of the Debtors' unsecured claims pool.

3. Further, the Committee's current composition, which includes RWE and Drax as part of a three-member Committee, is problematic in other ways as well. As described in the *Declaration of Glenn Nunziata in Support of Chapter 11 Petitions* [D.I. 27] (the "First Day Declaration"), RWE is the Debtors' main contract counterparty and RWE's long-term contracts, the "Master Agreements," will be a focal point of these cases. As a result, RWE will have to recuse itself from Committee deliberations regarding the Master Agreements, including efforts to renegotiate or otherwise deal with those agreements and the Board's independent investigation of the "Q4 2022 Transactions." Drax may also have to recuse itself from certain decisions or discussions because, upon information and belief, Drax is a direct competitor of the Debtors. Unless the Committee is reconstituted to include the Indenture Trustee, case-defining Committee deliberations may be left up to a two-member group, or potentially a one-member group, which is not an ideal voting structure and will further concentrate the Committee's decision-making amongst a small subset of creditors that do not reflect the interests of bondholders. Rather than let this underrepresented Committee continue in its current form, the Court should direct the UST to reconstitute the Committee to appoint the Indenture Trustee.

4. Though the Indenture Trustee contacted the UST to understand the decision to exclude it from the Committee, the UST did not provide an explanation, allowing the Indenture Trustee to only guess why it was excluded. Perhaps the UST's position was that the Indenture Trustee cannot serve on the Committee because holders of 95% of the 2026 Notes have signed a restructuring support agreement with the Debtors [D.I. 27, Ex. C] (the "RSA"). That position is without merit, however, as it conflates the 2026 Noteholders with the Indenture Trustee. The Indenture Trustee and the 2026 Noteholders are not one in the same. The Indenture Trustee has not signed the RSA, it is not bound by the terms of the RSA, and it cannot be directed under the RSA or the 2026 Notes Indenture in its capacity as a Committee member.⁴

5. Further, appointment of the Indenture Trustee to the Committee is vital to provide representation for the critical mass of funded debt creditors who have *not* signed onto the RSA. Importantly, the Indenture Trustee's positions will not be dictated by the 2026 Noteholders who have signed the RSA because the Indenture Trustee is the representative for *all* 2026 Noteholders. Thus, the Indenture Trustee must also represent the interests of the 5% of holders that are not party to the RSA. That remaining 5% of the 2026 Notes, *alone*, totals approximately \$38 million in unsecured claims, which, if it was a standalone claim, would be the fifth largest on the Top 30 List. That basis alone warrants the appointment of the Indenture Trustee to the Committee.

6. Fortunately, the Bankruptcy Code provides a mechanism to reconstitute creditors' committees that fail to adequately represent the interests of all creditors, such as this one. *See*

⁴ The Indenture Trustee's lead counsel alone has been involved in numerous cases in recent years where indenture trustees were appointed to official committees of unsecured creditors despite the fact that a majority of their holders were party to a restructuring support agreement. *See, e.g., In re Invacare Corp.*, No. 23-90068 (CML) (Bankr. S.D. Tex.); *In re Washington Prime Group Inc.*, No. 21-31948 (MI) (Bankr. S.D. Tex.); *In re Colt Holding Co. LLC*, No. 15-11296 (LSS) (Bankr. D. Del.). There are undoubtedly countless other examples where undersigned lead counsel was not involved.

11 U.S.C. § 1102(a)(4). Given the magnitude of unsecured funded debt that is unrepresented by the Committee’s composition, and the Indenture Trustee’s willingness to serve on the Committee, this is a textbook case for reconstituting the Committee pursuant to section 1102(a)(4) of the Bankruptcy Code.

JURISDICTION AND VENUE

7. The United States Bankruptcy Court for the Eastern District of Virginia (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The Indenture Trustee confirms its consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BASIS FOR RELIEF

9. The statutory bases for the relief requested herein are sections 105(a) and 1102(a)(4) of title 11 of the United States Code (the “Bankruptcy Code”) and Bankruptcy Rule 2020.

BACKGROUND

10. On March 12, 2024 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and

managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

11. A description of the Debtors and certain background information relating to the Chapter 11 Cases is set forth in the First Day Declaration.

12. Attached to each Debtor's voluntary petition for chapter 11 relief is the consolidated list of the Debtors' largest unsecured claims, the "Top 30 List." Three of the four largest unsecured claims on the Top 30 List are funded debt obligations, with the Indenture Trustee holding by far the largest claim.⁵ As of the Petition Date, the approximate principal outstanding amount of the 2026 Notes was \$750 million. The claim of the next largest creditor, RWE, is valued at less than half of that amount. The other creditors on the Top 30 List include contract counterparties, trade creditors, and litigation creditors, all of which hold far smaller claims than the Indenture Trustee.

13. On March 15, 2024, the Indenture Trustee's counsel received the UST's solicitation package to form the Committee. The deadline to return the solicitation package to the UST was March 20, 2024. The Indenture Trustee's counsel returned the completed solicitation package to the UST on March 18, 2024.⁶ Neither the Indenture Trustee nor its counsel was contacted by the UST regarding the Indenture Trustee's interest in serving on the Committee.⁷

⁵ Upon information and belief, Wilmington Trust, NA, as holder of the third and fourth largest unsecured claims, also submitted the solicitation package seeking membership on the Committee and was similarly denied.

