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THE WEINSTEIN COMPANY BANKRUPTCY

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*THE WEINSTEIN
COMPANY
BANKRUPTCY*

Mason Shelton & Trevor Torres

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INTRODUCTION

Two brothers have dominated the film production industry since the late 1980s, playing a prominent role in blockbuster movies. Harvey and Bob Weinstein are New York natives that took an early interest in media entertainment.¹ The two gained their initial experience by promoting rock concerts near the University of Buffalo.² Realizing they had some skill in this field, the brothers formed Miramax Film Corporation (“Miramax”) in 1979 for the purpose of buying movie rights.³ Miramax saw early success and by 1989 had proven itself as a market competitor with Harvey serving as the face of the company.⁴

In 1993, the Walt Disney Company acquired Miramax for \$60 million, leaving the brothers in charge of the main operations as co-chairmen.⁵ At this point, Miramax began work with Quentin Tarantino, who relied exclusively on the brothers for production of his films through 2017.⁶ At this time, Miramax was responsible for perpetually popular films, including *Pulp Fiction* and *Good Will Hunting*.⁷ The early 2000s proved to be a struggle for Miramax as the company tried to venture into other media forms, including magazines.⁸ Despite the critics, films produced by Miramax received 40 Academy Awards nominations in 2003, the most in over 60 years.⁹

¹ *Harvey Weinstein – American Film Producer*, The Editors of Encyclopedia Britannica, BRITANNICA (Mar. 11, 2020), <https://www.britannica.com/biography/Harvey-Weinstein> [<https://perma.cc/S3AQ-E6SK>].

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Quentin Tarantino’s First Film Without Weinstein Struggles to Stir, Despite Six-Minute Ovation*, Giovanni Camia, NATIONAL POST (May 22, 2019), <https://nationalpost.com/entertainment/movies/quentin-tarantinos-first-film-without-weinstein-struggles-to-stir-despite-six-minute-ovation> [<https://perma.cc/B9AU-LCGT>].

⁷ *Harvey Weinstein – American Film Producer*, *supra* note 1.

⁸ *Id.*

⁹ *Id.*

In 2005, the brothers took full control of their talent and their future by establishing The Weinstein Company.¹⁰ This decision was due to a volatile relationship with Disney, Miramax’s owner.¹¹ The Weinstein’s desired to “make larger, more costly films,” and their new company would allow this.¹² The brothers continued to produce blockbuster hits, continuously recognized by the Academy and at the Oscars. Notable works include *Inglourious Basterds*, *Django Unchained*, and *The Imitation Game*.¹³ The Weinstein Company faced continuous success for the next 12 years, producing movies that grabbed headlines and dominated the box office.¹⁴

In the pages that follow, we detail the crisis that took The Weinstein Company from its position of unparalleled success into Chapter 11, where substantially all of its assets were liquidated in an 11 U.S.C. § 363(b) & (f) process, and then into Chapter 7, for final liquidation under the supervision of a bankruptcy panel trustee. We begin, in the next sections, with a description of the crisis and its immediate fallout. We then consider its prepetition attempts to liquidate outside of bankruptcy. Next, we turn to commencement of the bankruptcy case and the retention of estate professionals that would drive and document the Chapter 11 sale process and DIP financing, which are in turn described chronologically as they played out. Finally, we describe the conversion to Chapter 7 and include some final notes on the individual story of Harvey Weinstein, once one of the most powerful men in Hollywood and in the international entertainment industry.”

¹⁰ *Id.*

¹¹ *Miramax Founders Leave Disney, Staff and Agencies*, The Guardian (Mar. 30, 2005), <https://www.theguardian.com/film/2005/mar/30/business.news> [<https://perma.cc/L6RT-N2J7>].

¹² *Id.*

¹³ *Harvey Weinstein – American Film Producer*, *supra* note 1 [<https://perma.cc/S3AQ-E6SK>].

¹⁴ *Id.*

WHY DID THE WEINSTEIN COMPANY GO BANKRUPT?

In October of 2017, Harvey Weinstein was accused of sexual harassment, sexual assault, and rape as a flood of reports emerged, starting with the New York Times.¹⁵ These acts allegedly took place over numerous decades.¹⁶ The board of directors of The Weinstein Company ultimately terminated Harvey Weinstein’s employment at The Weinstein Company.¹⁷ On March 11, 2019, Harvey Weinstein was sentenced to 23 years in prison.¹⁸

As the flood of reports continued to leak, The Weinstein Company began to feel the blowback in its business. In October 2017 alone, companies such as Netflix, Lexus, Apple, and Amazon terminated business relations with the company.¹⁹ Similar actions from companies, actors and actresses, and other business partners continued through the following months. In that same time, The Weinstein Company lost a majority of its Board members and 25% of its overall workforce by March 2018. Finally, weekly cash receipts plummeted from \$2 million to \$150,000 by March 2018.²⁰ The company considered a sale to save the company at a time they were unable to operate and losing cash at an exponential rate.

Colony Capital Acquisition, LLC

TWC’s television assets caught the interest of private equity firm Colony Capital Acquisitions, LLC, and the two entered an exclusivity agreement on October 15, 2017.²¹ Colony’s involvement with TWC was essential because the prospective deal would include an “immediate capital infusion [to help] return the Company to its rightful iconic position in the independent film

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Jan Ransom, *Harvey Weinstein’s Stunning Downfall: 23 Years in Prison*, N.Y. TIMES (Mar. 12, 2020), <https://www.nytimes.com/2020/03/11/nyregion/harvey-weinstein-sentencing.html> [<https://perma.cc/H7AG-LE7L>].

¹⁹ Declaration of Robert del Genio of The Weinstein Company Holdings LLC in Support of First Day Relief [7.pdf](#) at 16–17, *In re* The Weinstein Co., No. 18-10601 (Bankr. D. Del. Filed Mar. 19, 2018) (hereinafter “Declaration of Robert del Genio”).

²⁰ *Id.* at 17.

²¹ *Id.* at 19.

and television industry.”²² Unfortunately for TWC, Colony declined to provide the company with the cash infusion on October 25.²³ Ultimately, Colony ended its entire bid for TWC based on both a “disagreement on price” and “trying to effectuate a sale that [did]n’t benefit Harvey.”²⁴

Fortress Credit Company, LLC

As TWC’s negotiations with Colony faltered, Fortress Credit Company entered as a potential provider of rescue financing.²⁵ Fortress’ help was needed, especially in the form of a \$35 million “lifeline [that would have met TWC’s] cash needs for payroll and operations for about three months.”²⁶ After ending negotiations without a final agreement, Fortress emphasized that it could re-enter into talks with TWC “during a bankruptcy process if the movie company [sought] protection from creditors.”²⁷

²² Stabilizes TWC Operations and Reassures Distribution, Production and Talent Partners; Companies Enter Negotiating Period for Potential Sale, Business Wire (October 16, 2017, 9:25 AM), <https://www.businesswire.com/news/home/20171016005673/en/Weinstein-Company-Announces-Investment-Colony-Capital> [<https://perma.cc/V4HY-49ZY>].

²³ See Brooks Barnes and Rachel Abrams, *Weinstein Company Will Not Get Planned Cash Infusion*, N.Y. TIMES (Oct. 25, 2017), <https://www.nytimes.com/2017/10/25/business/media/weinstein-company-colony-capital.html> (Explaining that “Colony found more disorder than it had expected — and less value — once it started closely examining the studio’s assets...Colony saw bankruptcy as the most likely near-term outcome for the studio.”) [<https://perma.cc/FD7W-H7WV>].

²⁴ Brooks Barnes, *Thomas Barrack’s Colony Capital Ends Bid for Weinstein Studio*, N.Y. TIMES (Nov. 17, 2017), <https://www.nytimes.com/2017/11/07/business/media/weinstein-studio-colony-capital.html> [<https://perma.cc/HRH6-7BYD>]; see also Ryan Faughnder, *Colony Capital has pulled out of talks to acquire Weinstein Co., sources say*, L.A. TIMES (Nov. 7, 2017), <https://www.latimes.com/business/hollywood/la-fi-ct-weinstein-colony-capital-20171107-story.html> (Reporting that Harvey Weinstein maintained a 23% stake in TWC and that the board of directors valued the company at “roughly \$300 million.”) [<https://perma.cc/D4WL-V4KC>].

²⁵ Declaration of Robert del Genio, *supra* note 19, [7.pdf](#) at 19 (Explaining that “Specifically, Fortress expressed interest in acquiring Weinstein Domestic LLC’s outstanding debt under the UBE Facility and extending new loans. However, the refinancing did not materialize.”).

²⁶ Anousha Sakoui, *Fortress Loan Talks With Weinstein Co. Are Said to End*, BLOOMBERG (Nov. 11, 2017), <https://www.bloombergquint.com/markets/fortress-loan-talks-with-weinstein-co-are-said-to-end> [<https://perma.cc/36YK-6S8X>].

²⁷ *Id.*

Sale of “Paddington Bear 2”

TWC was pushed to the financial brink due to the time wasted in prior failed negotiations. As a stop-gap measure to avoid bankruptcy, Moelis began marketing TWC’s film asset Paddington Bear 2 and received five offers from interested buyers.²⁸ By mid-November, TWC sold the domestic rights of the film Paddington Bear 2 for \$28.8 million to Warner Brothers, of which \$13 million was designated as “immediate cash.”²⁹

Miscellaneous Sales of Films During the “White Knight” Negotiation

On November 23, 2017, TWC “was able to sell War with Grandpa, to its producers, Marro WWG LLC, for \$2.5 million.”³⁰ On January 12, 2018, “in an effort to preserve cash” TWC sold its rights for the Six Billion Dollar Man to Warner Brothers for \$7.2 million.³¹

“White Knight Bid” to Transform TWC

On November 8, 2017, the most significant prepetition sale opportunity came in the form of an offer letter from Maria Contreras-Sweet.³² The offer letter “attached a proposed term sheet, proposing to acquire the assets of the Company, to assume substantially all liabilities related to the Company’s business operations, to retain most (if not all) employees and to install a majority-female board of representatives.”³³ Contreras-Sweet’s offer represented the intentions of Mediaco Acquisition, LLC, which was described as “a consortium of investors that includes the Yucipa Companies (“Yucaipa”), Lantern Asset Management LLC (“Lantern Capital”), Maria Contreras-Sweet and other investors.”³⁴ Mediaco’s offer of \$275 million far exceeded Colony’s \$150 million-\$175 million offer that was subsequently rejected by TWC’s board of directors.³⁵ Throughout the

²⁸ Declaration of Robert del Genio, *supra* note 19, [7.pdf](#) at 20.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 21.

³² *Id.* at 20.

³³ *Id.*

³⁴ *Id.*

Mediaco negotiations, Moelis pitched and ultimately convinced TWC’s board to implement a strategy to “attract additional bidders”; however, this strategy proved ultimately to be unsuccessful.³⁶ In fact, after deciding that making a deal with Mediaco was the best prospect for a sale outside of bankruptcy, TWC entered into a “20-day exclusivity and expense reimbursement agreement with Mediaco.”³⁷

Exclusivity with Mediaco and Ultimate Collapse of Talks

TWC and Mediaco exchanged fifteen draft Asset Purchase Agreements during the life of the exclusivity agreement.³⁸ On February 11, 2018, the last day of the exclusivity agreement period, the Attorney General of the State of New York “commenced a civil lawsuit against [TWC] alleging that [TWC] had violated the New York Human Rights Law, New York Civil Rights Law and New York Executive Law in connection with Harvey Weinstein’s reported misconduct.”³⁹ After the filing of the A.G.’s lawsuit, TWC began “trying to salvage negotiations with Mediaco while seeking bidders for a potential in-court sale process.”⁴⁰ TWC also began negotiations with Union Bank “regarding the terms of a potential debtor-in-possession financing arrangement.”⁴¹

³⁵ Mike Fleming, Jr., *Read Weinstein Bidder Maria Contreras-Sweet’s Pitch: \$275 Million And Female-Centric Leadership*, DEADLINE (Nov. 19, 2017), <https://deadline.com/2017/11/harvey-weinstein-company-275-million-bid-maria-contreras-sweet-female-leadership-bid-1202212035/> [<https://perma.cc/36YK-6S8X>].

³⁶ Declaration of Robert del Genio, *supra* note 19, [7.pdf](#) at 20–21 (“Moelis distributed slide presentations regarding the Company’s saleable assets to 44 parties by mid-November 2017. Of these 44 parties, 30 signed preliminary letters of interest and gained access to a data room established for this purpose containing extensive documentation regarding the Company’s finances and asset holdings. On or around December 8, 2017, Moelis sent process letters to the 30 investors that had signed preliminary letters of interest. The letters provided for a bid deadline of December 20, 2017. In response, the Company received 10 proposals. Each proposal was for a purchase of some combination of the Company’s film library, television assets, and portfolio of unreleased films. Moelis recommended 8 of these proposals for a second round of negotiations, which remained ongoing until shortly before the Petition...The Board considered each of those proposals in detail and, after having detailed discussions and consulting their advisers, passed 8 bidders into the second round. However, of the 8, the Mediaco proposal presented the *only real opportunity for a sale of the Company outside of bankruptcy*. In fact, all other bidders either explicitly or verbally communicated their intention to acquire assets pursuant to a court-supervised bankruptcy 363 sale.”) (emphasis added).

³⁷ *Id.* at 21–22.

³⁸ *Id.* at 22.

³⁹ *Id.*

⁴⁰ *Id.* at 22–23.

⁴¹ *Id.* at 23.

The A.G.'s office "facilitated a productive meeting with Mediaco representatives" on February 21, 2018 that left TWC with the impression that "an out-of-court sale was still a feasible option to avoid a bankruptcy filing."⁴² Though a second deal with Mediaco was imminent, the talks collapsed for a second and final time after Mediaco discovered additional liabilities and debts during the due diligence period.⁴³ In response, on March 6, 2018, Mediaco "failed to make the first interim financing payment and instead terminated the Asset Purchase Agreement."⁴⁴ On the same day, TWC announced that it would be filing for bankruptcy.⁴⁵ The Weinstein Company Holdings LLC, along with 54 affiliated companies (collectively, the "Debtors") sought relief under the Bankruptcy Code through a jointly administrated set of cases, as described below.

On March 19, 2019, the Debtors, having less than \$500,000, filed for chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware. The case was assigned to the Honorable Judge Mary F. Walrath. Judge Walrath received her undergraduate degree from Princeton University and her Juris Doctorate from Villanova University.⁴⁶ Prior to becoming a judge, she was an associate at Clark Ladner Fortenbaugh & Young, and then as a partner at Walrath & Coolidge.⁴⁷ During this time, Judge Walrath worked in debtor and creditor rights and commercial litigation.⁴⁸

⁴² *Id.*

⁴³ Brooks Barnes, *Planned Sale of Weinstein Company Collapses Again*, N.Y. TIMES (Mar. 6, 2018), <https://www.nytimes.com/2018/03/06/business/media/weinstein-company-sale.html> ("But once the buyers began looking deeper into the Weinstein Company's finances, they discovered that it had more debt than they had been led to believe, according to two people briefed on the matter, who spoke on the condition of anonymity to discuss confidential information. Additional liabilities totaling between \$55 million and \$65 million were discovered, including \$27 million in unpaid residuals and profit participation; and \$20 million in accounts payable.") [<https://perma.cc/2X3X-ZV8N>].

⁴⁴ Declaration of Robert del Genio, *supra* note 19, [7.pdf](#) at 24.

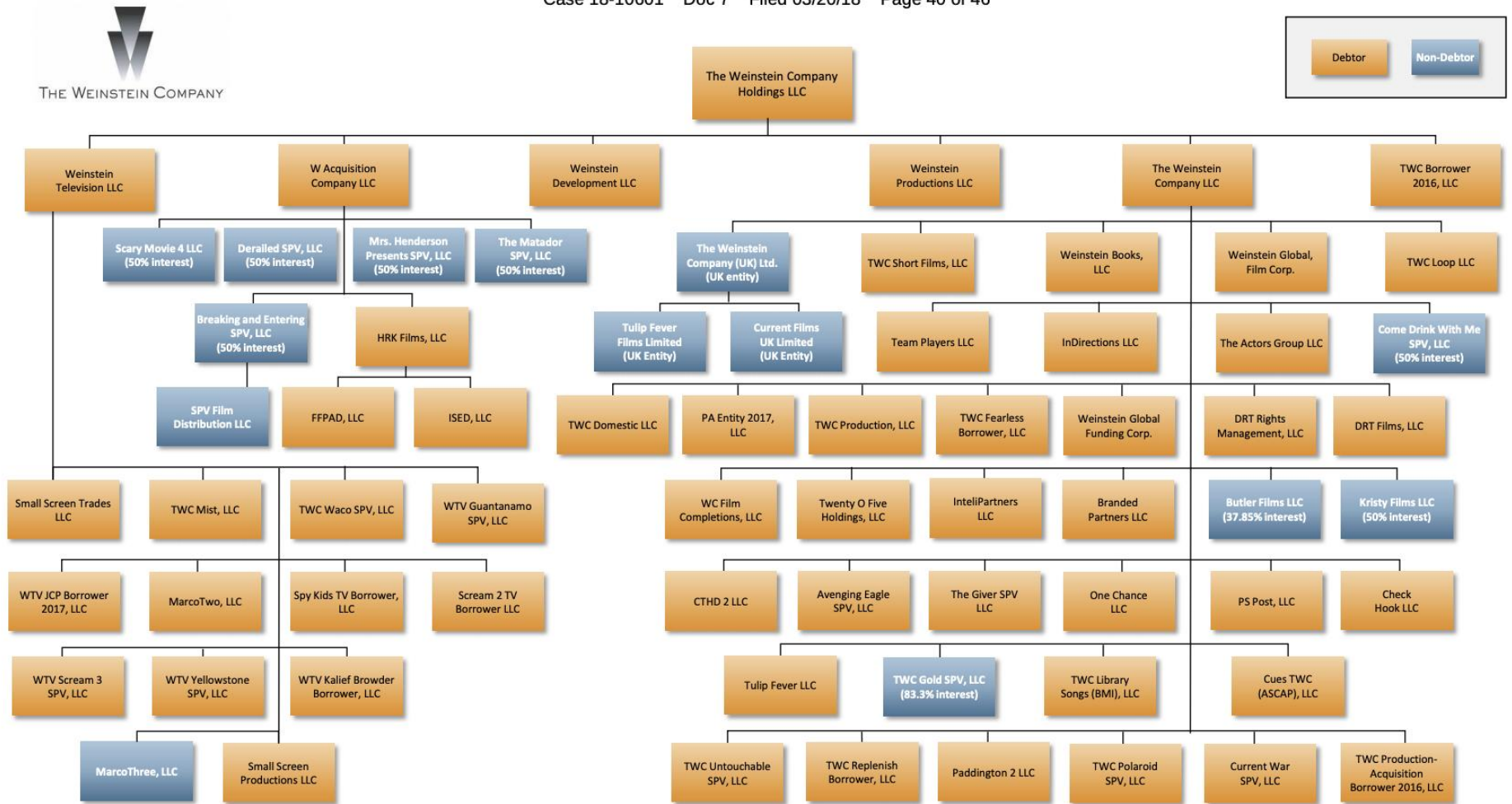
⁴⁵ *Id.* at 27.