⁶ A true and correct copy of the completed solicitation package is attached hereto as Exhibit A.

⁷ On March 21, 2024, the Indenture Trustee's counsel e-mailed the UST's office to inquire if there was any update as to the formation of the Committee. The UST's office responded that it hoped to form the Committee no later than March 25, 2024, and that counsel would be contacted if the UST had any questions.

14. On March 25, 2024, the UST filed the *Appointment of Unsecured Creditors' Committee* [D.I. 172] (the "Appointment Notice").⁸ The Appointment Notice appointed three creditors to the Committee: (1) RWE (contract creditor), (2) Drax (litigation creditor), and (3) Ryder (service provider). *None of the Debtors' unsecured funded debt is represented on the Committee.*

15. On March 25 and 26, 2024, the Indenture Trustee's counsel left messages with the UST's office to discuss the Indenture Trustee's desire to be appointed to the Committee.

16. On March 26, 2024, the Indenture Trustee's counsel spoke to Mr. Kenneth W. Whitehurst, III, Assistant United States Trustee. Mr. Whitehurst confirmed that the Indenture Trustee's solicitation package was received and, while he advised that the Indenture Trustee was considered for the Committee, he refused to provide the reason why it ultimately was not appointed.

RELIEF REQUESTED

17. The Indenture Trustee seeks entry of an order, pursuant to sections 105(a) and 1102(a)(4) of the Bankruptcy Code and Bankruptcy Rule 2020, reconstituting the Committee by adding the Indenture Trustee to the Committee.

BASIS FOR RELIEF REQUESTED

A. The Committee Must Adequately Represent the Various Types of Creditors.

18. The composition of a creditors' committee is extremely important because "creditors' committees play a central role in chapter 11 cases". *In re Pursuit Cap. Mgmt., LLC*, 595 B.R. 631, 654-55 (Bankr. D. Del. 2018). Unsecured creditors' committees not only serve as

⁸ A corrected Appointment Notice was subsequently filed that fixed a typographical error in the original Appointment Notice. *See* D.I. 173.

“the official organized voice of the unsecured creditors,” they also provide “needed checks and balances in the reorganization process.” *Value Prop. Trust v. Zim Co. (In re Mortg. & Realty Tr.)*, 212 B.R. 649, 653 (Bankr. C.D. Cal. 1997). As such, a committee that is representative of the general unsecured creditor body is critically important to the fair and efficient functioning of the chapter 11 process.

19. “If the unsecured creditors’ committee fails to be properly representative of the unsecured creditors, any party in interest can move to have the committee reconstituted.” *Official, Unsecured Creditors’ Comm. v. Stern (In re SPM Mfg. Corp.)*, 984 F.2d 1305, 1317 (1st Cir. 1993). Indeed, the 2005 amendments to the Bankruptcy Code, Pub. L. No. 109-8 (2005), specifically permit this Court to change the membership of the Committee. Section 1102(a)(4) provides:

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).

20. Though there is no established framework in the Bankruptcy Code to determine adequate representation,⁹ it is understood that for a creditor group to be adequately represented by a committee, the interests of that group must “have a *meaningful* voice on the committee in relation to their posture in the case.” *In re Dow Corning Corp.*, 194 B.R. 121, 141 (Bankr. E.D. Mich. 1996), *rev’d on other grounds*, 212 B.R. 258 (E.D. Mich. 1997). “Although committees do not necessarily need to reflect the precise composition of the creditor body, ***committees should adequately represent the various creditor types.***” *In re ParkWest Circle Realty, LLC*, No. 10-

⁹ See *In re Enron Corp.*, 279 B.R. 671, 684-85 (Bankr. S.D.N.Y. 2002); see also *In re McLean Indus., Inc.*, 70 B.R. 852, 861 (Bankr. S.D.N.Y. 1987) (“Because each case is distinct, there is no hard and fast rule.”).

12965 (A.J.G.), 2010 WL 3219531, at *4 (Bankr. S.D.N.Y. Aug. 11, 2010) (emphasis added) (citing *In re Dana Corp.*, 344 B.R. 35, 38 (Bankr. S.D.N.Y. 2006)). “[A]dequate representation exists through a single committee as long as the *diverse interests* of the various creditor groups are represented on and have participated in that committee.” *In re Sharon Steel Corp.*, 100 B.R. 767, 777–78 (Bankr. W.D. Pa. 1989) (emphasis added).

21. A bankruptcy court must determine whether an appointed committee adequately represents the various types of creditors based upon the unique facts of the case. *See In re Hills Stores Co.*, 137 B.R. 4, 5 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 55 B.R. 945, 948 (Bankr. S.D.N.Y. 1985). This “decision is not to be taken lightly, and involves a delicate balancing of various and sometimes diverging interests.” *Enron Corp.*, 279 B.R. at 685.

22. In analyzing the adequacy of representation, bankruptcy courts often consider factors such as:

- (1) the ability of the committee to function;
- (2) the nature of the case;
- (3) the standing and desires of the various constituencies;
- (4) the ability for creditors to participate in the case even without an official committee and the potential to recover expenses pursuant to section 503(b) of the Bankruptcy Code;
- (5) whether different classes may be treated differently under a plan and need representation;
- (6) the motivation of the movants;
- (7) the delay and additional cost of granting the motion;
- (8) the point in the proceeding when the motion is made;
- (9) the tasks the committee is to perform; and
- (10) any other factors relevant to the adequate representation issue.

See *Dana Corp.*, 344 B.R. at 38 (citations omitted); *Enron Corp.*, 279 B.R. at 685 (citations omitted).¹⁰ Several, if not all, of these factors militate in favor of adding the Indenture Trustee to the Committee.

23. A case-by-case analysis is necessary, with no one factor being dispositive. *Dana Corp.*, 344 B.R. at 38 (citing *In re Kalvar Microfilm*, 195 B.R. 599, 601 (Bankr. D. Del. 1996)). Courts have emphasized that adequate representation “lies not in the uniqueness of a single claim but ‘in the nature of the case and the composition of the committee.’” *In re Drexel Burnham Lambert Group, Inc.*, 118 B.R. 209, 212 (Bankr. S.D.N.Y. 1990) (quoting *McLean*, 70 B.R. at 861).

B. The Committee Does Not Adequately Represent the 2026 Noteholders or Other Unsecured Bondholders.

24. The Committee, as currently appointed, fails to represent the single largest creditor constituency in these Chapter 11 Cases: the holders of unsecured funded debt (*i.e.*, unsecured bondholders). This group is not only the largest category of unsecured claims, it is entirely unrepresented on the Committee despite the Indenture Trustee’s efforts to be appointed to the Committee.

25. The other Committee members do not adequately represent the interests of holders of the 2026 Notes (the “2026 Noteholders”), or holders of the other unsecured bonds. Bondholders generally have different interests than contract claimants, service providers, and litigation creditors—the constituencies currently represented on the Committee. Because the bondholders’ interests are unique to other types of creditors, the other Committee members inevitably will not represent their interests. Thus, the 2026 Noteholders’ different interests, or desires, for the Debtors’

¹⁰ See also *In re Agway, Inc.*, 297 B.R. 371, 374 (Bankr. N.D.N.Y. 2003) (citations omitted); *In re Roman Cath. Church of Archdiocese of New Orleans*, No. 20-10846, 2021 WL 454220, at *9-10 (Bankr. E.D. La. Feb. 8, 2021) (citations omitted).

restructuring (the third factor courts evaluate when considering reconstitution) weigh in favor of appointing the Indenture Trustee to the Committee. *See ParkWest*, 2010 WL 3219531 at *6 (granting motion under section 1102(a)(4) and holding that creditor should be added to committee because creditor's interest was not adequately represented by the committee); *see also Archdiocese of New Orleans*, No. 20-10846, 2021 WL 454220 (granting section 1102 motion, holding that commercial creditors were not adequately represented on committee comprised exclusively of tort claimants, and appointing an additional committee of commercial creditors).

26. In addition, the 2026 Noteholders, and the other unsecured bondholders, likely will be treated differently under a plan than those unsecured creditors currently represented on the Committee. The RSA would allocate unsecured bondholders into a separate class to face different treatment from the other general unsecured creditors. *See RSA Ex. A (Term Sheet)*, at 2. Because the 2026 Noteholders would be treated differently under a plan (factor 5), they deserve representation on the Committee, especially when the Committee negotiates the plan.

27. The nature of these cases (factor 2) also supports the need for bondholders to be adequately represented on the Committee. The Debtors are the largest producer of wood pellets in the world. First Day Decl. ¶ 6. The Debtors maintain a complex business enterprise supported by a varied debt structure. Indeed, these cases were filed with approximately \$2 billion of funded debt, approximately half of which is unsecured bond debt that has no representation on the Committee whatsoever. Although “the size of a case alone is not determinative[.]” the fact that this is a complex “mega” chapter 11 case cannot be overlooked and weighs in favor of reconstituting the Committee to include the Indenture Trustee. *Enron Corp.*, 279 B.R. at 688; *see also Beker Indus. Corp.*, 55 B.R. at 949 (“[T]he complex nature of this large case requires representation of Debenture holders and shareholders. As Collier illustrates, the size of a

bankruptcy case strongly indicates the need for additional committees representing different interests.”).