⁴⁶ Mary F. Walrath, BALLOTPEdia, https://ballotpedia.org/Mary_F._Walrath [<https://perma.cc/QAL7-C8XU>].

⁴⁷ *Id.*

⁴⁸ *Id.*

PRE-PETITION ORGANIZATIONAL STRUCTURE⁴⁹



⁴⁹ Declaration of Robert del Genio, *supra* note 19, [7.pdf](#) at 24.

FIRST DAY MOTIONS

Joint Administration

The Debtors first submitted to the court a motion for joint administration (“Joint Administration Motion”), supported by an incorporated declaration from chief restructuring officer Robert Del Genio, requesting that the court maintain one file and one docket for TWC and its affiliates.⁵⁰ In the Joint Administration Motion, TWC sought to combine the fifty-five chapter 11 cases “for procedural purposes only.”⁵¹ Del Genio explained that “many of the motions, hearings and other matters involved in the chapter 11 cases will affect all of the Debtors (within TWC) [and t]herefore, [] believe[d] that the joint administration of these cases [would] avoid the unnecessary time and expense of duplicative motions, applications and orders, thereby saving considerable time and expense for [TWC] and resulting in substantial savings for their estates.”⁵² The court granted the order authorizing joint administration of the case on March 20, 2018.⁵³

Claims and Noticing Agent

On March 30, 2018, the Debtors filed an application to retain Epiq Bankruptcy Solutions, LLC (“Epiq”) as the claims and noticing agent and the administrative agent, effective *nunc pro*

⁵⁰ Motion For Joint Administration [2.pdf](#) at 12, *In re* The Weinstein Co., No. 18-10601 (Bankr. D. Del. Filed Mar. 19, 2018) (hereinafter “Motion for Joint Administration”).

⁵¹ Declaration of Robert del Genio, *supra* note 19, [7.pdf](#) at 28.

⁵² *Id.*

⁵³ Order Authorizing Joint Administration of the Debtors' Chapter 11 Cases [69.pdf](#), *In re* The Weinstein Co., No. 18-10601 (Bankr. D. Del. Filed Mar. 19, 2018) (“An order has been entered in this case consolidating this case with the case of Avenging Eagle SPV (18-10602); Branded Partners (18-10607); Check Hook (18-10610); CTHD 2 (18-10615); Cues TWC (ASCAP) (18-10619); Current War SPV (18-10623); DRT Films (18-10627); DRT Rights Management (18-10631); FFPAD (18-10634); HRK Films (18-10639); Indirections (18-10642); Intelipartners (18-10644); Ised (18-10645); Marcotwo (18-10647); One Chance (18-10650); PA Entity 2017 (18-10652); Paddington 2 (18-10653); PS Post (18-10654); Scream 2 TC Borrower (18-10655); Small Screen Productions (18-10604); Small Screen Trades (18-10605); Spy Kids TV Borrower (18-10609); Team Players (18-10612); The Actors Group (18-10614); The Giver SPV (18-10617); The Weinstein Company (18-10620); Tulip Fever (18-10622); TWC Borrower 2016 (18-10625); TWC Domestic (18-10628); TWC Fearless Borrower (18-10630); TWC Library Songs (BMI) (18-10633); TWC Loop (18-10636); TWC Mist (18-10638); TWC Polaroid SPV (18-10641); TWC Production-Acquisition Borrower 2016 (18-10643); TWC Production (18-10646); TWC Replenish Borrower (18-10648); TWC Short Films (18-10649); TWC Untouchable SPV (18-10651); TWC Waco SPV (18-10603); Twenty O Five Holdings (18-10606); W Acquisition Company (18-10608); WC Film Completions (18-10611); Weinstein Books (18-10613); Weinstein Development (18-10616); Weinstein Global Funding (18-10618); Weinstein Global Film Corp (18-10621); Weinstein Productions (18-10624); Weinstein Television (18-10626); WTV Guantanamo SPV (18-10629); WTV JCP Borrower 2017 (18-10632); WTV Kalief Browder Borrower (18-10635); WTV Scream 3 SPV (18-10637); WTV Yellowstone SPV (18-10640) for procedural purposes only and providing for its joint administration in accordance with the terms thereof. The docket in Case No. 18-10601 (MFW) should be consulted for all matters affecting this case. (related document 2) Signed on 3/20/2018”).

tunc (retroactively).⁵⁴ The claims and noticing agent motion was filed pursuant to Section 156(c) of the Judicial Code, title 28 of the U.S. Code, which provides “any court may utilize facilities or services . . . which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in” chapter 11 cases.⁵⁵ The Debtors also cited to Local Rule 2002-1(f), which provides that the Court may “authorize the retention of a notice and/or claims clerk under 28 U.S.C. § 156(c). The administrative agent motion was filed pursuant to Section 327 of the Bankruptcy Code, as described below. Epiq was selected due to being “one of the country’s leading chapter 11 administrators, with significant experience in noticing, claims administration, soliciting, balloting, and facilitating other administrative aspects of the chapter 11 cases.”⁵⁶ Epiq’s retention was intended to expedite the claims filing and objection process and relieve the Debtors of “administrative burden,” and was in the best interest of the Debtors in order to preserve the estate throughout the reorganization.⁵⁷ Epiq also asserted that they did not have any “interest materially adverse to the Debtors’ estates in connection with any matter on which it would be employed.”⁵⁸

As claims and noticing agent, Epiq was retained to facilitate the bankruptcy by handling all documents required by the Bankruptcy Code, maintain and organize mail, and disseminate

⁵⁴ Debtors’ Application for Entry of an Order Pursuant to 28 U.S.C. § 156(c) and Local Rule 2002-1(f) Approving the Retention and Appointment of Epiq Bankruptcy Solutions, LLC as the Claims and Noticing Agent to the Debtors, Effective *Nunc Pro Tunc* to the Petition Date [3.pdf](#) at 1, *In re* The Weinstein Company Holdings, LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Mar. 20, 2018) [hereinafter Claims and Noticing Agent Application]; Debtors’ Application for Entry of an Order (A) Approving Employment and Retention of Epiq Bankruptcy Solutions, LLC as Administrative Advisor for Debtors, Effective *Nunc Pro Tunc* to the Petition Date and (B) Granting Related Relief [131.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et. al.*, No. 18-10601 (Bankr. D. Del. Filed Mar. 30, 2018) [hereinafter Epiq Application].

⁵⁵ 28 U.S.C. § 156(c) [<https://perma.cc/F866-ZRLB>].

⁵⁶ Claims and Noticing Agent Application, *supra* note 54, [3.pdf](#) at 7; *see also* Epiq Application, *supra* note 54, [131.pdf](#) at 4–5.

⁵⁷ Claims and Noticing Agent Application, *supra* note 54, [3.pdf](#) at 7–8; *see also* Epiq Application, *supra* note 54, [131.pdf](#) at 8.

⁵⁸ Claims and Noticing Agent Application, *supra* note 64, [3.pdf](#) at 9.

public information and releases.⁵⁹ As administrative advisor, Epiq was retained to manage and assist with schedules of assets and liabilities, financial reports, and other claims.⁶⁰

For compensation, the Debtors requested that the “undisputed fees and expenses incurred by Epiq” be considered administrative expenses and to be paid in the ordinary course of business.⁶¹ The Debtors also provided Epiq with a retainer in the amount of \$25,000, which was to be applied to “all pre-petition invoices” and then all other expenses until its exhaustion.⁶²

⁵⁹ *Id.* at 4–6. (Epiq was retained to provide numerous services as the claims and noticing agent, which included: (i) Preparation and service or required notices and documents required by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”); (ii) “Maintain . . . [copies] of the Debtors’ schedules of assets and liabilities and statements of financial affairs”; (iii) Maintain a list of potential credits, equity holder, and other parties in interest, as well as a mailing list of all parties that have filed a notice of appearance, and to update that list; (iv) Furnish notice to all potential creditors of the last date to file claims; (v) “Maintain a post office box or address” to receive claims and other mail; (vi) Filing an affidavit with the Clerk for all documents served; (vii) “Maintain the official claims register for each Debtor”; (viii) “Maintain an electronic platform for purposes of filing proofs of claim”; (ix) Implement measures to ensure “completeness and integrity of the Claims Registers and the safekeeping of the original claims”; (x) Record any claim transfers and provide the respective notices; (xi) Relocate court-filed proofs of claim to Epiq’s office; (xii) After docketing claims, provide copies to the Clerk of the Claims Register; (xiii) Keep up with the docket for any and all changes or duplications; (xiv) “Identify and correct any incomplete or incorrect addresses in any mailing or service lists”; (xv) Disseminate information to the public and respond to requests for information as directed by Debtors or the Court; (xvi) In the event of conversion to Chapter 7, “contact the Clerk’s office within three days of notice”; (xvii) “30 days prior to the close of these chapter 11 cases,” request the Debtors to submit a proposed order to the Court, which dismisses Epiq from its duties; (xviii) “Within 7 days of notice to Epiq of entry of an order closing” these cases, provide the Court a final Claims Register; (xix) At the close of the case, “box and transport all original documents” and send to the Philadelphia Federal Records Center, or any place requested by the Clerk’s office).

⁶⁰ Epiq Application, *supra* note 54, [131.pdf](#) at 4 (Epiq was retained as administrative advisor to: (i) manage voting process and prepare reports for any chapter 11 plan; (ii) create an “official ballot . . . in support of the ballot tabulation results”; (iii) provide a confidential data room; (iv) assist with schedules of assets, liabilities, and other financial reports; (v) assist with “claims objections, exhibits, claims reconciliation and related matters”; (vi) manage distributions under any chapter 11 plan; and (vii) provide any other services as may be requested).

⁶¹ Claims and Noticing Agent Application, *supra* note 54, [3.pdf](#) at 8; *see also* 11 U.S.C. § 502(b)(1)(A) (“After notice and a hearing, there shall be allowed administrative expenses . . . including the actual, necessary costs and expenses of preserving the estate.”) [<https://perma.cc/89K4-YLDJ>].

⁶² Claims and Noticing Agent Application, *supra* note 54, [3.pdf](#) at 8; *see* Epiq Application, *supra* note 54, [131.pdf](#) at 6–7.

The Court granted the application, effective *nunc pro tunc*, on March 20, 2018.⁶³ Epiq was required to apply for compensation and reimbursement for out-of-pocket expenses incurred.⁶⁴

Cash Management System

The Debtors also made an administrative request to the court via a motion to continue using its cash management system.⁶⁵ The Debtors moved to maintain its twenty bank accounts located at institutions like East West Bank, Bank of Hope, Bank Hapoalim, First Republic Bank, MUFG Union Bank, Comerica, and Opus Bank.⁶⁶ They further requested that the court to provide relief for it to continue uninterrupted use of its “business forms” (checks, letterhead, invoices).⁶⁷

Under § 363(c)(1) of the Bankruptcy Code, a cash management system is permitted to continue because the debtor-in-possession may “use property of the estate in the ordinary course without notice or hearing.”⁶⁸ Under § 363 and 105(a) of the Bankruptcy Code, the U.S. Trustee “has established operating guidelines for debtors in possession to supervise the administration of Chapter 11 cases.”⁶⁹ The Debtors urged the court to grant relief based on the belief that “continued

⁶³ Order Pursuant to 28 U.S.C. § 156(c) and Local Rule 2002-1(f) Approving the Retention and Appointment of Epiq Bankruptcy Solutions, LLC as the Claims and Noticing Agent to the Debtors, Effective *Nunc Pro Tunc* to the Petition Date and Granting Related Relief [70.pdf](#) at 2, *In re* The Weinstein Company Holdings, LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Mar. 20, 2018).

⁶⁴ Order (A) Approving Employment and Retention of Epiq Bankruptcy Solutions, LLC as Administrative Advisor for Debtors, Effective *Nunc Pro Tunc* to the Petition Date and (B) Granting Related Relief [257.pdf](#) at 2, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Apr. 18, 2018) [hereinafter Epiq Order].

⁶⁵ Motion to Maintain Bank Accounts //Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Continued Use of Existing Cash Management System and Bank Accounts; (II) Waiving Certain United States Trustee Requirements; (III) Authorizing Continued Performance of Intercompany Transactions; and (IV) Granting Related Relief [6.pdf](#) at 1, *In re* The Weinstein Co., No. 18-10601 (Bankr. D. Del. Filed Mar. 20, 2018) (hereinafter “Motion to Maintain Cash Management System”).

⁶⁶ *Id.* at 11.

⁶⁷ *Id.* at 13–14.

⁶⁸ *Id.* at 14.

⁶⁹ *Id.* at 16 (These guidelines include: (i) close all existing bank accounts; (ii) open new bank accounts in a depository approved by the U.S. Trustee that are designated as DIP Accounts, with separate DIP Accounts established for an operating account, a tax account, and a payroll account; (iii) obtain and utilize new checks for all DIP Accounts that bear the designation “Debtor In Possession” and contain other information about the debtor’s Chapter 11 case; (iv) deposit all business revenues into the general operating DIP Account, with amounts needed to fund the other accounts being transferred to those accounts as necessary; and (v) deposit to the tax DIP Account sufficient funds to pay any tax liability (when incurred) associated with the debtor’s payroll).

use of the [Cash Management System would] prevent[] disruption . . . and facilitate[] speed of collection for accounts receivables.⁷⁰ The Debtors did, however, reserved its right to open new accounts per the applicable notice requirements.⁷¹

Utilities

On March 20, 2018, the Debtors filed a motion seeking continued use of their utilities, approval of adequate assurance payments, and procedures for resolving objections to the proposed adequate assurance.⁷² This motion was filed pursuant to Section 366 of the Bankruptcy Code, which provides that a “utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of commencement of a case under [the Bankruptcy Code] or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.”⁷³ The Debtors maintained that the interim relief was necessary to “avoid immediate and irreparable harm” in the continuation of their business and the chapter 11 case.⁷⁴ The Court has authority to grant this interim relief under Bankruptcy Rule 6003, which allows payment of a claim to the extent “relief is necessary to avoid immediate and irreparable harm.”⁷⁵

The Debtors believed they had enough cash to pay for utilities during the chapter 11 case.⁷⁶ Regardless, the Debtors proposed to have adequate assurance in the form of a cash deposit “equal

⁷⁰ *Id.* at 17.

⁷¹ *See id.* (“[TWC] request[s] the authority to open any new bank accounts or close any existing bank accounts as [it] may deem necessary and appropriate in the ordinary course, provided that [TWC] give[s] notice within 15 days after such opening of a new bank account or closing of an existing bank account to the U.S. Trustee and any statutory committees appointed in these Chapter 11 cases.”).

⁷² Debtors’ Motion for Entry of Interim and Final Orders (I) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service; (II) Approving the Debtors’ Proposed Form of Adequate Assurance of Payment to Utilities; and (III) Establishing Procedures for Resolving Objection to the Debtors’ Proposed Form of Adequate Assurance [4.pdf](#) at 1, *In re The Weinstein Company Holdings, LLC, et al.*, No. 18-10601 (Bankr. D. Del. Filed Mar. 20, 2018) [hereinafter Utilities Motion].

⁷³ 11 U.S.C. § 366(a) [<https://perma.cc/7NRP-HCQ5>].

⁷⁴ Utilities Motion, *supra* note 72, [4.pdf](#) at 10–11.

⁷⁵ FED. R. BANKR. P. 6003 [<https://perma.cc/T432-MPF4>].

⁷⁶ Utilities Motion, *supra* note 72, [4.pdf](#) at 4.

to one-half of the Debtors' approximate monthly payment," which averages \$18,150.⁷⁷ The Debtors believed this deposit, along with their cash on hand would be sufficient adequate assurance.⁷⁸ Further, any utilities service has protection under Section 366 of the Bankruptcy code, which provides that "if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive . . . adequate assurance of payment," then they may alter, refuse, or discontinue the service.⁷⁹ Adequate assurance can be made in many forms, which includes through a cash deposit.⁸⁰

The Court granted the motion on an interim basis, substantially in form to the proposed order, and then almost a month later, the motion was granted by a final order.⁸¹

Wages Motion

On March 20, 2018, the Debtors moved for authorization to pay their employees their prepetition wages, maintain employee benefits, and grant financial institutions authority to honor the related checks and transfers.⁸² The Debtors had 85 full-time employees and 12 independent contractors on payroll.⁸³ These employees performed technical, production, public relations,

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ 11 U.S.C. § 366(c)(2) [<https://perma.cc/7NRP-HCQ5>].