C. The Indenture Trustee Should Be Added to the Committee at this Time.

28. It is in the best interests of creditors and the Chapter 11 Cases for the UST to reconstitute the Committee and add the Indenture Trustee to the Committee at this time. First, the Indenture Trustee may improve the functioning of the Committee (factor 1), particularly in matters relating to RWE. As the Debtors indicated in the First Day Declaration, certain transactions and long-term contracts with Committee member RWE created the financial distress that led to the Debtors’ bankruptcy filing. *See* First Day Decl. ¶¶ 88-91. The Debtors’ Q4 2022 Transactions and Master Agreements with RWE will be a necessary focus of the Chapter 11 Cases. RWE will need to recuse itself from important Committee decisions directly impacting RWE, including decisions relating to the Debtors’ key supply and sale contracts. At such times, only two Committee members would remain to decide critical case matters when RWE is recused, which would further narrow the creditor interests represented and create the risk of deadlock. The current structure of the Committee members, therefore, limits the Committee’s ability to function on important matters in the Chapter 11 Cases.

29. Second, the Debtors may be reluctant to share certain sensitive or confidential business information with RWE or Drax, a direct competitor against whom they are in active litigation, which further undermines the Committee’s ability to function effectively. Because the Debtors are not likely to have any such concerns about sharing information with the Indenture Trustee, if it is on the Committee, the Indenture Trustee could represent creditors on issues in which RWE and Drax are limited in their ability to do so. As such, appointing the Indenture

Trustee to the Committee would improve the Committee's ability to function effectively on behalf of all unsecured creditors on all matters (factor 1).

30. Third, as noted, the Indenture Trustee is not party to the RSA, so its decisions would not be controlled by that agreement. Rather, it is free to advocate for all 2026 Noteholders, including the 5% that have not signed the RSA. In short, the Indenture Trustee could fairly and fully represent holders of the Debtors' unfunded debt, and thus improve the efficacy of the Committee, without any obligations that would undermine this important role.

31. Last, appointing the Indenture Trustee to the Committee at this time, without delay, would benefit the Chapter 11 Cases. The Committee was only recently appointed, so the Indenture Trustee could be added to the Committee without significant disruption to the Chapter 11 Cases or cost to get up to speed (factors 7 and 8). Further, it would be prudent for the Court to direct the UST to add the Indenture Trustee to the Committee now, rather than find later on, after significant case developments, that the bondholders require a voice on the Committee or even a committee of their own. Such a determination at a later stage would be far more costly and disruptive to the Chapter 11 Cases. Indeed, filing this Motion only three days after the Committee was formed strongly weighs in favor of factor 8.

32. For these reasons, it is critical that the Court order the UST to (i) reconstitute the Committee to provide "adequate representation of creditors" as provided by section 1102(a)(4) of the Bankruptcy Code and (ii) appoint the Indenture Trustee, so that the Committee will represent all creditor constituencies, including bondholders, the largest unsecured creditor constituency in the Chapter 11 Cases, by far.

NOTICE

33. Notice of this Motion has been provided to the parties required to be served pursuant to the *Procedures for Complex Chapter 11 Cases in the Eastern District of Virginia* and pursuant to the *Notice of Motion and Notice of Hearing* and *Certificate of Service* filed contemporaneously with the Motion. The parties provided notice of this Motion include the following parties or their counsel, as applicable: (a) the Debtors; (b) the Assistant United States Trustee for the Eastern District of Virginia; (c) the Committee; and (d) those persons who have formally appeared in the Chapter 11 Cases and requested service pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested in this Motion, the Indenture Trustee submits that no further notice is necessary.

NO PRIOR REQUEST

34. No prior request for the relief sought in this Motion has been made to this or any other court.

[Signature Page to Follow]

Dated: March 28, 2024

Respectfully submitted,

/s/ David R. Ruby

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William D. prince IV, Esq. (VSB # 77209)

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AND

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*Counsel for Wilmington Savings Fund Society,
FSB, as the Successor Trustee for the 6.500%
Senior Notes Due 2026*

CERTIFICATE OF SERVICE

[Separate Certificate of Service to be Filed]

EXHIBIT A



U.S. Department of Justice
Office of the United States Trustee
Eastern District of Virginia
Alexandria Division

1725 Duke St.
Suite 650
Alexandria, VA 22314

(703) 557-7176 Phone
(703) 557-7279 Fax

Date: March 13, 2024

Re: Enviva Inc., 24-10453-BFK¹

Dear Creditor:

The above-named debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Section 1102(b) of the Bankruptcy Code authorizes the United States Trustee to appoint an Official Committee of Unsecured Creditors (“Committee”), and the debtors’ petition or other sources of information indicate that you may be eligible for appointment to the Committee. The Committee represents the interests, and acts on behalf, of all unsecured creditors. Members of the Committee are generally selected from the list of the thirty largest unsecured creditors.

If you wish to be considered for membership on the Committee, please complete the enclosed Questionnaire and return it **by e-mail to my attention at kenneth.n.whitehurst@usdoj.gov, no later than Wednesday, March 20, 2024, by 5:00 p.m. (Eastern Standard Time)**. Return of the questionnaire, however, does not guarantee appointment to the Committee, only that you will be considered. If you do not wish to serve on the Committee, you do not need to return the form.