⁸⁰ 11 U.S.C. § 366(c)(1)(A) [<https://perma.cc/7NRP-HCQ5>].

⁸¹ Interim Order (I) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service; (II) Approving the Debtors' Proposed Form of Adequate Assurance of Payment to Utilities; and (III) Establishing Procedures for Resolving Objection to the Debtors' Proposed Form of Adequate Assurance [71.pdf](#) at 2, *In re* The Weinstein Company Holdings, LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Mar. 20, 2018); Final Order (I) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service; (II) Approving the Debtors' Proposed Form of Adequate Assurance of Payment to Utilities; and (III) Establishing Procedures for Resolving Objection to the Debtors' Proposed Form of Adequate Assurance [245.pdf](#) at 2, *In re* The Weinstein Company Holdings, LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Apr. 17, 2018).

⁸² Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Certain Employee Compensation and Benefits and (B) Maintain and Continue Such Benefits and Other Employee-Related Programs and (II) Authorizing Financial Institutions to Honor and Process All Related Checks and Transfers [5.pdf](#) at 3, *In re* The Weinstein Company Holdings, LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Mar. 20, 2018) [hereinafter Wages Motion].

⁸³ *Id.* at 5.

management and back office functions.⁸⁴ These employees engaged in work that was essential to the operations and maximization of profits for the Debtors. This was due to their skills and experience with vendors, relationships with customers, and knowledge of the Debtors' business and infrastructure.⁸⁵ During the interim period, the Debtors expected about \$819,080 to become due related to these obligations.⁸⁶ The Debtors sought to pay up to \$12,850 per employee in the interim period, which is the cap amount set by the Bankruptcy Code.⁸⁷ Upon the final order, the Debtors sought to pay the remaining obligations.⁸⁸

The Debtors had a variety of payments that are incurred monthly in relation to the employment of full-time employees and independent contractors. The following amounts were owed, and expected to become due in the interim period:⁸⁹

Full-Time Employee Compensation	\$502,988 ⁹⁰
Independent Contractor Compensation	\$254,000
Payroll Taxes	\$55,380
Reimbursable Expenses	\$999,786 ⁹¹
Medical Benefits	\$123,000
Dental Plans	\$7,500
Disability Benefits Program	\$350
Life Insurance Program	\$350
401(k) Contributions	\$6,400

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 4; *see also* 11 U.S.C. § 507(a) [<https://perma.cc/5D7E-LT6R>].

⁸⁸ Wages Motion, *supra* note 82, [5.pdf](#) at 4.

⁸⁹ *Id.* at 6–12.

⁹⁰ *Id.* at 6 (Debtors intended to pay \$362,100 of this amount.).

⁹¹ *Id.* at 9 (This figure represents expenses incurred in the scope of employment.).

The Debtors asserted they should be granted authorization to pay these outstanding amounts under relevant provisions of the Bankruptcy Code. Under Section 363(b) of the Bankruptcy Code, a debtor has the ability to use, sell, or lease, other than in the ordinary course of business, property of the estate.⁹² To do so, however, the Debtors had to show that they had a legitimate business purpose. The Debtors contention was that these expenses are pertinent to keeping their business as a going concern. Additionally, Section 105(a) permits the Court to allow payment of prepetition obligations when such payment is essential to the continued operation of the debtor's business.⁹³

On March 20, 2018, the Court entered an interim order, which granted the Debtors the requested relief.⁹⁴ Less than a month later, on April 17, 2018, the Court entered a final order, approving the Debtors' motion.⁹⁵

⁹² 11 U.S.C. § 363(b) [<https://perma.cc/LJC9-S3J8>].

⁹³ 11 U.S.C. § 105(a) (This provision is commonly known as the Doctrine of Necessity.) [<https://perma.cc/DEL4-WYWU>].

⁹⁴ Interim Order (I) Authorizing the Debtors to (A) Pay Certain Employee Compensation and Benefits and (B) Maintain and Continue Such Benefits and Other Employee-Related Programs and (II) Authorizing Financial Institutions to Honor and Process All Related Checks and Transfers [72.pdf](#) at 2, *In re* The Weinstein Company Holdings, LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Mar. 20, 2018).

⁹⁵ Final Order (I) Authorizing the Debtors to (A) Pay Certain Employee Compensation and Benefits and (B) Maintain and Continue Such Benefits and Other Employee-Related Programs and (II) Authorizing Financial Institutions to Honor and Process All Related Checks and Transfers [246.pdf](#) at 2, *In re* The Weinstein Company Holdings, LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Apr. 17, 2018).

**COMPENSATION OF PROFESSIONALS IN THE ORDINARY COURSE OF
BUSINESS**

The Motion

On March 30, 2018, the Debtors filed a motion, which requested authorization “to retain and compensate certain professionals utilized in the ordinary course of . . . business, effective *nunc pro tunc* to the Petition Date,” along with related relief.⁹⁶ This motion was filed pursuant to Sections 105, 327, 328, and 330 of the Bankruptcy Code, along with Rule 2014 of the Bankruptcy Rules.⁹⁷ These professionals generally provided “legal, regulatory, and/or other related services” that directly impacted day-to-day operations.⁹⁸ The Debtors contended that the retention and compensation of these ordinary course professionals (“OCPs”) was necessary to avoid a disruption of business operations and undue “cost, expense, and delay of securing replacement professionals.”⁹⁹

Ordinary Course Professionals Procedures

The Debtors proposed “that the following procedures . . . govern the retention and payment of the OCPs”:¹⁰⁰

- (i) Each OCP completed a declaration stating their disinterested position and ultimately served it upon: (i) Sidley Austin LLP; (ii) Young Conaway Stargatt & Taylor; (iii) Pachulski Stang Ziehl & Jones; (iv) and the U.S. Trustee (collectively, the “Reviewing Parties”);
- (ii) The Reviewing Parties then had 14 days to object;
- (iii) “If no objection [was] received, the Debtors [were] authorized to retain and pay that OCP”;

⁹⁶ Debtors’ Motion for an Order Authorizing the Employment and Compensation of Professionals Utilized in the Ordinary Course of Business, Effective *Nunc Pro Tunc* to the Petition Date [133.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Mar. 30, 2018) [hereinafter Ordinary Course of Business Professionals].

⁹⁷ *Id.* at 3.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 3–7.

- (iv) “Once the Debtors [retained] an OCP . . . , they [could] pay such OCP . . . upon submission to, and approval by, the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered and expenses actually incurred.” Each OCP’s compensation was limited to \$35,000 per month (“Monthly Fee Limit”); however, payments could reach \$50,000 per month (“Tier 1 Monthly Fee Limit”), provided those OCPs were identified as “Tier 1 OCP.”;
- (v) If the Debtors elected to “designate a Tier 1 OCP not already designated as such,” they had to file and serve upon the Reviewing Parties a notice. The request was deemed approved if no objection was filed;
- (vi) “If an OCP’s fees and expenses [exceeded] the Monthly Limit or Tier 1 Monthly Limit, as applicable, such OCP [had to] file a fee application on account of the excess amount”;
- (vii) “Each fee application [had to] be served upon the Reviewing Parties. The Reviewing Parties . . . then [had] twenty (20) days to object to the Fee Application. If . . . no objection [was] filed, the fees requested . . . shall be deemed approved”
- (viii) “At three-month intervals (each, a “Quarter”) during . . . the Chapter 11 cases, the Debtors [had to] file with the Court and serve on the Reviewing Parties no later than thirty (30) days after the end of such Quarter a statement that . . . [included] the following information for each OCP: (i) the name of the OCP; (ii) the amounts paid as compensation for services rendered and reimbursement of expenses incurred by that OCP during the reported Quarter broken down by month; (iii) all postpetition payments made to that OCP to such date; and (iv) a general description of the services rendered by that OCP”;
- (ix) The Debtors were permitted to retain additional OCPs by filing with the Court and serving notice to the Reviewing Parties, and by having the OCP comply with the OCP Procedures.

Ordinary Course Professionals

Professional	Tier 1 OCP	Services Provided
Barnes & Thornburg	No	Legal Services – Insurance and Regulatory Counsel
Eisner Jaffe	No	Legal Services – General Counsel
The Brull Law Firm	No	Legal Services – Intellectual Property Counsel
Seyfarth Shaw LLP	Yes	Legal Services – General Counsel
Mitchell Silberberg & Knupp LLP	No	Legal Services – Guild Counsel
Cloisters	No	Legal Services – General U.K. Counsel
Farrer & Co.	No	Legal Services – General U.K. Counsel

Basis for Relief

When determining whether an entity is considered a professional pursuant to the Bankruptcy Code, which then determines whether express court approval is needed for retention, “courts generally consider whether such entity is involved in the actual reorganization effort, rather than a debtor’s ongoing business operations.”¹⁰¹ Additionally, courts consider a variety of factors under to determine whether an entity is a professional pursuant to Section 327 of the Bankruptcy Code.¹⁰²

The Debtors asserted that the OCPs they were seeking to retain did not fall under control of Section 327 of the Bankruptcy Code.¹⁰³ The work supplied by OCPs did not pertain to the

¹⁰¹ *Id.*; see also *Comm. Of Asbestos-Related Litigants v. Johns-Manville Corp.*, 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1986) [<https://perma.cc/BT3Y-Y9MH>].

¹⁰² 11 U.S.C. § 327 [<https://perma.cc/Z58Q-Q639>]; see also *In re First Merchs. Acceptance Corp.*, No. 97-1599, 1997 WL 873551, at *3 (D. Del. Dec. 15, 1997) (factors include: “(a) whether the entity controls, manages, administers, invests, purchases, or sells assets that are insignificant to the debtor’s reorganization; (b) whether the entity is involved in negotiating the terms of a plan of reorganization; (c) whether the entity is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor’s business operations; (d) whether the entity is given discretion or autonomy to exercise his or her own professional judgment in some part of the administration of the debtor’s estate; (e) the extent of the entity’s involvement in the administration of the debtor’s estate; (f) the extent of the entity’s involvement in the administration of the debtor’s estate; and (g) whether the entity’s services involve some degree of special knowledge or skill, such that it can be considered a “professional” within the ordinary meaning of the term.) [<https://perma.cc/LPS4-DZXR>].

¹⁰³ Ordinary Course of Business Professionals, *supra* note 96, [133.pdf](#) at 8.

Debtors' bankruptcy case, but instead their ongoing business operations.¹⁰⁴ The Debtors then reiterated that filing individual applications would be disruptive to business, inefficient, and costly.¹⁰⁵ For these reasons, the Debtors requested authorization for employment and compensation of OCPs.

Objection

On April 17, 2018, the Debtors filed a certificate of no objection, which stated they had “received no answer, objection, or any other responsive pleading” regarding their motion to retain and compensate professionals in the ordinary course of business.¹⁰⁶

Order

On April 18, 2018, the Court granted the motion, effective *nunc pro tunc* to the Petition Date.¹⁰⁷

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 9.

¹⁰⁶ Certificate of No Objection Regarding Debtors' Motion for an Order Authorizing the Employment and Compensation of Professionals Utilized in the Ordinary Course of Business, Effective *Nunc Pro Tunc* to the Petition Date [249.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Apr. 17, 2018).

¹⁰⁷ Order Authorizing the Debtors to Employ and Compensate Professionals Utilized in the Ordinary Course of Business, Effective *Nunc Pro Tunc* to the Petition Date [253.pdf](#) at 2, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Apr. 18, 2018).

INTERIM COMPENSATION OF PROFESSIONALS AND EXPENSE
REIMBURSEMENT

The Motion

On March 30, 2018, the Debtors filed a motion requesting an order which “[authorized] and [established] procedures for interim compensation for services rendered and reimbursement of expenses incurred by attorneys and other professionals” who were retained through other provisions of the Bankruptcy Code.¹⁰⁸ This motion was filed pursuant to Section 105(a) of the Bankruptcy Code, Bankruptcy Rule 2016(a), and Local Rule 2016-2.¹⁰⁹

The Retained Professionals that were under consideration included: “(i) Cravath, Swaine & Moore LLP (“Cravath Swaine”), as bankruptcy co-counsel; (ii) Richards, Layton & Finger, P.A. (“Richards Layton”), as bankruptcy co-counsel; (iii) Moelis & Company LLC. (“Moelis”), as investment banker; and (iv) Epiq Bankruptcy Solutions, LLC (“Epiq”), as solicitation and administrative agent (collectively, the “Debtors’ Professionals”).”¹¹⁰ The Debtors also retained Pachulski Stang Ziehl and Jones LLP (“Pachulski Stang”).¹¹¹

¹⁰⁸ Debtors’ Motion for Entry of an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [132.pdf](#) at 1, *In re* The Weinstein Company Holdings, LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Mar. 30, 2018) [hereinafter Motion for Interim Compensation and Reimbursement]; 11 U.S.C. § 105(a) (permitting the Court to issue any order that is “necessary or appropriate to carry out the provisions of this title) [<https://perma.cc/DEL4-WYWU>]; FED. R. BANKR. P. 2016(a) (providing that “an entity seeking interim or final compensation for services or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended, and expenses incurred, and (2) the amounts requested.”) [<https://perma.cc/X9Q9-J6SP>].

¹⁰⁹ *Id.* at 3.

¹¹⁰ *Id.* at 7.

¹¹¹ *Id.* at 4.

Proposed Procedures

The Debtors proposed methods for Monthly Fee Applications and Interim Fee Applications (collectively, “Compensation Procedures”).¹¹² Worth noting, Retained Professionals were not permitted to file a fee application until the court approved their retention pursuant to Section 327 or 1103 of the Bankruptcy Code.¹¹³

Monthly Fee Application Procedure

For Monthly Fee Applications, any Retained Professional “seeking interim allowance of its fees and expenses [could] file an application” on or after the 20th day of a month following the month for when those fees and expenses were earned.¹¹⁴ This application had to include “the relevant time entry and description and expense detail.”¹¹⁵ Each Monthly Fee Application had to be served upon: (i) the Debtors; (ii) Cravath Swaine and Richards Layton; (iii) the Office of the United States Trustee; (iv) Sidley Austin LLP and Young Conaway Stargatt, co-counsel to the DIP Agent and Pre-Petition Agent; and (v) Pachulski Stang.¹¹⁶ If a Retained Professional failed to file an application on any given month, they were permitted to consolidate applications in future months.¹¹⁷ Any objection to a Monthly Fee Application had to be filed “on the 20th day following the date the Monthly Fee Application [was] served.”¹¹⁸ The objection had to be written and served upon the respective Retained Professional and other Notice Parties.¹¹⁹ Once the objection deadline passed, the Retained Professional could file a certificate of no objection, and then pay 80% of fees

¹¹² *Id.* at 4.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 4–5.

¹¹⁷ *Id.* at 5.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

due and 100% of expenses requested.¹²⁰ If any amounts were objected to, the Retained Professional could request Court approval or forego the payments until the next hearing.¹²¹

Interim Fee Application Procedure

For Interim Fee Applications, Retained Professionals could file, in three-month intervals, an application for “interim approval and allowance of compensation and reimbursement of expenses . . . , including any holdbacks.”¹²² These applications had to be filed “on or before the 45th day . . . following the end of each Interim Fee Period.”¹²³ The Interim Fee Application had to include the following: (i) The Monthly Fee Applications being requested; (ii) the amount requested; (iii) the amount paid to date or subject to an objection; (iv) the deadline for objection; and (v) any additional information requested or required.¹²⁴ “Each attorney Retained Professional [had to] make a reasonable effort to comply with the U.S. Trustee’s requests for information and additional disclosures as set forth in the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013*, in connection with each Interim Fee Application and/or final application.”¹²⁵ Notice to parties was limited to Monthly Fee Applications, Interim Fee Applications, final fee applications, and Hearing Notices.¹²⁶ Any parties in interest that requested notice were entitled to Hearing Notices and final fee applications.¹²⁷ Any objections had to be filed and served “so as to be received” on the 20th day following service of the initial application.¹²⁸

¹²⁰ *Id.*

¹²¹ *Id.* at 5–6.

¹²² *Id.* at 6.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* at 7.

Basis for Relief

Section 330 of the Bankruptcy Code allows a Court to “award a professional person employed under Section 327 reasonable compensation for actual, necessary services rendered . . . and reimbursement for actual, necessary expenses.”¹²⁹ In determining the amount to award, the Court considers “the nature, extent, and value of such services” and will factor in the time spent, rates charged, necessity of the services for the case, efficiency of the performance, special certifications of the professional, and whether the compensation is reasonable.”¹³⁰ Additionally, Section 331 of the Bankruptcy Code allows a Retained Professional to apply to the Court every 120 days after an order for relief for compensation.¹³¹ Based on how large the Debtors’ case was and the “amount of time and effort that will be required,” compensation is justified.¹³²

No Objections and Order

The Debtors filed a certificate of no objection on April 16, 2018, stating that no objections had been timely filed.¹³³ With that, the Debtors requested for an order granting their motion.¹³⁴ The next day the Court granted Debtors’ motion and proposed procedures.¹³⁵

¹²⁹ 11 U.S.C. § 330(a)(1) [<https://perma.cc/Z682-WBMT>].

¹³⁰ 11 U.S.C. § 330(a)(3) [<https://perma.cc/Z682-WBMT>].

¹³¹ 11 U.S.C. § 331 [<https://perma.cc/C9KE-ULNH>].

¹³² Motion for Interim Compensation and Reimbursement, *supra* note 108, [132.pdf](#) at 9.