The United States Trustee urges you to consider serving on the Committee. Under the Bankruptcy Code, the Committee has the right to demand that the debtors consult with the Committee before making major decisions or changes, to request the appointment of a trustee or examiner, to participate in the formation of a plan of reorganization, and in some cases, to propose its own plan of reorganization. If appropriate, the Committee may request that the Bankruptcy Court convert a chapter 11 case to one under chapter 7, at which time the debtors’ operations would cease and the assets would be liquidated. The Committee is authorized to select and employ an attorney and other necessary professionals, subject to court approval. Fees of professionals employed by the Committee may be paid from available assets, if any, of the bankruptcy estate after court approval. Further, Committee members’ actual expenses may be reimbursed from estate assets.

¹ The debtor has requested that this case be jointly administered with the following affiliated debtors’ cases: Enviva Aircraft Holdings Corp., Enviva Development Finance Company, LLC, Enviva Energy Services, LLC, Enviva GP, LLC, Enviva Holdings GP, LLC, Enviva Holdings, LP, Enviva Management Company, LLC, Enviva MLP International Holdings, LLC, Enviva Partners Finance Corp., Enviva Pellets Bond, LLC, Enviva Pellets Epes Finance Company, LLC, Enviva Pellets Epes Holdings, LLC, Enviva Pellets Epes, LLC, Enviva Pellets Greenwood, LLC, Enviva Pellets Lucedale, LLC, Enviva Pellets Waycross, LLC, Enviva Pellets, LLC, Enviva Port of Pascagoula, LLC, Enviva Shipping Holdings, LLC, and Enviva, LP.

If we receive sufficient creditor interest in this solicitation, we may schedule a telephone conference for the purpose of forming a committee. If, however, a sufficient number of creditors do not elect to serve on the Committee, a Committee may not be formed and these rights may go unexercised.

The Committee performs a vital role in chapter 11 reorganizations, and we hope that you will choose to participate.

Sincerely,

GERARD R. VETTER
ACTING UNITED STATES TRUSTEE

/s/ Kenneth N. Whitehurst, III

Assistant United States Trustee

Attachments



U.S. Department of Justice
Office of the United States Trustee
Eastern District of Virginia
Alexandria Division

1725 Duke St. (703) 557-7176 Phone
Suite 650 (703) 557-7279 Fax
Alexandria, VA 22314

QUESTIONNAIRE

Date: March 13, 2024

Re: Enviva Inc., 24-10453

QUESTIONNAIRE FOR OFFICIAL COMMITTEE OF UNSECURED CREDITORS²

Please Type or Print Clearly.

I am willing to serve on a Committee of Unsecured Creditors. Yes (X) No ()

A. Unsecured Creditor's Name and Contact Information:

Name: Wilmington Savings Fund Society, FSB, as Trustee ("WSFS") Phone: (302) 888-7420
Address: Attn: Patrick J. Healy Fax: (302) 421-9137
500 Delaware Avenue E-mail: phealy@wsfsbank.com
Wilmington, DE 19801

B. Counsel (If Any) for Creditor and Contact Information:

Name: Kilpatrick Townsend & Stockton LLP Phone: (404) 815-6482
Address: Attn: Todd C. Meyers, Esq. Fax: (404) 541-3307
1100 Peachtree Street NE, Suite 2800 E-mail: tmeyers@ktslaw.com
Atlanta, GA 30309-4528

C. If you have been contacted by a professional person(s) (e.g., attorney, accountant, or financial advisor) regarding the formation of this committee, please provide that individual's name and/or contact information:

Akin Gump Strauss Hauer & Feld LLP; ArentFox Schiff LLP; Brown Rudnick LLP;
Cleary Gottlieb Steen & Hamilton LLP; Cooley LLP; Dentons; Ducera Partners LLC;
Dundon Advisers LLC; M3 Partners; Milbank LLP; Pachulski Stang Ziehl & Jones LLP;
Paul Hastings LLP; Piper Sandler & Co.; Province Firm; White & Case LLP; Whiteford, Taylor & Preston LLP

D. Amount of Unsecured Claim (U.S. \$) Not less than \$750,000,000 in outstanding principal amount plus interest, fees, charges, and unliquidated amounts.

** Note: This is not a proof of claim form. Proof of claim forms are filed with the Clerk of the Bankruptcy Court, not with the United States Trustee.*

(Please return completed questionnaire by e-mail to kenneth.n.whitehurst@usdoj.gov, no later than Wednesday, March 20, 2024, by 5:00 p.m. (Eastern Standard Time).

E. If your claim is against Document Page 21 of 25

more than one debtor, list all debtors: Enviva Inc. and Enviva Partners Finance Corp. as Issuers and Enviva, LP; Enviva GP, LLC; Enviva Aircraft Holdings Corp.; Enviva Holdings GP, LLC; Enviva Holdings, LP; Enviva Shipping Holdings, LLC; Enviva Management Company, LLC; Enviva Development Finance Company, LLC; Enviva Pellets, LLC; Enviva Pellets Lucedale, LLC; Enviva Pellets Waycross, LLC; Enviva Port of Pascagoula, LLC; Enviva Energy Services, LLC; Enviva Pellets Greenwood, LLC; and Enviva Pellets Bond, LLC as guarantors.

F. Describe the nature of your claim(s), *i.e.*, whether arising from goods or services provided; loans made; litigation; *etc.*, including whether any portion is secured. If secured, please describe the collateral securing the claim. If any portion of the claim(s) arises from litigation, please state the nature of the claim, the case number and jurisdiction (if applicable) and the status.

See attached rider.

G. Amount of Unsecured Claim entitled to 11 U.S.C. §503(b) treatment as an administrative expense:

None.

H. Would your schedule permit you to actively participate on the committee by attending weekly meetings (either by telephone or in person)? Yes (X) No ()

Representations:

1. Are you or the company you represent in any way “affiliated” with any of the debtors within the meaning of Section 101(2) of the Bankruptcy Code, or a shareholder of, or related to, the debtor(s)? Yes () No (X)

If a shareholder, state the number of shares:

2. Do you, or the company you represent, engage in a business which directly or indirectly competes with any of the businesses of the debtor(s)? Yes () No (X)

3. Have you ever been or are you an officer, director, agent, representative or employee of the debtor(s)?

Yes () No (X) Does your claim arise from this relationship? Yes () No ()

4. State when you acquired the claim, the amount paid, and the face amount of the claim:

See attached rider.

5. Have you or your attorney entered into a settlement agreement with the debtor regarding resolution of your claim? Yes () No (X)

6. Do you have a claim against any entity affiliated with the debtor? Yes () No (X)

State the name of the entity and the nature and amount of the claims:

7. Do you or any affiliated entities have any other claims against, or debt or equity securities of, the debtor(s)? Yes () No (X)

8. Do you or any affiliated entities have any financial arrangement that may affect the value of your claim(s) against or interest(s) in the debtor(s) (e.g., personal guarantees, credit insurance, etc.)?
Yes () No (X)
9. If you have given a proxy to a third party either to represent you at the creditors' committee formation meeting, or in connection with your claim, please attach a copy of the written proxy. If a professional person has arranged for someone to hold a proxy on your behalf, please identify that individual:
N/A

You may attach a written statement to explain or supplement any responses.

Creditors wishing to serve as fiduciaries on an official committee are advised that they may not purchase, sell or otherwise trade in or transfer claims against the debtor while they are committee members absent an order of the court on application of the creditor.

Please be advised that once a committee is formed, the United States Trustee will file a notice of appointment in the court record that contains contact information for any creditor appointed, including the creditor's name, address, and telephone number.

Privacy Act Statement. 11 U.S.C. § 1102 authorizes the collection of this information. The information will be used by the United States Trustee to determine your qualifications for appointment to the Committee. Disclosure of this information may be to a bankruptcy trustee or examiner when the information is needed to perform the trustee's or examiner's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." See 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: http://www.justice.gov/ust/eo/rules_regulations/index.htm. Your disclosure of information is voluntary; however, failure to provide the requested information may result in the rejection of your application to be appointed to the Committee.

I hereby certify that, to the best of my knowledge and belief, the answers to this Questionnaire are true and correct. By executing this Questionnaire, I also agree to the restrictions and conditions set forth in the preceding paragraphs and in the Committee Information Sheet, and I agree to provide the periodic certifications upon the request of the United States Trustee.

Date: March 18, 2024



Signature

Patrick J. Healy

Print Name

Senior Vice President

Title

OFFICIAL COMMITTEE OF UNSECURED CREDITORS INFORMATION SHEET

Purpose of Unsecured Creditors' Committees. To increase participation in the chapter 11 proceeding, section 1102 of the Bankruptcy Code requires that the United States Trustee appoint a committee of unsecured creditors (the "Committee") as soon as practicable after the order for relief has been entered. The Committee ordinarily consists of the persons, willing to serve, who hold the seven (7) largest unsecured claims of the kinds represented on such committee. The debtor has filed a list indicating that your claim may be among the largest unsecured claims against the debtor, and for that reason, you may be eligible to serve on the Committee. There must be at least three (3) unsecured creditors willing to serve in order to form a Committee.

Powers and Duties of Unsecured Creditors' Committees. Members of the Committee are fiduciaries who represent all unsecured creditors as a group without regard to the types of claims which individual unsecured creditors hold against the debtor. Section 1103 of the Bankruptcy Code provides that the Committee may consult with the debtor, investigate the debtor and its business operations and participate in the formulation of a plan of reorganization. The Committee may also perform such other services as are in the interests of the unsecured creditors which it represents. Moreover, Federal Rule of Bankruptcy Procedure 2019, as amended, requires each member of an official committee to file a verified statement disclosing its name, its address, and the nature and amount of each "disclosable economic interest"³ held in relation to the debtor on the date the committee was formed. Rule 2019 also requires the committee to file a verified supplemental statement updating the earlier information (if information previously disclosed has materially changed) when taking a position before the court or soliciting votes on a plan.