¹³³ Certificate of No Objection Regarding Debtors’ Motion for Entry of an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [225.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Apr. 16, 2018).

¹³⁴ *Id.* at 2.

¹³⁵ Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [247.pdf](#) at 2, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Apr. 17, 2018).

RETENTION OF PROFESSIONALS

Essential Rules Regarding Retention of Professionals

In bankruptcy cases, it is necessary for the debtor to retain professionals in various fields in order to streamline the bankruptcy process while also continuing to operate as a going concern. Under § 327 of the Bankruptcy Code, a debtor may employ “attorneys, accountants, . . . or other professional persons” that do not possess an adverse interest and that are disinterested in order to carry out duties.¹³⁶ Disinterested persons include those that: (a) are not creditors, equity holders, or insiders of the Debtor; (B) were not, within the preceding two years, “directors, officers, or employees of the debtors”; and (C) do not have a material adverse interest of the debtor.¹³⁷

In their application to retain these professionals, the debtor is to provide specific facts, which show the “necessity for the employment, the name of the person to be employed, the reason for the selection, the professional services to be rendered, any proposed arrangement for compensation” and any conflicts of interest.¹³⁸

FTI Consulting, Inc. – Case Management Services

On March 30, 2018, the Debtors filed an application to retain FTI Consulting, Inc. (“FTI”) to provide management services to the Debtors.¹³⁹ Rather than applying under Section 327 of the Bankruptcy Code, the application was filed under Section 363.¹⁴⁰ The purpose of this was to avoid the fee application and compensation requirements imposed by Sections 330 and 331, which apply to Section 327.¹⁴¹ The Debtors sought to retain FTI in order to have Robert Del Genio serve as

¹³⁶ 11 U.S.C. § 327(a) [<https://perma.cc/Z58Q-Q639>].

¹³⁷ 11 U.S.C. § 101(14) [<https://perma.cc/TH3H-ZHEH>].

¹³⁸ FED. R. BANKR. P. 2014 [<https://perma.cc/293Q-7LKR>].

¹³⁹ Application of Debtors for an Order Authorizing the Debtors to (I) Retain and Employ FTI Consulting, Inc. to Provide the Debtors Interim Management Services, (II) Designate Robert Del Genio as Chief Restructuring Officer and (III) Designate Luke Schaeffer as Chief Strategy Officer *Nunc Pro Tunc* to the Petition Date [129.pdf](#) at 1, *In re The Weinstein Company Holdings LLC, et al.*, No. 18-10601 (Bankr. D. Del. Filed Mar. 30, 2018) [hereinafter FTI Application].

¹⁴⁰ *Id.* at 1.

Chief Restructuring Officer and Luke Schaeffer as Chief Strategy Officer. Additionally, FTI provided Transaction Support,¹⁴² aided in delivering information to Epiq, assisted in cash management and forecasting, provided financial analysis regarding “litigation involving the Transaction,¹⁴³ the Services or as otherwise requested,” and other services as reasonably requested.¹⁴⁴

The Compensation and Expenses were provided as follows:¹⁴⁵

Senior Managing Directors/Senior Advisors	\$875 – 1,075/hour
Managing Directors	\$780 – 855/hour
Senior Directors	\$715 – 795/hour
Directors	\$650 – 770/hour
Consultants	\$345 – 475/hour
Administrative/Paraprofessionals	\$135 – 265/hour
DIP Fee	Upon closing of a Financing Transaction, ¹⁴⁶ Debtors owed FTI \$350,000.
Additional Fee	Upon closing and funding of a Transaction, Debtors owed FTI \$1,500,000 if the Report ¹⁴⁷ or other materials were provided to the third party when the Transaction was completed. It was agreed that if the DIP Fee was triggered and then followed by a transaction that

¹⁴¹ *Id.*

¹⁴² *Id.* at 6 (*Transaction Support* means the forecasting, valuation, and support related to a business transaction, involving all or most of the business, assets, or equity interests.).

¹⁴³ “Transaction” is in reference to the 363-asset sale, which will be described below.

¹⁴⁴ FTI Application, *supra* note 139, [129.pdf](#) at 6–7.

¹⁴⁵ *Id.* at 8–9.

¹⁴⁶ *Financing Transaction* means “establishing a debtor in possession credit facility.”

¹⁴⁷ *Report* means “individually or collectively, FTI’s procedures, analyses and conclusions as documented in one or more written reports with, where appropriate, supporting schedules.”

	triggered the Additional Fee, then FTI would reduce the amount by \$100,000.
Reasonable Allocated and Direct Expenses	FTI billed for reasonable expenses incurred on Debtors' behalf. These expenses include "reasonable and customary out of pocket expenses . . . such as certain telephone, overnight mail, messenger, pre-approved travel, pre-approved lodging, meals and other expenses." If FTI employees were to testify or provide evidence in an proceeding, FTI would be compensated at that individual's regular hourly rate.

Prior to the Petition Date, FTI had been providing services to the Debtors and received \$1,607,975 in compensation.¹⁴⁸ "As of the Petition Date, FTI ha[d] an outstanding claim of \$284,522.08 for pre-petition services and [held] a retainer of \$100,000."¹⁴⁹ FTI applied the retainer to their subsequent services and waived the remaining outstanding balance.¹⁵⁰

In qualifying themselves, FTI believed it, nor any of its employees, held an adverse interest or any conflicts of interest.¹⁵¹ The Debtors contended that FTI's retention was permissible under Section 363 of the Bankruptcy Code, which states that a debtor "may use property of the estate other than in the ordinary course of business," provided there is a sound business purpose underlying the decision.¹⁵² The Debtors maintained that the use of FTI would allow them to "preserve and maximize the value of the Debtor's estates."¹⁵³ The Debtors also pointed to the

¹⁴⁸ FTI Application, *supra* note 139, [129.pdf](#) at 12.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² 11 U.S.C. § 363(b) [<https://perma.cc/LJC9-S3J8>].

¹⁵³ FTI Application, *supra* note 139, [129.pdf](#) at 14.

Court's power under Section 105(a) of the Bankruptcy Code to allow the Debtors to retain FTI as a means to carry out the rest of the bankruptcy case.¹⁵⁴

On April 24, 2018, the Court granted the application pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code.¹⁵⁵

Moelis & Company LLC – Investment Banker

On March 30, 2018, the Debtors filed an application to retain Moelis & Company LLC (“Moelis”) as their investment banker.¹⁵⁶ This application was filed pursuant to Sections 327(a) and 328(a)¹⁵⁷ of the Bankruptcy Code, as well as Rule 2014(a) of the Federal Rules of Bankruptcy Procedure.¹⁵⁸ Moelis is an investment bank with a substantial track record and capabilities in numerous financial services, especially in the bankruptcy environment.¹⁵⁹ The Debtors selected Moelis for these reasons, as well as their extensive knowledge on the Debtors’ business, stemming from over two years of business.¹⁶⁰ Significantly, some of this business includes assistance with the proposed asset purchase efforts from late 2017.¹⁶¹ It was necessary that this application be granted because “denial of relief . . . [would] deprive the Debtors of the assistance of uniquely qualified investment banking professionals.”¹⁶²

¹⁵⁴ *Id.* at 16; *see also* 11 U.S.C. § 105(a) [<https://perma.cc/DEL4-WYWU>].

¹⁵⁵ Order Authorizing the Debtors to (I) Retain and Employ FTI Consulting, Inc. to Provide the Debtors Interim Management Services, (II) Designate Robert Del Genio as Chief Restructuring Officer and (III) Designate Luke Schaeffer as Chief Strategy Officer *Nunc Pro Tunc* to the Petition Date [414.pdf](#) at 2, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Apr. 24, 2018).

¹⁵⁶ Application of Debtors for Order (I) Authorizing Retention and Employment of Moelis & Company LLC as Investment Banker to The Debtors for Specified Purposes *Nunc Pro Tunc* to the Petition Date Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a) And (ii) Waiving Certain Information Requirements Imposed by Local Rule 2016-2 [134.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et al.*, No 18-10601 (Bankr. D. Del. Filed Mar. 30, 2018) [hereinafter Moelis Application].

¹⁵⁷ 11 U.S.C. § 328(a) (“The trustee . . . may employ or authorize the employment of a professional person under Section 327 . . . on any reasonable terms and conditions of employment.”) [<https://perma.cc/GP7W-Y36S>].

¹⁵⁸ Moelis Application, *supra* note 155, [134.pdf](#) at 1.

¹⁵⁹ *Id.* at 3–4.

¹⁶⁰ *Id.* at 5.

¹⁶¹ *Id.* at 6.

Moelis was contracted to supply many services, including: (i) assistance in business and financial analysis; (ii) identification and evaluation of candidates for a transaction; (iii) contact those that may be appropriate for a transaction, as well as meet with them for negotiations; (iv) preparation of marketing plan and information materials for potential acquirors; (v) identification of potential Lenders; (vi) assistance in creating a strategy for Transactions; (vii) assistance in structuring and negotiating the transactions; (viii) meet with the Board to discuss proposed transactions; and (ix) providence of other advisement and services as agreed upon¹⁶³

Moelis' compensation can be broken down into three components. The Debtors agreed to pay a "Monthly Fee" of \$150,000, which started upon the execution of the agreement.¹⁶⁴ The Debtors then agreed to pay a "Sale Transaction Fee," which is 1.5% of the Transaction Value, with a minimum amount of \$7,000,000.¹⁶⁵ This amount was payable as of the closing of the first Sale Transaction.¹⁶⁶ The Debtors also agreed to reimburse Moelis for reasonable, documented, out of pocket expenses pursuant to Section 330 of the Bankruptcy Code.¹⁶⁷ "During the 90-day period immediately preceding the Petition Date, the Debtors paid Moelis \$485,050.18 in the aggregate for fees and reimbursement of expenses. Moelis . . . waived any outstanding prepetition amounts not paid . . . and thus, the Debtors [did] not owe Moelis any fees . . . incurred . . . as of the Petition Date."¹⁶⁸

¹⁶² *Id.* at 19.

¹⁶³ *Id.* at 8.

¹⁶⁴ *Id.* at 9.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 10; *see also* 11 U.S.C. § 330(a)(3)(C) (stating reasonable compensation may include expenses if they were necessary to the administration, or beneficial at the time, to a case.) [<https://perma.cc/Z682-WBMT>].

¹⁶⁸ Declaration of Carlos Jimenez in Support of Application of Debtors for Order (I) Authorizing Retention and Employment of Moelis & Company LLC as Investment Banker to the Debtors for Specified Purposes *Nunc Pro Tunc* to the Petition Date Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a) and (II) the Waiving Certain Information Requirements Imposed by Local Rule 2016-2 [212.pdf](#) at 14, *In re* The Weinstein Company Holdings LLC, *et al.*, No 18-10601 (Bankr. D. Del. Filed Mar. 30, 2018) [hereinafter Jimenez Declaration.]

On April 24, 2018, the Court granted the application to retain Moelis as the investment banker.¹⁶⁹

Cravath, Swaine & Moore LLP – Co-Counsel

On March 30, 2018, the Debtors applied to retain Cravath, Swaine & Moore LLP (“Cravath”) as bankruptcy counsel.¹⁷⁰ This application was filed with reference to Sections 327(a), 328(a), 329, and 330 of the Bankruptcy Code, as well as rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure.¹⁷¹ Cravath was selected because of their “extensive experience and knowledge in the fields of in-court and out-of-court restructuring transactions, mergers and acquisitions, post-petition financing and debtors’ and creditors’ rights, as well as its ability to respond quickly to emergency hearings and other emergency matters.”¹⁷² Additionally, the Debtors had extensive history with Cravath and had grown to trust and rely on their professional services.¹⁷³ To the best of Cravath’s knowledge, they did not have any detrimental conflicts of interest.¹⁷⁴ Cravath was retained to provide all legal services required throughout the chapter 11 process.¹⁷⁵

¹⁶⁹ Order (I) Authorizing Retention and Employment of Moelis & Company LLC as Investment Banker to the Debtors for Specified Purposes *Nunc Pro Tunc* to the Petition Date Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a) and (II) Waiving Certain Information Requirements Imposed by Local Rule 2016-2 [413.pdf](#) at 3, *In re* The Weinstein Company Holdings LLC, *et al.*, No 18-10601 (Bankr. D. Del. Filed Apr 24, 2018).

¹⁷⁰ Debtors’ Application for Entry of an Order Authorizing the Retention and Employment of Cravath, Swaine & Moore LLP as Bankruptcy Counsel *Nunc Pro Tunc* to the Petition Date [135.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et al.*, No 18-10601 (Bankr. D. Del. Filed Mar. 30, 2018) [hereinafter Cravath Application.]

¹⁷¹ *Id.*; *see also* 11 U.S.C. § 329 (providing that attorneys can be retained to represent a debtor in a chapter 11 case.).

¹⁷² Cravath Application, *supra* note 170, [135.pdf](#) at 4 [<https://perma.cc/TD7U-PRWD>].

¹⁷³ *Id.*

¹⁷⁴ Declaration of Paul H. Zumbro in Support of the Debtors’ Application for Entry of an Order Authorizing the Retention and Employment of Cravath, Swaine & Moore LLP as Attorneys for Debtors *Nunc Pro Tunc* to Petition Date [292.pdf](#) at 15, *In re* The Weinstein Company Holdings LLC, *et al.*, No 18-10601 (Bankr. D. Del. Filed Mar. 30, 2018) [hereinafter Zumbro Declaration].

¹⁷⁵ *Id.* at 3–4 (These services included: (i) advise the debtors of their legal obligations, duties, and rights throughout the Chapter 11 case; (ii) protect and preserve the Debtors’ estate; (iii) preparation of “all motions, applications, answers, orders, reports and other papers”; (iv) prosecution and assistance with any sale or other disposition of the Debtors’ assets; (v) “taking all necessary actions in connection with any Chapter 11 plan and related disclosure statement and all related documents, and seeking approval of all transactions contemplated therein and in any amendments thereto; and (vi) performing other legal services related to the chapter 11 case.).

For compensation, the “Debtors do not owe Cravath any amount for services rendered or expenses incurred prior to the Petition Date, and thus Cravath is not a prepetition creditor.”¹⁷⁶ The following chart was the proposed compensation structure, with payment accruing on an hourly basis, plus reimbursement of actual, necessary expenses.¹⁷⁷

Cravath’s General Hourly Billables:¹⁷⁸

Position	Range of Current Hourly Rates
Partners	\$1,000 – \$1,400
Associates	\$585 – \$905
Paralegals	\$255 – \$355

On April 24, 2018, the application to retain Cravath as Bankruptcy Counsel was granted.¹⁷⁹

Richards, Layton & Finger, P.A. – Co-Counsel

On March 30, 2018, the Debtors applied to retain Richards, Layton & Finger P.A. (“Richards Layton”) as bankruptcy co-counsel.¹⁸⁰ This application was filed with reference to Sections 327(a), 328(a), 329, and 330 of the Bankruptcy Code, as well as rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure.¹⁸¹ Richards Layton was selected due to their

¹⁷⁶ *Id.* at 10.

¹⁷⁷ *Id.* at 12.

¹⁷⁸ *Id.* (Specific professionals and their rates are as follows: Michael Goldman - \$1,400; George E. Zobitz - \$1,400; Karin A. Demasi - \$1,360; Paul H. Zumbro - \$1,360; Andrew E. Elken - \$1,000; Lauren R. Kennedy - \$905; Paul Sandler - \$835; Andrew Wark - \$835; Sanjay Murti - \$805; David Kumagi - \$790; Stephanie Marshak - \$705; Evan Schladow - \$705; Catriela Cohen - \$585; Daniel Lin - \$585; Claire O’Brien - \$585; Rachel Klein - \$315; James Curbow - \$290; Andrew Adler - \$270).

¹⁷⁹ Order Authorizing the Retention and Employment of Cravath, Swaine & Moore LLP as Bankruptcy Counsel *Nunc Pro Tunc* to the Petition Date [415.pdf](#) at 2, *In re* The Weinstein Company Holdings LLC, *et al.*, No 18-10601 (Bankr. D. Del. Filed Apr. 24, 2018).

¹⁸⁰ Debtors’ Application for Entry of an Order Authorizing the Retention and Employment of Richards, Layton & Finger, P.A. as Bankruptcy Co-Counsel *Nunc Pro Tunc* to the Petition Date [128.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et al.*, No 18-10601 (Bankr. D. Del. Filed Mar. 30, 2018) [hereinafter Richards Layton Application].

“extensive experience in the field of debtors’ and creditors’ rights and business reorganizations and liquidations under chapter 11 of the Bankruptcy Code.”¹⁸²

Richards Layton was hired to provide the following services: (i) protection and preservation of the Debtors’ estate; (ii) advise the Debtors of their legal rights, powers and duties; (iii) preparation of “all motions, applications, answers, orders, reports and other papers”; (iv) assist with the 363 Asset Sale; (v) “take all necessary or appropriate actions in connection with a chapter 11 plan(s)”; (vi) prosecution and assistance with any sale or other disposition of the Debtors’ assets; and (vii) performance of all other necessary legal actions.¹⁸³ Further, Richards Layton may work in coordination with Cravath as the Debtors’ co-counsel.¹⁸⁴ To the best of Richard Layton’s knowledge they do not have a detrimental conflict of interest

Compensation was to be provided to Richards Layton as follows:¹⁸⁵

Position	Range of Hourly Rates
Directors	\$545 - \$925
Counsel	\$575 - \$625
Associates	\$330 - \$625
Paraprofessionals	\$255

¹⁸¹ *Id.*

¹⁸² Declaration of Mark D. Collins in Support of the Debtors’ Application for Entry of an Order Authorizing the Petition and Employment of Richards, Layton & Finger P.A. as Bankruptcy Co-Counsel *Nunc Pro Tunc* to the Petition Date [276.pdf](#) at 2, *In re* The Weinstein Company Holdings LLC, *et al.*, No 18-10601 (Bankr. D. Del. Filed Mar. 30, 2018) [hereinafter Collins Declaration].

¹⁸³ Richards Layton Application, *supra* note 180, [128.pdf](#) at 3–4.

¹⁸⁴ *Id.* at 4.

¹⁸⁵ *Id.* at 6 (Specific professionals and their rates are as follows: Mark D. Collins - \$925; Paul N. Heath - \$750; Zachary I. Shapiro - \$610; Brett M. Haywood - \$450; David T. Queroli - \$385; M. Lynzy McGee - \$255).

Prior to the Petition Date, the Debtors had paid a \$600,000 retainer to Richards Layton.¹⁸⁶ The firm immediately drew down this amount as they expected to earn it in relation to “services performed and anticipated to be performed through the petition date.”¹⁸⁷

On April 23, 2018, the Court granted the Debtors’ application to retain Richards Layton as co-counsel.¹⁸⁸

Bernstein Litowitz Berger & Grossmann, LLP – Special Litigation Counsel

On May 1, 2019, the Debtors applied to retain Bernstein Litowitz Berger & Grossmann (“Bernstein Litowitz”) as special litigation counsel.¹⁸⁹ This application was filed pursuant to Section 327(e) of the Bankruptcy Code, which allows for employment of an attorney “for a specified purpose.”¹⁹⁰ This application was also filed pursuant to Sections 328(a) and 330 of the Bankruptcy Code and Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure.¹⁹¹ Section 328(a) and 330 allow compensation to be paid to professional persons for services provided.¹⁹² One of the last remaining assets in the estates of the Debtors were against Directors and Officers (“D&O Claims”) and the Debtors believed pursuing these would be in the best interest of the estate and creditors.¹⁹³ Bernstein Litowitz was selected due to their presence as one of the “leading law firms worldwide . . . related to corporate governance, shareholder rights, and

¹⁸⁶ Collins Declaration, *supra* note 182, [276.pdf](#) at 6.

¹⁸⁷ *Id.*

¹⁸⁸ Order Authorizing the Retention and Employment of Richards, Layton & Finger, P.A. as Bankruptcy Co-Counsel *Nunc Pro Tunc* to the Petition Date [288.pdf](#) at 2, *In re* The Weinstein Company Holdings LLC, *et al.*, No 18-10601 (Bankr. D. Del. Filed Apr. 24, 2018).

¹⁸⁹ Debtors’ Application Pursuant to 11 U.S.C. § 327(e) and 328(a) to Retain and Employ Bernstein Litowitz Berger & Grossmann, LLP as Special Litigation Counsel to the Debtors *Nunc Pro Tunc* to May 1, 2019 [2337.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et al.*, No 18-10601 (Bankr. D. Del. Filed May. 1, 2019) [hereinafter Bernstein Litowitz Application].

¹⁹⁰ 11 U.S.C. § 327(e) [<https://perma.cc/Z58Q-O639>].

¹⁹¹ Bernstein Litowitz Application, *supra* note 189, [2337.pdf](#) at 1.

¹⁹² 11 U.S.C. § 328(a) [<https://perma.cc/XE8T-UDG2>]; 11 U.S.C. § 330 [<https://perma.cc/Z682-WBMT>].

¹⁹³ Bernstein Litowitz Application, *supra* note 189, [2337.pdf](#) at 4.

securities litigation.”¹⁹⁴ Also, they have had a significant uptick in work related to sexual harassment claims.¹⁹⁵ Bernstein Litowitz did not have a detrimental conflict of interest.¹⁹⁶

Bernstein Litowitz was retained to perform the following services: (i) advise with respect to D&O Claims, along with representation regarding those claims; and (ii) interaction and coordination with other retained professionals in furtherance of those claims.¹⁹⁷

Bernstein Litowitz was to be compensated on a contingency-fee basis.¹⁹⁸ If recovery were to take place within six months from when Bernstein Litowitz provided “notice of the intent to mediate or arbitrate,” then they would be entitled to 25%.¹⁹⁹ If recovery took place after that, Bernstein Litowitz would be entitled to 30%.²⁰⁰ “However, if the Debtors [chose] to accept a settlement offer without [Bernstein Litowitz’s] consent, then [Bernstein Litowitz] [would] be entitled to the greater of 40% of any such recovery . . . or five times [Bernstein Litowitz’s] lodestar²⁰¹ amount.”²⁰² Lastly, if this case converts to a chapter 7 bankruptcy and Bernstein Litowitz is not retained for that process, then they would be entitled to “a final fee application for all work performed up to that date at three-quarters” of their typical hourly rates.²⁰³

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 8.

¹⁹⁷ *Id.* at 5.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 4–5.

²⁰¹ *Lodestar Method Law and Legal Definition*, US LEGAL (March 8, 2020, 1:52 PM), <https://definitions.uslegal.com/l/lodestar-method/> (“The ‘lodestar method’ is a method adopted for calculating attorneys’ fees where the court multiplies a reasonable hourly rate by a reasonable number of hours expended.”) [<https://perma.cc/H8QD-XVUE>].

²⁰² Bernstein Litowitz Application, *supra* note 189, [2337.pdf](#) at 6.

²⁰³ *Id.* (In fact, the case did convert to a chapter 7. See section below.).

Two objections arose to the application to retain Bernstein Litowitz. First, the group of plaintiffs with “actions against Harvey Weinstein . . . and their officers and directors”²⁰⁴ who asserted that there had been extensive mediation and negotiations, totaling over 130 hours of time, and the plaintiffs claimed the parties were “literally days away from receiving a proposed global resolution.”²⁰⁵ It was proposed that the granting of that application would end any chance of the resolution, would waste years of litigation, and deplete resources of the estates.²⁰⁶ The second objection came from the Official Committee of Unsecured Creditors.²⁰⁷ This objection sought to reject the retention of Bernstein Litowitz if a resolution of the D&O claims was reached prior to the hearing.²⁰⁸

The Debtors responded, maintaining that retention of Bernstein Litowitz was necessary for a few reasons. First, the Debtors would not agree to any resolution of the D&O claims without representation by counsel in relation to those claims.²⁰⁹ With that, it had been determined that Bernstein Litowitz was best to take on that responsibility.²¹⁰ Finally, the Debtors contended that there was no indication that resolution of the D&O Claims was in the immediate future.²¹¹ The

²⁰⁴ Objection of the New York State Attorney General and Tort Claimants to, and Request to Adjourn for 30 Days, Debtors’ Application Pursuant to 11 U.S.C. § 327(e) and 328(a) to Retain and Employ Bernstein Litowitz Berger & Grossmann, LLP as Special Litigation Counsel to the Debtors *Nunc Pro Tunc* to May 1, 2019 [2362.pdf](#) at 3, *In re* The Weinstein Company Holdings LLC, *et al.*, No 18-10601 (Bankr. D. Del. Filed May. 15, 2019).

²⁰⁵ *Id.* at 3–4.

²⁰⁶ *Id.* at 4.

²⁰⁷ Limited Objection of the Official Committee of Unsecured Creditors to Debtors’ Application Pursuant to 11 U.S.C. §§ 327(e) and 328(a) to Retain and Employ Bernstein Litowitz Berger & Grossmann, LLP as Special Litigation Counsel to the Debtors *Nunc Pro Tunc* to May 1, 2019 [2363.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et al.*, No 18-10601 (Bankr. D. Del. Filed May 15, 2019).

²⁰⁸ *Id.* at 2.

²⁰⁹ Reply to Objections to Debtors’ Application Pursuant to 11 U.S.C. §§ 327(e) and 328(a) to Retain and Employ Bernstein Litowitz Berger & Grossmann, LLP as Special Litigation Counsel to the Debtors *Nunc Pro Tunc* to May 1, 2019 [2371.pdf](#) at 2, *In re* The Weinstein Company Holdings LLC, *et al.*, No 18-10601 (Bankr. D. Del. Filed May 20, 2019) .

²¹⁰ *Id.* at 2–3.

²¹¹ *Id.* at 3.

Debtors did, however, revise their proposed order, addressing the objection to the contingency fee, and applied instead a flat rate.²¹²

Ultimately, the Court granted the motion to retain Bernstein Litowitz.²¹³ The Court also provided that compensation was to be a “flat fee of \$400,000.00” and Bernstein Litowitz would file an fee application for reimbursement of actual and necessary expenses.²¹⁴

Pachulski Stang Ziehl & Jones LLP – Counsel for Unsecured Creditors

On April 24, 2018, the Official Committee of Unsecured Creditors (the “Committee”) of the Debtors filed an application to retain Pachulski Stang Ziehl & Jones LLP (“Pachulski Stang”) as counsel to the Committee.²¹⁵ This application was filed pursuant to Sections 328(a) and 1103(a) of the Bankruptcy Code, Rule 2014 of the Bankruptcy Rules, and Rule 2014-1 of the Local Rules of Bankruptcy.²¹⁶ Section 1103 simply provides that a committee can select certain professionals to represent them or perform services throughout a Chapter 11 case.²¹⁷ Pachulski Stang is a mid-size firm that has “extensive experience representing creditors’ committees” in bankruptcy cases.²¹⁸ Pachulski Stang believed that they did not have any detrimental conflicts of interest.²¹⁹

²¹² Certification of Counsel Regarding Order Authorizing the Debtors to Retain and Employ Bernstein Litowitz Berger & Grossman, LLP as Special Litigation Counsel to the Debtors *Nunc Pro Tunc* to May 1, 2019 [2608.pdf](#) at 6, *In re* The Weinstein Company Holdings LLC, *et al.*, No 18-10601 (Bankr. D. Del. Filed Oct. 15, 2019).

²¹³ Order Authorizing the Debtors to Retain and Employ Bernstein Litowitz Berger & Grossmann, LLP as Special Litigation Counsel to the Debtors *Nunc Pro Tunc* to May 1, 2019 [2610.pdf](#) at 2, *In re* The Weinstein Company Holdings LLC, *et al.*, No 18-10601 (Bankr. D. Del. Filed Oct. 16, 2019).

²¹⁴ *Id.*

²¹⁵ Application of the Official Committee of Unsecured Creditors for Order, Pursuant to 11 U.S.C. §§ 328, and 1103, Fed. R. Bankr. P. 2014, and Local Rule 2014-1, Authorizing and Approving the Employment and Retention of Pachulski Stang Ziehl & Jones LLP as Counsel to the Official Committee of Unsecured Creditors *Nunc Pro Tunc* to March 28, 2018 [421.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. De. Filed Apr. 24, 2018) [hereinafter Pachulski Stang Retention].

²¹⁶ *Id.*

²¹⁷ 11 U.S.C. § 1103(a) [<https://perma.cc/UB76-Q5HN>].

²¹⁸ Pachulski Stang Retention, *supra* note 215, [421.pdf](#) at 3.

²¹⁹ *Id.* at 5.

They were retained to aid administration of the chapter 11 from the viewpoint of the Committee, as well as advise the Committee on their powers and duties.²²⁰

Pachulski Stang was compensated “on an hourly basis, plus reimbursement of actual, necessary expenses.”²²¹ The hourly rates were charged as follows:²²²

Position	Hourly Rate Range
Partners	\$650 - \$1,295
Counsel	\$595 - \$ 1,025
Associates	\$495 - \$595
Paralegals	\$350 - 375

On May 29, 2018, the Court granted the application to retain Pachulski Stang.²²³

Berkeley Research Group, LLC – Financial Advisor

On April 24, 2018, the Debtors filed an application to retain Berkeley Research Group, LLC (“Berkeley”), as financial advisor, effective *nunc pro tunc* to March 30, 2018.²²⁴ This application was filed pursuant to Sections 328(a), 330, and 1103 of the Bankruptcy Code,

²²⁰ *Id.* at 4–5 (The services that were provided include the following: (i) assistance and advise in consultation with “Debtors regarding the administration of these Cases”; (ii) assistance and advisement regarding “Debtors’ retention of professionals and advisors”; (iii) assistance and advisement in “analyzing the Debtors’ assets and liabilities, . . . validity of liens,” and participation in any transactions; (iv) assistance and advisement regarding any of Debtors’ rights and obligations; (v) assistance and advisement in “investigating the acts, conduct, assets, liabilities, and financial condition of the Debtors, the Debtors’ operations and the desirability of the continuance of . . . those operations, and any other” relevant matters; (vi) assistance and advisement with any asset sales; (vii) assistance and advisement in the Committee’s “participation in the negotiation, formulation, or objection to any plan of liquidation or reorganization”; (viii) assistance and advisement to the Committee in knowing their powers and duties; (ix) assistance and advisement with claims and litigation matters; and (x) any other necessary services.).

²²¹ *Id.* at 7.

²²² *Id.*

²²³ Order Authorizing and Approving the Retention of Pachulski Stang Ziehl & Jones LLP as Counsel to the Official Committee of Unsecured Creditors *Nunc Pro Tunc* to March 28, 2018 [942.pdf](#) at 2, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed May 29, 2018).

²²⁴ Application for Entry of an Order Authorizing the Retention and Employment of Berkeley Research Group, LLC, as Financial Advisor to the Official Committee of Unsecured Creditors *Nunc Pro Tunc* to March 30, 2018 [422.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed April 24, 2018) [hereinafter Berkeley Application].

Bankruptcy Rules 2014(a) and 2016(a), and Local Rule 2014-1.²²⁵ Berkeley is competent in a variety of financial services, including “senior financial, management consulting, accounting, and other professionals who specialize in providing restructuring, transaction advisory, litigation support, solvency, and valuation assistance” to companies under financial distress.²²⁶ They have extensive experience assisting parties in bankruptcy cases and believe they will effectively assist the Debtors in their 363 sale.²²⁷ Berkeley was retained to provide financial analysis and reports, including evaluation on transactions, cash-flow, and general cash management.²²⁸

Berkeley charged their “standard hourly rate, plus reimbursement of actual and necessary expenses incurred.”²²⁹

The standard hourly rates were as follows:²³⁰

Professional	Hourly Rate
Managing Director	\$675 - \$995
Director	\$505 - \$740
Professional Staff	\$260 - \$510

²²⁵ *Id.*

²²⁶ *Id.* at 4.

²²⁷ *Id.*

²²⁸ *Id.* at 5–7 (Their specific services included: (i) advisement and analysis on financial affairs; (ii) development of reports to evaluate financial performance relative to projections; (iii) “evaluating relief requested in cash management motion, debtor-in-possession financing arrangements, or other use of cash collateral arrangements negotiated”; (iv) analyzing transactions on a historical and current basis, while also monitoring cash disbursements; (v) analyzing assets and “possible recoveries to creditor constituencies under various scenarios and developing strategies to maximize recoveries; (vi) review and analyze the bankruptcy plan and any disclosure statements, and, if needed, development of a bankruptcy plan; (vii) assist with the 363 sale; (viii) evaluate the staking horse agreement; (ix) analyze valuations on film and TV property; (x) evaluation of lien claims; (xi) assist in employee needs and costs; (xii) monitor claims management process; (xiii) work with other retained professionals in monitoring prior sales processes and transactions; (xiv) advisement on any potential avoidance actions; (xv) assist with “assumption and or rejection of executory contracts and or leases; (xvi) work with tax advisors to minimize tax liabilities; (xvii) perform any other matters as requested by Debtors.).

²²⁹ *Id.* at 9.

²³⁰ *Id.* at 10 (Specific professionals charged the following rates: Jay Borrow - \$995; R. Todd Neilson - \$800; David Judd - \$750; Kyle Herman - \$750; Joseph Vizzini - \$740; Vernon Calder - \$710; Matthew Babcock - \$585; Joseph Woodmansee - \$550; Kevin Cho - \$390).

Support Staff	\$135 - \$195
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On May 29, 2018, the Court granted the application, effective *nunc pro tunc* to March 30, 2018.²³¹

Seyfarth Shaw LLP – Special Litigation Counsel

On July 13, 2018, the Debtors filed an application to retain Seyfarth Shaw LLP (“Seyfarth Shaw”) as special litigation counsel.²³² This application was filed pursuant to Sections 327(e), 328, and 330 of the Bankruptcy Code, Rules 2014(a) and 2016 of the Bankruptcy Rules, and Rules 2014-1 and 2016-1 of the Local Rules.²³³ Seyfarth Shaw had already done extensive work with the Debtors in pre-petition matters, including civil suits regarding Harvey Weinstein’s sexual misconduct and “certain governmental proceedings.”²³⁴ With that, Seyfarth Shaw had already been permitted to serve as a professional in the ordinary course of business.²³⁵ This application was filed to allow Seyfarth Shaw to continue representation in matters related to pre-petition matters, which have been ongoing since November of 2017.²³⁶ Seyfarth Shaw was retained to represent the Debtors in any and all prepetition matters.²³⁷

²³¹ Order Authorizing Official Committee of Unsecured Creditors to Employ Berkeley Research Group, LLC as Financial Advisor, *Nunc Pro Tunc* to March 30, 2018 [943.pdf](#) at 2, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed May. 29, 2018).

²³² Debtors’ Application Pursuant to 11 U.S.C. § 327(e) to Retain and Employ Seyfarth Shaw LLP as Special Litigation Counsel to the Debtors *Nunc Pro Tunc* to June 18, 2018 [1239.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed July 13, 2018) [hereinafter *Seyfarth Shaw Retention*].

²³³ *Id.*

²³⁴ *Id.* at 3.

²³⁵ *Id.*

²³⁶ *Id.* at 6.

²³⁷ *Id.* at 7 (These services included: (i) representing the Debtors in connection with any prepetition matter and any related litigation; (ii) “responding to discover and information requests”; (iii) “defending against any claims that have been raised or may in the future be raised” related to prepetition matters; (iv) “drafting and filing dispositive motions and other pleadings or documents”; (v) “interacting and coordinating with the Debtors’ other professionals and personnel in furtherance of the foregoing.”).