Employment of Professionals. Section 1103 of the Bankruptcy Code provides that the Committee may, subject to the bankruptcy court's approval, employ one or more attorneys, accountants, or other professionals to represent or perform services for the Committee. The decision to employ particular professionals should occur at a scheduled meeting of the Committee where a majority of the Committee is present. All professionals retained by the Committee may be compensated from assets of the debtor's estate pursuant to section 330 of the Bankruptcy Code. Applications for the payment of professional fees may be monitored by the Office of the United States Trustee and are subject to the Court's approval. However, the Committee should carefully review all applications and not rely on the Court or the United States Trustee to discover and object to unreasonable or unnecessary professional fees or costs.

Other Matters. The Committee should elect a chairperson and may adopt bylaws. As a party in interest, the Committee may be heard on any issue in the bankruptcy proceeding. Federal Bankruptcy Rule 2002(i) requires that the Committee (or its authorized agent) receive all notices concerning motions and hearings in the bankruptcy proceeding.

³ "Disclosable economic interest" means any claim, interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting the holder an economic interest that is affected by the value, acquisition, or disposition of a claim or interest.

In the event you are appointed to an official committee of creditors, the United States Trustee may require periodic certifications of your claims while the bankruptcy case is pending. Creditors wishing to serve as fiduciaries on any official committee are advised that they may not purchase, sell or otherwise trade in or transfer claims against the Debtor while they are committee members absent an order of the Court. By submitting the enclosed Questionnaire and accepting membership on an official committee of creditors, you agree to this prohibition. The United States Trustee reserves the right to take appropriate action, including removing a creditor from any committee, if the information provided in the Questionnaire is inaccurate, if the foregoing prohibition is violated, or for any other reason the United States Trustee believes is proper in the exercise of her discretion. You are hereby notified that the United States Trustee may share this information with the Securities and Exchange Commission if deemed appropriate.

Privacy Act Statement. 11 U.S.C. § 1102 authorizes the collection of this information. The information will be used by the United States Trustee to determine your qualifications for appointment to the Committee. Disclosure of this information may be to a bankruptcy trustee or examiner when the information is needed to perform the trustee's or examiner's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." *See* 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: http://www.justice.gov/ust/eo/rules_regulations/index.htm. Your disclosure of information is voluntary; however, failure to provide the requested information may result in the rejection of your application to be appointed to the Committee.

Should you have any additional questions concerning the Committee or your membership on the Committee, please contact the Office of the United States Trustee.

WSFS's Rider to the *Enviva Inc., et al.* Committee Questionnaire

F. WSFS holds a claim as the successor indenture trustee under the Indenture dated December 9, 2019 (as amended, restated, modified or supplemented from time to time thereafter, the "Indenture") for the benefit of holders of 6.500% senior unsecured notes due 2026 (the "Senior Notes") issued in connection with the Indenture. Enviva Inc. and Enviva Partners Finance Corp. are party to the Indenture as Issuers of the Senior Notes. As set forth in the *Declaration of Glenn Nunziata in Support of Chapter 11 Petitions* [Dkt. No. 27], the Senior Notes are guaranteed by the other Debtors listed in response E.

Representations:

4. WSFS became successor indenture trustee in connection with the Indenture on March 1, 2024.

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*Counsel for Wilmington Savings Fund Society,
FSB, as Successor Trustee for the 6.500% Senior Notes
Due 2026*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

)	
In re:)	Chapter 11
)	
ENVIVA INC., <i>et al.</i> ,)	Case No. 24-10453 (BFK)
)	
Debtors. ¹)	Jointly Administered
)	

NOTICE OF MOTION AND NOTICE OF HEARING

PLEASE TAKE NOTICE that on March 28, 2024, Wilmington Savings Fund Society, FSB, in its capacity as the successor trustee for the 6.500% Senior Notes due 2026 (“**WSFS**”) filed MOTION OF THE SUCCESSOR INDENTURE TRUSTEE FOR THE 6.500% SENIOR NOTES DUE 2026 FOR ENTRY OF AN ORDER DIRECTING THE UNITED STATES TRUSTEE TO (I) RECONSTITUTE THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND (II) APPOINT THE SUCCESSOR INDENTURE TRUSTEE TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS (the “**Motion**”) with the United States Bankruptcy Court for the

¹ A complete list of the Debtor entities may be obtained on the website of the Debtors’ proposed claims and noticing agent at www.kcellc.net/enviva. The location of the Debtors’ corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.

Eastern District of Virginia, Alexandria Division (the “**Court**”) in the above-captioned Chapter 11 cases.

PLEASE TAKE FURTHER NOTICE THAT your rights may be affected. You should read these papers carefully and discuss them with your attorney in these bankruptcy cases, if you have one. If you do not have an attorney, you may wish to consult one.

PLEASE TAKE FURTHER NOTICE THAT pursuant to Rule 1075-1 of the Local Bankruptcy Rules (the “**Local Bankruptcy Rules**”), the Court has adopted the “Procedures for Complex Chapter 11 Cases in the Eastern District of Virginia” (the “**Case Management Procedures**”), which prescribe the manner in which motions and objections must be filed and served and when hearings will be conducted. A copy of the Case Management Procedures are available by visiting <https://www.vaeb.uscourts.gov/vaeb-local-rules>. All other documents filed in these cases may be obtained at no charge at www.kccllc.net/enviva or for a fee via PACER at <http://www.vaeb.uscourts.gov>.