Seyfarth Shaw charged their standard hourly rate per position, plus expenses.”²³⁸ Seyfarth Shaw did not hold a retainer, but the “Debtors owed Seyfarth Shaw \$1,198,982.47 for prepetition services.”²³⁹

The following represents the standard hourly rates charged for Seyfarth Shaw’s professionals:²⁴⁰

Position	Hourly Rates
Partner	\$525 - \$1,185
Of Counsel	\$285 - \$1,180
Associate	\$235 - \$640
Staff Attorney	\$195 - \$550
Paraprofessional	\$65 - \$570

On August 13, 2018, the Court authorized the Debtors to retain Seyfarth Shaw as special litigation counsel, effective *nunc pro tunc* to June 18, 2018.²⁴¹

WithumSmith+Brown, PC – Tax Services Provider

On July 23, the Debtors filed an application to retain WithumSmith+Brown, PC (“Withum”) as their tax services provider.²⁴² This application was filed pursuant to Sections

²³⁸ *Id.* at 7–8.

²³⁹ *Id.* at 9; *see also* Motion of Seyfarth Shaw LLP for an Order (I) Modifying the Automatic Stay for Cause to Permit Seyfarth Shaw LLP to Recover its Fees and Disbursements Under the Debtors Insurance Policies or, in the Alternative, (II) Determining that the Coverage Under the Insurance Policies for Defense Costs is not Property of the Debtors’ Estates [768.pdf](#) at 2-4, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed May 4, 2018) (Seyfarth Shaw sought relief for representation in 14 pre-petition matters, which Debtors maintained insurance policies designated to cover expenses of such representation.); Order (I) Modifying the Automatic Stay for Cause to Permit Seyfarth Shaw LLP to Recover its Fees and Disbursements Under the Debtors Insurance Policies or, in the Alternative, (II) Determining that the Coverage Under the Insurance Policies for Defense Costs is not Property of the Debtors’ Estates [1000.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed June 8, 2018) (The Court granted the motion.).

²⁴⁰ Seyfarth Shaw Retention, *supra* note 232, [1239.pdf](#) at 7–8.

²⁴¹ Order Authorizing the Debtors to Retain and Employ Seyfarth Shaw LLP as Special Litigation Counsel *Nunc Pro Tunc* to June 18, 2018, Pursuant 11 § U.S.C. 327(e) [1346.pdf](#) at 2, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Aug. 13, 2018).

²⁴² Debtors’ Application to Retain and Employ WithumSmith+Brown, PC as Tax Services Provider Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016 and Local Rule 2014-1,

327(a) and 328(a) of the Bankruptcy Code, rules 2014(a) and 2016(a) of the Bankruptcy Rules, and rule 2014-1 of the Local Rules.²⁴³ “Withum is a nationally recognized certified public accounting firm” and is rated as one of the top firms in the country.²⁴⁴

Withum was retained in order “to prepare the state and federal income tax returns” for 2017, which assisted with federal and state law compliance, as well as administration of the bankruptcy proceedings.²⁴⁵

Withum was provided with a retainer in the amount of \$75,000 and was not owed for any prepetition obligations as they had not previously engaged with the Debtors.²⁴⁶ This retainer was drawn down to exhaustion as services were provided, at which point they began to apply for compensation as required.²⁴⁷ Withum estimated that services would cost between \$300,000 and \$350,000, noting, however, that charges would be based on the following hourly rates:²⁴⁸

Position	Hourly Rates
Partners	\$450 - \$595
Senior Managers	\$280 - \$440
Managers/Supervisors	\$210 - \$275
Seniors/Staff	\$145 - \$195
Administrative/Paraprofessional	\$75 - \$110

On August 9, the Court granted the application to retain Withum as tax services provider, effective *nunc pro tunc* to June 18, 2018.²⁴⁹

Nunc Pro Tunc to June 18, 2018 [1266.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed July 23, 2018).

²⁴³ *Id.*

²⁴⁴ *Id.* at 3.

²⁴⁵ *Id.*

²⁴⁶ *Id.* at 5.

²⁴⁷ *Id.*

²⁴⁸ *Id.* at 3–4.

REJECTION OF UNEXPIRED REAL PROPERTY LEASES

Motion One – NYC Office Lease

On March 30, 2018, the Debtors filed a motion to “reject an unexpired lease of non-residential real property effective *nunc pro tunc* (retroactively) . . . and . . . authorizing the Debtors to abandon any remaining personal property thereat.”²⁵⁰ This was filed pursuant to Sections 105(a), 365, and 554 of the Bankruptcy Code.²⁵¹ Additionally, Bankruptcy Rules 6006 and 6007 are applicable.

The Lease

The lease was the former office for The Weinstein Company LLC, which was an office space located in New York City.²⁵² The monthly rental payment was \$37,237, and the lease had nearly three years remaining.²⁵³ As of March 5, 2018, the Debtors received a notice of default, accruing since December 2017, which resulted in \$147,864 past due.²⁵⁴

The Debtors argued it was in their best interest to reject the lease as it would “avoid the incurrence of additional administrative expenses for property that is of no value to the Debtors.”²⁵⁵

²⁴⁹ Order Authorizing the Debtors to Retain and Employ WithumSmith+Brown, PC as Tax Services Provider Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016 and Local Rule 2014-1, *Nunc Pro Tunc* to June 18, 2018 [1338.pdf](https://perma.cc/1338.pdf) at 2, *In re The Weinstein Company Holdings LLC, et al.*, No. 18-10601 (Bankr. D. Del. Filed Aug. 9, 2018) (Withum was entitled to seek reimbursement only for actual and necessary expenses.).

²⁵⁰ Debtors’ Motion Pursuant to 11 U.S.C. §§ 105(a), 365, and 554 and Fed. R. Bankr. P. 6006 and 6007 for Authority to (I) Reject an Unexpired Real Property Lease Effective *Nunc Pro Tunc* to March 31, 2018 and (II) Abandon Any Remaining Personal Property Located at the Leased Premises at the Leased Premises [130.pdf](https://perma.cc/130.pdf) at 1, *In re The Weinstein Company Holdings LLC, et al.*, No. 18-10601 (Bankr. D. Del. Filed Mar. 30, 2018) [hereinafter Motion to Reject NYC Office Lease and Abandon Property].

²⁵¹ *Id.*; 11 U.S.C. § 105(a) (permitting the Court to issue any order that is “necessary or appropriate to carry out the provisions of this title”) [<https://perma.cc/MZD6-JNQ8>]; 11 U.S.C. § 365(a) (permitting a trustee in bankruptcy to “assume or reject any executory contract or unexpired lease of the debtor.”) [<https://perma.cc/YQ5Q-Z3TX>]; 11 U.S.C. § 554(a) (providing that a trustee, after request, “may abandon any property of the estate that is burden some to the estate or that is of inconsequential value and benefit to the estate.”) [<https://perma.cc/H6UH-CR3R>]; FED. R. BANKR. P. 6006(c) (requiring that notice of a motion to assume, reject, or assign an executory contract or unexpired lease be provided to other parties in interest) [<https://perma.cc/NS6C-HAKV>]; FED. R. BANKR. P. 6007 (allowing a party to object to the foregoing motions within 14 days of service) [<https://perma.cc/U94Z-T86H>].

²⁵² *Id.* at 3.

²⁵³ *Id.*

²⁵⁴ *Id.*

Additionally, the Debtors had vacated the office, “unequivocally surrendered and relinquished the Leased Premises to the Landlord on or before March 31, 2018,” returned the keys to the landlord, and provided written notice to the landlord of intention to file this motion.²⁵⁶ Finally, it would have cost more in storage fees for the property that has been left in the office space (“Abandoned Property”) than would be realized from a sale of that property.²⁵⁷ Accordingly, the Debtors sought rejection of the lease and abandonment of the Abandoned Property..²⁵⁸

Basis for Relief

Pursuant to Section 365 of the Bankruptcy Code, the Debtors asserted that this request was based on sound business judgment with respect to preservation of the estate.²⁵⁹ This was because the office space was no longer needed by the Debtors.²⁶⁰ Also, Section 362 of the Bankruptcy Code bars creditors from setting of debt owed that arose before the commencement of a bankruptcy case; therefore, “if any of the Debtors have deposited amounts with the landlord as a security deposit . . . or if the landlord owes any of the debtors . . . pursuant to the Lease or other agreements . . . the landlord shall not be permitted to set off . . . the amounts from such deposit.”²⁶¹

The Debtors asserted that *nunc pro tunc* relief effective as of March 31, 2018 was appropriate “based on the equities of the circumstances.”²⁶² The Debtors no longer occupied the office space and had surrendered it back to the landlord.²⁶³ If the Court allowed relief *nunc pro tunc*, the Debtors would avoid paying rent for a period of time that they did not use the property.²⁶⁴

²⁵⁵ *Id.* at 4.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.* at 5; *see also* 11 U.S.C. § 365(a) [<https://perma.cc/R3QT-CPDW>].

²⁶⁰ Motion to Reject NYC Office Lease and Abandon Property, *supra* note 250, [130.pdf](#) at 5.

²⁶¹ *Id.*; *see also* 11 U.S.C. § 362(a)(7) [<https://perma.cc/Z59F-7L5M>].

²⁶² Motion to Reject NYC Office Lease and Abandon Property, *supra* note 250, [130.pdf](#) at 6.

²⁶³ *Id.* at 6–7.

²⁶⁴ *Id.* at 7.

Finally, the Debtors explained this would not prejudice the landlord since they provided their intent to reject the lease when they surrendered the premises.²⁶⁵

Again, in the abandonment of property pursuant to Section 554(a), the Debtors merely had to show that the decision was made with sound business judgment.²⁶⁶ This rule is only superseded when “abandonment of property will contravene laws designed to protect public health and safety or . . . abandonment of the property poses an imminent threat to the public’s welfare.”²⁶⁷ Neither of these situations were present.²⁶⁸ Lastly, the Debtors claimed that the amount of Abandoned Property was insignificant and did not have any real value to the estate.²⁶⁹

The Debtors asserted they satisfied Bankruptcy Rule 6004(a), established cause to “exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h) any other applicable Bankruptcy Rule.”

²⁶⁵ *Id.*

²⁶⁶ *Id.*; *see also* 11 U.S.C. § 554(a) [<https://perma.cc/7ZCR-3ZPP>].

²⁶⁷ Motion to Reject NYC Office Lease and Abandon Property, *supra* note 250, [130.pdf](#) at 7.

²⁶⁸ *Id.*

²⁶⁹ *Id.* (The Debtors asserted they satisfied Bankruptcy Rule 6004(a), established cause to “exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h) any other applicable Bankruptcy Rule.”).

No Objection and Order

As of April 17, 2018, the Debtors “received no answer, objection, or any other responsive pleading” to their motion to reject their lease of an office space and abandonment of Abandoned Property.²⁷⁰ On April 18, the Court granted the motion.²⁷¹

Motion Two – Beverly Hills Office

On August 31, 2018, the Debtors filed to “reject an unexpired lease of non-residential real property effective *nunc pro tunc* to August 31, 2018.”²⁷² This was filed pursuant to Bankruptcy Code Sections 105(a), 365, and Bankruptcy Rule 6006.²⁷³

The Lease

The lease here was an office space utilized by The Weinstein Company, LLC, located in Beverly Hills, California. Originally, the Debtors entered into an agreement for Lantern to sublease the office space and pay the rental obligations, but Lantern had since decided to terminate the sublease and enter into a direct lease with the landlord.²⁷⁴ With that, the Debtors filed this motion to reject.²⁷⁵

²⁷⁰ Certificate of No Objection Regarding Debtors’ Motion Pursuant to 11 U.S.C. §§ 105(a), 365, and 554 and Fed. R. Bankr. P. 6006 and 6007 for Authority to (I) Reject an Unexpired Real property Lease Effective *Nunc Pro Tunc* to March 31, 2018 and (II) Abandon Any Remaining Personal Property Located at the Leased Premises at the Leased Premises [248.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et. al.*, No. 18-10601 (Bankr. D. Del. Filed Apr. 17, 2018).

²⁷¹ Order Authorizing (I) Rejection of an Unexpired Real Property Lease Effective *Nunc Pro Tunc* to March 31, 2018 and (II) Abandonment of Any Remaining Personal Property Located at the Leased Premises [261.pdf](#) at 2, , *In re* The Weinstein Company Holdings LLC, *et. al.*, No. 18-10601 (Bankr. D. Del. Filed Apr. 18, 2018).

²⁷² Debtors’ Motion Pursuant to 11 U.S.C. §§ 105(a) and 365 and Fed. R. Bankr. P. 6006 for Authority to Reject an Unexpired Real Property Lease Effective *Nunc Pro Tunc* to August 31, 2018 [1435.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et. al.*, No. 18-10601 (Bankr. D. Del. Filed Aug. 31, 2018) [hereinafter Motion to Reject Beverly Hills Office Lease].

²⁷³ *Id.*

²⁷⁴ *Id.* at 3.

²⁷⁵ *Id.* at 4.

Basis for Relief

Pursuant to Section 365 of the Bankruptcy Code, the Debtors asserted this request was based on its sound business judgment.²⁷⁶ The Debtors provided the following support that this motion was filed with sound business judgment: (i) the Debtors no longer operated their business and, thus, did not need the office space; (ii) the landlord stated that if the lease were not rejected, then they would not enter into a new lease with Lantern; and (iii) “[rejection of] the lease pursuant to the terms of the Motion facilitates Lantern entering into the New Lease and any payments that Lantern makes pursuant to such lease will mitigate the landlord’s rejection damages claim for the benefit of the Debtors and their estates.”²⁷⁷ Additionally, the Debtors requested that the landlord not be permitted to offset any amounts owed from the security deposit or under the lease agreement.²⁷⁸

Similar to the New York City office, rejection *nunc pro tunc* was asserted as appropriate based upon the equities of the circumstances.²⁷⁹ In this motion, however, the Debtors were in agreement with all relevant parties that this rejection was necessary.²⁸⁰ Finally, the landlord was not prejudiced due to the new lease with Lantern.²⁸¹

Objection – Douglas Emmett

Douglas Emmett 2008, LLC, (“Douglas Emmett”), the landlord of this property, filed a limited objection on September 14, 2018.²⁸² Douglas Emmett did not object to the rejection of the lease, but did reject being “prohibited from ‘setting off or otherwise utilizing any amounts

²⁷⁶ *Id.* at 5; *see also* 11 U.S.C. § 365(a) [<https://perma.cc/YQ5Q-Z3TX>].

²⁷⁷ Motion to Reject Beverly Hills Office Lease, *supra* note 272, [1435.pdf](#) at 6.

²⁷⁸ *Id.* at 6–7; *see also* 11 U.S.C. § 362(a)(7) [<https://perma.cc/Z59F-7L5M>].

²⁷⁹ Motion to Reject Beverly Hills Office Lease, *supra* note 272, [1435.pdf](#) at 7.

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² Limited Objection to Debtors’ Proposed Order Authorizing Rejection of an Unexpired Real Property Lease Effective *Nunc Pro Tunc* to August 31, 2018 [1486.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-601 (Bankr. D. Del. Filed Sept. 14, 2018) [hereinafter Douglas Emmett Objection].

deposited by the Debtors as a security deposit or pursuant to any other similar arrangement . . . without further order of this court.”²⁸³ Douglas Emmett was the beneficiary of an irrevocable standby Letter of Credit,²⁸⁴ which was obtained to support the Debtors lease obligations. Douglas Emmett asserted that without protection, “drawdown against the Letter of Credit would be precluded by the automatic stay.”²⁸⁵ It was then asserted that the Letter of Credit was not an asset within the Debtors’ estate, and was therefore not subject to an automatic stay.²⁸⁶ With that, Douglas Emmett claimed that they were “entitled to draw down the Letter of Credit in accordance with the terms and conditions” of that letter.²⁸⁷

Order

On October 11, 2018, the Court granted the motion, subject only to allowing Douglas Emmett to retain all rights under the Letter of Credit, which was not subject to the automatic stay.²⁸⁸ This means that if Lantern defaults under their new lease, Douglas Emmett has remedial rights against the Debtors for the time that would have remained under their contract. Additionally, Douglas Emmett would not have to wait until the close of the bankruptcy case to seek remedies.

²⁸³ *Id.*

²⁸⁴ Ron Borcky, *Understanding and Using Letters of Credit, Part II*, CREDIT RESEARCH FOUNDATION, <https://www.crfonline.org/orc/cro/cro-9-2.html> (A standby letter of credit “is a payment or performance guarantee . . . used as a backup should the buyer fail to pay as agreed.” They are used to “establish a rapport” between the parties and indicate all obligations will be fulfilled. “The beneficiary to a standby letter of credit can cash it on demand.”) [<https://perma.cc/KK8P-4YCE>].

²⁸⁵ Douglas Emmett Objection, *supra* note 282, [1486.pdf](#) at 2.

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ Order Authorizing Rejection of an Unexpired Real Property Lease Effective *Nunc Pro Tunc* to August 31, 2018 [1589.pdf](#) at 2, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-601 (Bankr. D. Del. Filed Oct. 11, 2018).

THE 363 SALE

Legal Background

Section 363 of the Bankruptcy Code authorizes the debtor-in-possession to “use, sell, or lease” assets within the estate.²⁸⁹ To effectuate the motion for sale, the debtor will deliver adequate notice to creditors, provide protection for the first bidder (hereinafter referred to as the “stalking horse”), and ensure that a breakup fee is in place for the benefit of the stalking horse bidder.²⁹⁰

Factual Background

TWC faced financial turmoil in 2010 that led to a restructuring agreement that kept it out of bankruptcy.²⁹¹ Then, on October 5, 2017, the New York Times published an article detailing several allegations of sexual assault against Harvey Weinstein. This created a domino effect that would ultimately trigger TWC’s prepetition sale efforts.²⁹² Following a “thorough and independent investigation,”²⁹³ TWC’s Board of Directors removed Harvey Weinstein²⁹⁴ and subsequently suffered a rash of cancellations and employee turnover.²⁹⁵

²⁸⁹ MICHAEL L. BERNSTEIN & GEORGE W. KUNEY, *BANKRUPTCY IN PRACTICE* 247 (Charles J. Tabb ed., 5th ed. 2015).

²⁹⁰ *Id.* at 249–250.

²⁹¹ Georg Szalai, *The Weinstein Co. Looking for \$150 Million Loan*, THE HOLLYWOOD REP. (Feb. 21, 2012), <https://www.hollywoodreporter.com/news/weinstein-co-looking-for-150-million-loan-harvey-bob-293117> (stating that “[t]he studio has in recent years addressed some financial challenges. For example, in 2010, it got rid of debt by transferring a package of around 250 movies to Goldman Sachs and Assured Guaranty.”) [<https://perma.cc/EBM8-U9TK>].

²⁹² Declaration of Robert del Genio, *supra* note 19, [7.pdf](#) at 14.

²⁹³ *Id.* at 15.

²⁹⁴ *Id.* 15–16.

²⁹⁵ *Id.* 16–18.

Post-Petition Sale Process

Motion to Approve Sale Procedures

On the petition date, the Debtors filed a motion to seeking approval for a § 363(b) and (f) sale process for all or substantially all of its assets. The first order sought was a Bidding Procedures Order that proposed authorizing bidding procedures, stalking horse protections, and scheduling a hearing for May 4, 2018.²⁹⁶ In addition, the motion included a request for authorizing the assumption and assignment of contracts and leases held by the Debtors.²⁹⁷ The sale motion also sought approval for the final Sale Order including selling its assets free and clear without encumbrances.²⁹⁸

The Stalking Horse Agreement

The Debtors sought to ensure that the Lantern Capital, the Stalking Horse Bidder, was protected throughout the bidding process. In the event of Lantern being outbid at the sale hearing, the Debtors included a breakup fee that would be coupled with an additional reimbursement fee that would cover miscellaneous fees leading up to the sale.²⁹⁹

The Stalking Horse Agreement provided that the purchase price would be “an amount equal to...\$310,000,000.”³⁰⁰ In addition, the agreement would include “Purchased Assets” (including all

²⁹⁶ Debtors’ Motion for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially All of the Debtors’ Assets, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Auction for, and Hearing to Approve, Sale of Substantially All of the Debtors’ Assets, (D) Approving Form and Manner of Notices of Sale, Auction and Sale Hearing, € Approving Assumption and Assignment Procedures and (F) Granting Related Relief and (II)(A) Approving Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, (B) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases and (C) Granting Related Relief [8.pdf](#) at 4-5, *In re* The Weinstein Co., No. 18-10601 (Bankr. D. Del. Filed Mar. 19, 2018) (hereinafter “Motion for Approval of Sale”).

²⁹⁷ *Id.*

²⁹⁸ *Id.* at 5. “[T]he sale of all or substantially all, or a portion of, the Assets to the Successful Bidder free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and the Successful Bidder; ii. [T]he assumption and assignment of certain Contracts and Leases in connection with the proposed Sale; and iii. [G]ranteeing related relief.”

²⁹⁹ *Id.* at 11–12. “[I]n particular (a) the payment of a break-up fee in an amount equal to three percent (3%) of the Cash Purchase Price...and (b) reimbursement in an amount up to two percent (2%) of the Cash Purchase Price for reasonable and documented out-of-pocket costs, fees and expenses.”

³⁰⁰ *Id.* at 12–14.

JV Equity Securities, Seller's right, title and interest in Title Rights and Covered Titles, and various rights to accounts and leases) and "Assumed Liabilities" (including various television series with outstanding lenders and guarantors).³⁰¹ Notably, the agreement did not contemplate agreements with "[m]anagement or [k]ey [e]mployees" presumably because the arrangement would not see TWC continuing as a going concern.³⁰² The agreement did, however, contemplate an auction with limitations placed "on the Debtors' ability to shop the Assets until...fifteen (15) days after the Execution Date."³⁰³ With respect to the agreement's "Good Faith Deposit," Wilmington Trust was designated as an escrow agent that would hold the Stalking Horse Bidder's \$15,500,000 deposit.³⁰⁴ The sale's record retention practices were crafted to comply with Local Rule 6004-1(b)(iv)(J).³⁰⁵

The agreement also sought to insulate the prospective buyer of successor liability consistent with Local Rule 6004-1(b)(iv)(L).³⁰⁶ With respect to credit bidding, the agreement stated that it "[did] not seek to allow, disallow or affect in any manner credit bidding pursuant to

³⁰¹ *Id.* at 13–14.

³⁰² *Id.* at 14.

³⁰³ *Id.*

³⁰⁴ *Id.* at 15.

³⁰⁵ *See id.* (Stating that "[u]ntil the third (3rd) anniversary of the Closing Date (or, in the case of any Tax Returns (and books and records and other documents relating thereto), the seventh (7th) anniversary of the Closing Date), the Stalking Horse Bidder shall provide each Seller Party and a reasonable number of their respective attorneys, accountants, representatives and agents, at the Seller Parties' cost and expense, during ordinary business hours and upon reasonable prior notice, at a location determined at the reasonable discretion of the Stalking Horse Bidder, in such manner as to not disrupt or interfere with the normal operation of the business by the Stalking Horse Bidder, with reasonable access to the books, records, Tax Returns and other information (including supporting documents) of the Business relating to all periods through the Closing (including periods commencing prior to and concluding after the Closing) to the extent reasonably requested for accounting, audit, legal or Tax matters, or performing any of the Seller Parties' obligations under this Agreement or any Ancillary Agreement.

If, at any time within three (3) years after the Closing Date (or within seven (7) years after the Closing Date with respect to Tax Returns (and books and records and other documents relating thereto)), the Stalking Horse Bidder proposes to dispose of any of such books or records (including supporting documents), the Stalking Horse Bidder shall first offer to deliver the same to the Seller Parties (or their respective representatives) at the sole cost and expense of the Seller Parties.").

³⁰⁶ *See id.* ("The Seller Parties seek to sell the Purchased Assets to the Stalking Horse Bidder on the terms set forth in the Stalking Horse Agreement and free and clear of all Liens (other than included in the Assumed Liabilities and the Permitted Liens) and find that the Stalking Horse Bidder is not a successor of any of the Seller Parties.").

section 363(k) of the Bankruptcy Code.”³⁰⁷ Rounding off the end of the agreement, the Debtors “anticipated that the proposed Sale Order [would] seek relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h)” so that the sale could close immediately after its approval.³⁰⁸

Bidding Procedures

The Stalking Horse Agreement provided instructions for both the qualification or bidders and what would constitute a qualified bid. For bidder qualification, each party (other than the Stalking Horse Bidder) would need to provide to the Notice Parties “written disclosure of the identity of each entity” participating, “an executed confidentiality agreement,” and “a Potential Bidder that delivers the documents and information [required]” to the Consultation Parties.³⁰⁹

With respect to qualified bids, the agreement provided a bid deadline of April 30, 2018 at 5:00 p.m. EST, established that the sale would be conducted without contingencies or conditions precedent placed on any “qualified bidder,” and clearly addressed that all qualified bidders would provide financial disclosures demonstrating an ability to purchase at the conclusion of the sale hearing.³¹⁰ The bidding procedures further clarified that each qualified bidder had the chance to conduct due diligence regarding the assets, relied “solely upon its own independent review” of all documents, and were explicitly “not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid.”³¹¹ In an attempt to foster certainty and legitimate interest, TWC included a “Good Faith Deposit” provision within the procedures that

³⁰⁷ *Id.* at 16; *see also* 11 U.S.C. § 363(k) (“At a sale...that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder *may offset* such claim against the purchase price of such property.”) (emphasis added) [<https://perma.cc/LJC9-S3J8>].

³⁰⁸ Motion for Approval of Sale, *supra* note 296, [8.pdf](#) at 16; *see* Fed. R. Bankr. P. 6004(h) (“Stay of Order Authorizing Use, Sale, or Lease of Property. An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.”) [<https://perma.cc/ASK4-6PUE>].

³⁰⁹ Motion for Approval of Sale, *supra* note 296, [8.pdf](#) at 17.

³¹⁰ *Id.* at 19.

³¹¹ *Id.*

would equal 5% of the purchase price.³¹² Lastly, the Debtors sought to ensure that every bidder waived “any right to a jury trial.”³¹³ In fact, any bidder with a concern or claim arising during the bidding would be bound to “bring any such action or proceeding in the Bankruptcy Court” without the opportunity to appeal its final decree.³¹⁴

Go-Shop and Initial Overbid

To ensure a “fair and open bidding process,” the agreement’s bidding procedures included a Go-Shop Provision that made clear that the Debtor’s ability to shop its assets to other potential buyers was not limited.³¹⁵ Specifically, the provision made clear that the Debtors could take an active approach in driving the sale towards the highest possible purchase price. The procedures went further with an “initial overbid and bidding increments” provision that provided a “Minimum Initial Overbid Amount of \$1,000,000 over and above the aggregate of the Stalking Horse Purchase Price...[with] minimum bid increments thereafter [of] \$1,000,000.”³¹⁶

Modification of Procedures

The Debtors included a modification provision that allowed them, “in consultation with the Consultation Parties, [to] extend the Bid Deadline...[along with the ability to] modify, employ and announce at the Auction additional or amended procedural rules that are reasonable.”³¹⁷ These modifications were, however, required to “not [be] materially inconsistent with the Bidding Procedures [or the Code],” “not purport to abrogate or modify the Stalking Horse Protections,” and ensure disclosure to every bidder at the auction.³¹⁸

³¹² *Id.* (“[Qualified bids are to be] accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to five percent (5%) of the purchase price provided for in the bid (a ‘Good Faith Deposit.’)”).

³¹³ *Id.*

³¹⁴ *Id.* (“Any final judgment [by the Bankruptcy Court], including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.”).

³¹⁵ *Id.* at 20.

³¹⁶ *Id.*

³¹⁷ *Id.*

Back-Up Bidder Protection

The Debtors included a provision for “Closing with Alternative Back-Up Bidders” that required the “Qualified Bidder(s) [w]ith the next highest or otherwise best Qualified Bid...to serve as a back-up bidder [] and keep its bid open and irrevocable.”³¹⁹ This back-up bidder provision would remain effective “until the earlier occur of (i) thirty (30) days after the Sale Hearing and (ii) closing on the Successful Bid(s) with Successful Bidder(s).”³²⁰

Dates and Deadlines

The Debtors provided that the sale process would proceed as follows³²¹:

On or before April 3, 2018	Hearing to consider approval of the Bidding Procedures and entry of the Bidding Procedures Order
April 30, at 4:00 p.m. (Eastern Daylight Time)	Deadline to object to the Stalking Horse Bidder and the Sale to the Stalking Horse Bidder
April 30, 2018 at 5:00 p.m. (Eastern Daylight Time)	Bid Deadline
May 1, 2018 at 5:00 p.m. (Eastern Daylight Time)	Deadline for Debtors to notify Potential Bidders of their status as Qualified Bidders
May 2, at 10:00 a.m. (Eastern Daylight Time)	Auction to be held at the offices of Richard, Layton & Finger, P.A. (if necessary)
May 2, 2018	Target date for the Debtors to file with the Court the Notice of Auction Results
May 3, at 4:00 p.m. (Eastern Daylight Time)	Deadline to object to conduct of the Auction and the Sale to the Successful Bidder (other than the Stalking Horse Bidder)
May 3, 2018	Target date to file proposed Sale Order
May 4, 2018	Proposed date of the Sale Hearing to consider approval of Sale and entry of Sale Order

Notice Procedures-Sale and Notice Publication

The motion by the Debtors also included the specific methodology they would use to provide notice to the US Trustee, secured and unsecured creditors, and the counsel for all included parties.³²² Furthermore, the Debtors made clear that they would comply with publication

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ *Id.* at 21.

³²² *Id.* at 21-22 (The Bidding Procedures provided that, within two days of entering the Bidding Procedures Order, TWC “shall serve the Sale Notice by first-class mail” to the US Trustee, the committee of the unsecured creditors, all other known creditors, counsel for the Stalking Horse Bidder (Akin Gump Strauss Hauer & Feld LLP and Pepper Hamilton LLP), counsel to the Pre-petition and DIP Agents (Sidley Austin LLP and Young Conaway Stargatt & Taylor LLP), the New York Attorney General, the IRS, all applicable state and local taxing authorities, the FTC, the SEC, the US Attorney in Delaware, the US Attorney General/Antitrust Division of the DOJ, the other offices of the attorneys general for the states in which TWC operates, all potential buyers that have expressed prior interest in TWC’s

requirements by advertising the estate's sale in the Wall Street Journal, the USA Today, or any other necessary organizations.³²³

Notice Procedures-Notice of Determination of Qualified Bids

The Debtors, after consulting with the Consultation Parties, were to determine “which bids qualify as a Qualified Bid and [] notify Potential Bidders whether they [were] selected as Qualified Bidders by no later than May 1, 2018.”³²⁴

Notice Procedures-Notice of Hearing if Auction Not Held

In the event that the Stalking Horse bid stood alone, the Debtors would be required to provide the Sale Notice Parties with a notice indicating “that the Auction for the Assets [had] been canceled,” “that the Stalking Horse Bidder [was] the Successful Bidder [for the assets],” and ultimately set a date and time for the Sale Hearing.³²⁵

Notice Procedures-Notice of Auction Results

If the auction went ahead as planned, the Debtors would be required to “file a notice of the Successful Bid(s) and Back-up Bid(s)” in a Notice of Auction Results that would be published on the Case Information Website.³²⁶

Assumption and Assignment Procedures

Pursuant to section 365(b) of the Bankruptcy Code, the Debtors sought approval of its proposed Assumption and Assignment Procedures that would:³²⁷

assets, TWC's insurance carrier, all parties-in-interest listed on the creditor matrix, and all of the other “Sale Notice Parties.”).

³²³ *Id.* (In addition, by April 6, 2018, the Sale Notice was to be published in the Wall Street Journal or the USA Today along with any other appropriate publications.).

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ *Id.* at 23.

[O]utline the process by which the Debtors will serve notice to all Counterparties regarding the proposed assumption and assignment, related Cure Amounts, if any, and information regarding the Stalking Horse Bidder's or such other Successful Bidder's adequate assurance of future performance and (b) establish objection and other relevant deadlines and the manner for resolving disputes relating to assumption and assignment of the Contracts and Leases.

The procedures required the Debtors to include “each of the Contracts and Leases that may be assumed or assigned” and “the proposed Cure Amount” for each in the assumed contracts schedule.³²⁸ The procedures are also provided for the objection deadlines, resolution of objections, and what happens in the event of a “failure to file timely assumption and assignment objection.”³²⁹ The proposed procedures concluded with modification of assumed contracts schedule, the post-auction objection, and the reservation of rights for the Debtors.³³⁰

Rationale for Approving the Sale Procedures as Proposed

The Debtors defended its request for approval based on the “Best Interests of the Debtors and Their Economic Stakeholders.”³³¹ The Debtors' rationale varied from the fairness of the bidding procedures³³² to defending the break-up fee based on its “sound business purpose.”³³³

In addition, the Debtors justified the No-Shop provision of the Stalking Horse Agreement on the basis that it served as “the result of good faith, arm's-length negotiations” because it contemplated a “finite period of time...fifteen [] days...in order for [the Debtors] to enter bankruptcy with little distraction” and with the subsequent stalking horse established.³³⁴ In fact,

³²⁸ *Id.*

³²⁹ *Id.* at 24–25.

³³⁰ *Id.* at 25–26.

³³¹ *Id.* at 27.

³³² *Id.*

³³³ *Id.* at 28.

³³⁴ *Id.* at 32–33.

the Debtors implored the court to grant its motion based on the length of time it spent “shopping segments of the Assets for more than a year.”³³⁵

The Debtors also addressed the requirements of the proposed sale under Section 363 of the Bankruptcy Code. First, the Debtors explained that the entire sale contained “sound business justification” based on the theory of value preservation.³³⁶ Next, the Debtors described its reasonably calculated noticing procedures as adequate and timely with respect to the sale, bidding, auction and sale hearing.³³⁷ Thereafter, the Debtors defended the sale process based on the inevitable production of a “fair and reasonable purchase price for the Assets” after “extensive prepetition marketing” and the Stalking Horse Bid “serv[ing] as a floor.”³³⁸ Lastly, the Debtors addressed the good faith purchaser’s protection by noting that the deal would provide a “fair and transparent competitive bidding process” that would satisfy 11 U.S.C. § 363(m).³³⁹ With respect to Section 363(k) of the Bankruptcy Code, the Debtors defended the agreement’s provision allowing secured parties to credit bid.³⁴⁰

The Debtors addressed the assumption and assignment of executor contracts and unexpired leases by arguing that the assumption merely indicated an exercise of sound business judgment because “[the] consummation of the Sale is critical...to maximize value for [the] estates.”³⁴¹ With respect to the issue of providing adequate protection, the Debtors simply explained that such an

³³⁵ See *id.* at 34 (“[TWC] and their advisors have shopped segments of the Assets for more than a year (*i.e.*, the Television Business) and all of the Assets for nearly half that time.”).

³³⁶ *Id.* at 36.

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *Id.* at 38.