PLEASE TAKE FURTHER NOTICE THAT if you do not timely file and serve a written objection to the relief requested in the Motion, consistent with the Case Management Procedures and the Local Bankruptcy Rules, the Court may deem any opposition waived, treat the Motion as conceded, and enter an order granting the relief requested in the Motion without further notice or a hearing.

PLEASE TAKE FURTHER NOTICE THAT in accordance with the Case Management Procedures, if you wish to oppose the Motion, **on or before April 8, 2024**, or such shorter time as the Court may hereafter order, and of which you may receive subsequent notice (the “**Objection Deadline**”), you must file with the Court, at the address shown below, a written objection pursuant to Local Bankruptcy Rule 9013-1 and the Case Management Procedures:

Clerk of the Court
United States Bankruptcy Court
200 S. Washington St.
Alexandria, Virginia 22314-5405

PLEASE TAKE FURTHER NOTICE THAT in accordance with the Case Management Procedures, you must also serve a copy of your written objection on the Core Group, the 2002 List, and the Affected Entities, as such terms are defined in the Case Management Procedures, **on or before the Objection Deadline.**

PLEASE TAKE FURTHER NOTICE THAT the Motion is scheduled to be heard before the Court at the hearing currently scheduled for **April 11, 2024 at 2:00 p.m.** Eastern Prevailing Time, in the United States Bankruptcy Court, 200 S. Washington St., Courtroom I, Alexandria, Virginia 22314. The hearing will be conducted by remote video conference and in person, as directed by the Court pursuant to the *Case Management Order No. 1* [ECF No. 71]. Additional information regarding procedures for hearings before the Court, including videoconference hearings, is available by visiting the Court's website at: <https://www.vaeb.uscourts.gov/>. If you fail to (i) file timely a written response and (ii) attend the hearing (even if a response is timely filed), the Court may consider your objection waived and enter an order granting the relief requested.

PLEASE TAKE FURTHER NOTICE THAT you should consult the Case Management Procedures before filing any written objection to the Motion.

Date of Notice: March 28, 2024

/s/ David R. Ruby

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*Counsel for Wilmington Savings Fund Society,
FSB, as the Successor Trustee for the 6.500%
Senior Notes Due 2026*

CERTIFICATE OF SERVICE

[Separate Certificate of Service to be Filed]

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*Counsel for Wilmington Savings Fund Society, FSB, as
Successor Trustee for the 6.500% Senior Notes Due
2026*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

In re:)	
)	Chapter 11
ENVIVA INC., <i>et al.</i> ,)	Case No. 24-10453 (BFK)
)	
Debtors. ¹)	Jointly Administered
)	

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 2024, true and accurate copies of the following pleadings:

- MOTION OF THE SUCCESSOR INDENTURE TRUSTEE FOR THE 6.500% SENIOR NOTES DUE 2026 FOR ENTRY OF AN ORDER DIRECTING THE UNITED STATES TRUSTEE TO (I) RECONSTITUTE THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND (II) APPOINT THE SUCCESSOR INDENTURE TRUSTEE TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

¹ A complete list of the Debtor entities may be obtained on the website of the Debtors' proposed claims and noticing agent at www.kcellc.net/enviva. The location of the Debtors' corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.

- Notice of Motion and Notice of Hearing

were served via e-mail or ECF or via first-class U.S. Mail (postage prepaid), in accordance with the Court's Procedures for Complex Chapter 11 Cases in the Eastern District of Virginia (Effective February 15, 2022) and the Service Lists maintained by Kurtzman Carson Consultants LLC in this case as set forth on **Exhibit "A" – Served Via Electronic Mail or ECF and Exhibit "B" – Service by First-Class U.S. Mail (postage prepaid)** attached hereto. Service included the following persons:

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[* Indicates service by ECF or email. All others served by First Class U.S. Mail, postage prepaid.]

Respectfully submitted,

/s/ David R. Ruby

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*Counsel for Wilmington Savings Fund Society,
FSB, as the Successor Trustee for the 6.500%
Senior Notes Due 2026*

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	Email
Top 30 Creditor	AMANDUS KAHL GMBH & CO KG	ATTN MIKE CURCI	DIESELSTRAË 5 - 9			REINBEK	CURCI@AMANDUSKAHLUSA.COM
Top 30 Creditor	ANDRITZ INC	ATTN CHRISTOPHER KEAYS	STATTEGGER STRASSE 18			GRAZ	CHRISTOPHER.KEAYS@ANDRITZ.COM
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Counsel to Swire Bulk Pte Ltd.	Blank Rome LLP	Michael B. Schaedle and Gregory F. Vizza	One Logan Square	130 North 18th Street		Philadelphia	Mike.Schaedle@blankrome.com; Gregory.Vizza@blankrome.com
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Top 30 Creditor	CAL INVESTMENTS LLC	ATTN JANET M. CALLAHAN	205 MARTIN LUTHER JR. KING DR.			AMORY	JMC@CALPLLC.COM
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