³⁴⁰ See *id.* at 41 (“[T]he holder of a claim secured property that is subject of a sale ‘may bid at such sale, and, if the holder of a claim purchases such property, such holder may offset such claim against the purchase price of such property.’”); See also 11 U.S.C. § 363(k) [<https://perma.cc/LJC9-S3J8>].

³⁴¹ Motion for Approval of Sale, *supra* note 296, [8.pdf](#) at 42.

“adequate assurance of future performance information can be obtained from counsel...upon request.”³⁴²

Objections & Adversary Proceedings

Following the motion for approving the sale and its procedures, Cigna Health and Life Insurance Company filed an objection because it believed that the assumption and assignment would compel it to provide both group and dental insurance to the Debtors and the subsequent buyer without adequate assurance.³⁴³ Wind River Productions, LLC and Acacia Entertainment LLC later moved to be joined in the proceeding and argued to reject the bidding procedures on the same ground for lack of adequate assurance.³⁴⁴

Adversary Proceeding # 18-50397

Hotel Mumbai Ltd. brought one of the more contentious objections to the motion for sale. Pre-petition, Hotel Mumbai had a production and distribution agreement for a film titled “Hotel Mumbai” that detailed the 2008 terrorist attacks in Mumbai, India and claimed 166 lives.³⁴⁵ Hotel Mumbai objected on two grounds including a claim of pre-petition rescission of contract and licensing rights for an upcoming film.³⁴⁶ In addition, Hotel Mumbai ensured that it reserved its

³⁴² *Id.* at 44.

³⁴³ Objection of Cigna Health and Life Insurance Company to Debtors’ Motion for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially All of the Debtors’ Assets, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Auction for, and Hearing to Approve, Sale of Substantially All of the Debtors’ Assets, (D) Approving Form and Manner of Notices of Sale, Auction and Sale Hearing, € Approving Assumption and Assignment Procedures and (F) Granting Related Relief and (II)(A) Approving Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, (B) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases and (C) Granting Related Relief [136.pdf](#) at 3-5, *In re* The Weinstein Co., No. 18-10601 (Bankr. D. Del. Filed Apr. 2, 2018).

³⁴⁴ Joinder of Wind River Productions, LLC and Acacia Entertainment LLC to the Objection of Cigna Health and Life Insurance Company to the Debtors Bidding Procedures (related document(s)[8], [136]) Filed by Acacia Filmed Entertainment, LLC, Wind River Productions, LLC. (Attachments: # (1) Certificate of Service) (Desgrosseilliers, Mark [137.pdf](#) *In re* The Weinstein Co., No. 18-10601 (Bankr. D. Del. Filed Apr. 2, 2018).

³⁴⁵ *Mumbai Terrorist Attacks of 2008*, Shanthie Mariet D’Souza, The Editors of Encyclopedia Britannica, BRITANNICA (Apr. 24, 2020), <https://www.britannica.com/event/Mumbai-terrorist-attacks-of-2008> [<https://perma.cc/6G9W-QLRE>].

³⁴⁶ Objection and Reservation of Rights of Hotel Mumbai Pty Ltd. and Related Affiliates to Debtors’ Motion for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially All of the Debtors’ Assets, (B) Approving

rights with respect to later objection under Section 365(f) for inadequate protection during the sale process.³⁴⁷ The objection later moved towards an adversary proceeding and a subsequent compromise between the Debtors and Hotel Mumbai.³⁴⁸

Adversary Proceeding # 18-50487

Several guilds representing directors (DGA), screen actors (SAG-AFTRA), and writers (WGA West) filed an objection together seeking “residual payments” that were owed under prior collective bargaining agreements.³⁴⁹ Ultimately, a settlement was reached that secured \$11 million to be paid to satisfy the claims.³⁵⁰

Adversary Proceeding #18-50486

Following the actual sale of substantially all of the Debtors’ assets, AI International Holdings brought a claim against MUFG Union Bank claiming it improperly benefited from the

Stalking Horse Bid Protections, (C) Scheduling Auction for, and Hearing to Approve, Sale of Substantially All of the Debtors’ Assets, (D) Approving Form and Manner of Notices of Sale, Auction and Sale Hearing, (E) Approving Assumption and Assignment Procedures and (F) Granting Related Relief and (II)(A) Approving Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, (B) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases and (C) Granting Related Relief [139.pdf](#), *In re* The Weinstein Co., No. 18-10601 (Bankr. D. Del. Filed Apr. 2, 2018).

³⁴⁷ *Id.* at 3–4.

³⁴⁸ *See* Debtors’ Motion Pursuant to Fed. R. Bankr. P. 9019 for Approval of Settlement Stipulation with Hotel Mumbai Pty Ltd. and Lantern Entertainment LLC [1022.pdf](#), *In re* The Weinstein Co., No. 18-10601 (Bankr. D. Del. Filed June 15, 2018) (“Material terms of the stipulation include: “i. Provision by HMPL of a confidential ‘Settlement Amount’ (as defined in the Stipulation), which Settlement Amount will be provided to the Debtors in the event the Sale has not closed when such funds become due or to Lantern in the event the Sale has closed; ii. Lantern and the Debtors relinquish, waive and release unto HMPL any and all rights, title, and interest they may have in the Picture and/or the License Agreement, except for the entitlements set forth in the Stipulation; iii. The Parties, on behalf of themselves and certain other affiliates, agree to mutual releases of any and all claims related to the License Agreement, the Picture, the Adversary Proceeding, the PI Motion, HMPL’s Objections and Paragraph 60 of the Sale Order; iv. The discontinuance with prejudice of the Adversary Proceeding, the PI Motion, the First Objection and the Sale Objection”).

³⁴⁹ Adversary case 18-50487. Complaint by Directors Guild of America, Inc., Screen Actors Guild - American Federation of Television and Radio Artists, Writers Guild of America, West, Inc. against MUFG Union Bank, N.A., UnionBanCal Equities Inc.. Fee Amount \$350 (21 (Validity, priority or extent of lien or other interest in property)), (91 (Declaratory judgment)). AP Summons Served due date: 09/4/2018. (Attachments: # (1) Exhibit A # (2) Exhibit B) (Kaufman, Susan) [10](#), *In re* The Weinstein Co., No. 18-10601 (Bankr. D. Del. Filed June 15, 2018).

³⁵⁰ Order Granting Debtors Motion Pursuant to Fed. R. Bankr. P. 9019 for Approval of Settlement Agreement with Guilds, MUFG, UnionBanCal, and Committee (Related Doc # [8], [13]) Signed on 1/8/2019. (LMC) [8](#), *In re* The Weinstein Co., No. 18-10601 (Bankr. D. Del. Filed June 15, 2018).

sale and should ultimately disgorge itself of \$46 million.³⁵¹ Following unsuccessful attempts at reconciling and reaching a settlement, both parties sought and received an approval for court-supervised mediation.³⁵² Even after mediation, both parties remained entrenched and ultimately both entered a motion for a stipulation that the adversary proceeding to be dismissed with prejudice and that each side would be responsible for its subsequent legal cost.³⁵³

Adversary Proceeding #18-50924

The final confrontation that led to an adversary proceeding was between Lantern Entertainment, the successful buyer of the company, and producer Bruce Cohen concerning whether his “Talent Party Agreement” was transferable.³⁵⁴ After the court granted Lantern’s motion for summary judgment, the District Court of Delaware affirmed on appeal finding that Cohen’s agreement was not executory because “[Although] ancillary performance is due on both

³⁵¹ Adversary case 18-50486. Complaint by AI International Holdings (BVI) Ltd. against MUFG Union Bank, N.A., Union Bancal Equities, Inc.. Fee Amount \$350 (21 (Validity, priority or extent of lien or other interest in property)). AP Summons Served due date: 08/31/2018. (Attachments: # (1) Exhibit A # (2) Exhibit B # (3) Exhibit C # (4) Exhibit D # (5) Exhibit E # (6) Exhibit F # (7) Exhibit G # (8) Exhibit H # (9) Exhibit I # (10) Exhibit J # (11) Exhibit K # (12) Exhibit L # (13) Exhibit M # (14) Exhibit N # (15) Exhibit O # (16) Exhibit P) (Wright, Davis) [2](#), *In re The Weinstein Co.*, No. 18-10601 (Bankr. D. Del. Filed June 15, 2018).

³⁵² Order Approving Mediation Stipulation (related document(s)[49]) Signed on 2/22/2019. (Attachments: # (1) Exhibit A to Proposed Order) (LMC) [2](#), *In re The Weinstein Co.*, No. 18-10601 (Bankr. D. Del. Filed June 15, 2018).

³⁵³ Stipulation of Dismissal with Prejudice of Adversary Proceeding No. 18-50486 (MFW) related document(s)[969] Filed by AI International Holdings (BVI) Ltd.. (related document(s)[1], [969]) (Donilon, Gregory) [1](#), *In re The Weinstein Co.*, No. 18-10601 (Bankr. D. Del. Filed June 15, 2018).

³⁵⁴ Adversary case 18-50924. Complaint for Declaratory Judgment Against Bruce Cohen Productions and Bruce Cohen by Lantern Entertainment LLC against Bruce Cohen Productions, Bruce Cohen. Fee Amount \$350 (91 (Declaratory judgment)). AP Summons Served due date: 01/15/2019. (Meltzer, Evelyn) (Entered: 10/17/2018) [2](#), [8-9](#), *In re The Weinstein Co.*, No. 18-10601 (Bankr. D. Del. Filed June 15, 2018) (“The Weinstein Company entered into a contract with Bruce Cohen regarding Cohen’s production of a motion picture entitled Silver Linings Playbook (the “Picture”). The contract specified that Cohen was to provide production services for the Picture in exchange for, in essence, compensation and film credits. Production of the Picture was completed in 2012, and the Picture was released in November of that year. . . .because the parties have materially performed under the Agreement, the Agreement is not executory. Cohen has completed performing his production services of the Picture, and The Weinstein Company completed performance by providing Cohen with compensation and other forms of consideration, such as film credit rights, during the production period as per the terms of the Agreement. The Picture was produced and released in November 2012 and no material obligations remain for either party to perform. A declaratory judgment would settle the controversy, ensure that the Agreement is not considered executory, and therefore may be properly assigned to Lantern pursuant to Bankruptcy Code section 363, and aid the Debtors in their reorganization efforts.”).

sides...the primary purpose of a work-for-hire contract in the industry is the completion of the project.”³⁵⁵

The U.S. Trustee objected because the “superpriority status for termination payment...improperly [gave] superpriority status to the break-up fee and expense reimbursement.”³⁵⁶

The Committee of Unsecured Creditors provided its response stating that “[t]he Bidding Procedures, as originally proposed were overreaching...[and] would be value-destructive.”³⁵⁷ Nevertheless, a formal objection was not raised and the court approved the bidding procedures along with the order for sale on April 6, 2018.³⁵⁸ Lantern Entertainment, as the only qualified bidder, successfully purchased the Debtors’ assets for \$289 million.³⁵⁹

³⁵⁵ Final Order By District Court Judge Maryellen Noreika, Re: Appeal on Civil Action Number: 19-243 (BAP 19-07) , Affirmed (Attachments: # (1) Memorandum) (related document(s)[52]) (JS) [16](#), *In re The Weinstein Co.*, No. 18-10601 (Bankr. D. Del. Filed June 15, 2018).

³⁵⁶ United States Trustee’s Objection to Debtors’ Motion for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially All of the Debtors’ Assets, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Auction for, and Hearing to Approve, Sale of Substantially All of the Debtors’ Assets, (D) Approving Form and Manner of Notices of Sale, Auction and Sale Hearing, (E) Approving Assumption and Assignment Procedures and (F) Granting Related Relief and (II)(A) Approving Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, (B) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases and (C) Granting Related Relief [166.pdf](#), *In re The Weinstein Co.*, No. 18-10601 (Bankr. D. Del. Filed Apr. 3, 2018).

³⁵⁷ Statement of the Official Committee of Unsecured Creditors to Debtors’ Motion for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially All of the Debtors’ Assets, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Auction for, and Hearing to Approve, Sale of Substantially All of the Debtors’ Assets, (D) Approving Form and Manner of Notices of Sale, Auction and Sale Hearing, (E) Approving Assumption and Assignment Procedures and (F) Granting Related Relief and (II)(A) Approving Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, (B) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases and (C) Granting Related Relief [176.pdf](#) at 2, *In re The Weinstein Co.*, No. 18-10601 (Bankr. D. Del. Filed Apr. 5, 2018).

³⁵⁸ Order (I)(A) Approving Bidding Procedures for Sale of Substantially All of the Debtors’ Assets, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Auction for, and Hearing to Approve, Sale of Substantially All of the Debtors’ Assets, (D) Approving Form and Manner of Notices of Sale, Auction and Sale Hearing, (E) Approving Assumption and Assignment Procedures and (F) Granting Related Relief [190.pdf](#), *In re The Weinstein Co.*, No. 18-10601 (Bankr. D. Del. Filed Apr. 6, 2018).

³⁵⁹ Dawn C. Chmielewski, *Lantern Entertainment Closes \$289 Million Acquisition of The Weinstein Co.’s Assets*, DEADLINE (July 16, 2018), <https://deadline.com/2018/07/lantern-entertainment-closes-289-million-acquisition-weinstein-co-s-assets-1202427141/> [<https://perma.cc/B6A4-EG8R>].

DIP FINANCING

What is DIP Financing?

DIP Financing is a form of financing utilized by companies undergoing a chapter 11 bankruptcy.³⁶⁰ The main use is to assist the company in its reorganization “by allowing it to raise capital to fund its operations as its bankruptcy case runs its course.”³⁶¹

DIP Financing is obtained by filing for bankruptcy and then receiving court approval of the plan.³⁶² The Debtors are obligated to inform their vendors, suppliers, and customers that they are obtaining this financing and expect to remain in business and provide payments.³⁶³

Those who act as lenders in DIP Financing start by making a determination as to whether or not the company is “worth of credit after examining its finances” and if it will be able to successfully reorganize.³⁶⁴ Those lenders that decide to provide the DIP Financing then ensure that their loan package is secured by first priority liens on their collateral.³⁶⁵ Finally the DIP lender will work in coordination with the debtors to create an approved budget. This budget forecasts a “company’s receipts, expenses, net cash flow, and outflows.”³⁶⁶ It also considers the timing of required due payments throughout the reorganization.³⁶⁷

³⁶⁰ *Debtor-in-Possession (DIP) Financing*, Will Kenton, INVESTOPEDIA (Mar. 13, 2020), <https://www.investopedia.com/terms/d/debtorinpossessionfinancing.asp> [<https://perma.cc/4XBU-J2DG>].

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.*

The Motion

I. Key Terms

Borrowers – The Weinstein Company Holdings, LLC (“TWCH”), The Weinstein Company LLC (“TWC”), and TWC Domestic LLC (“TWCD”).³⁶⁸

DIP Agent – MUFG Union Bank, N.A., as administrative agent³⁶⁹

DIP Facility – Secured, superpriority post-petition loans, advances, and other financial accommodations.³⁷⁰

DIP Credit Agreement – Debtor-In-Possession Loan and Security Agreement.³⁷¹

DIP Credit Parties – DIP Agent, DIP Lenders, and other Secured Parties³⁷²

DIP Lender(s) – MUFG Union Bank, N.A.³⁷³

DIP Loan Documents – DIP Credit Agreement and all other related documents and agreements, including security agreements, guaranties, and promissory notes³⁷⁴

Permitted Priority Liens – liens secured under Section 364(d)(1) of the Bankruptcy Code by “valid, binding, continuing, enforceable, fully perfected, first priority, senior priming security interests”

³⁶⁸ Debtors’ Motion for Orders (I) Approving Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Granting Related Relief, and (VII) Scheduling Final Hearing [11.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et. al.*, No. 18-10601 (Bankr. D. Del. Filed Mar. 20, 2018) [hereinafter DIP Financing Motion].

³⁶⁹ *Id.* at 2.

³⁷⁰ *Id.* at 1.

³⁷¹ *Id.* at 2.

³⁷² *Id.*

³⁷³ *Id.*

³⁷⁴ *Id.*

on all DIP Collateral, subordinate only to the liens on Pre-Petition Collateral that “are not subject to avoidance, reduction, allowance, disgorgement, counterclaim, surcharge or subordination.”

II. Debtors’ Request

On March 20, 2018, the Debtors filed a motion for approval of postpetition financing (“DIP Financing”).³⁷⁵ Within this filing, the Debtors requested approval to obtain DIP Financing with a priority interest in the amount of \$7.5 million in the interim and \$25 million upon final order.³⁷⁶

III. Debtors’ Secured Prepetition Indebtedness³⁷⁷

Credit Agreement	Debtor	Creditor	Obligation	Collateral
MUFG Secured Credit Facility (“Pre-Petition Credit Agreement”)	TWCD	Union Bank, N.A. (now MUFG) as Administrative Agent	\$156,411,347, plus accrued and unpaid interest.	First priority lien on substantially all of TWCD’s assets and a senior pledge of TWC’s equity in TWCD.
UnionBanCal Equities Junior Credit Facility (“UBE Credit Agreement”)	TWCD	UnionBanCal Equities, Inc. (“UBE”)	\$15,600,000	Junior lien on substantially all of TWCD’s assets.
Bank of America Credit Facility (“Bank of America	Weinstein Television LLC (“WTV”)	Bank of America, N.A.	\$18,100,000	<i>Project Runway</i> franchise, <i>Fashion, Inc.</i> series, assets of WTV and its subsidiaries, TWC’s rights in television products. All

³⁷⁵ *Id.* at 1.

³⁷⁶ *Id.* at 1–3 (The Debtors requested: (i) Authorization to obtain secured, superpriority postpetition DIP Financing; (ii) Authorization to execute and deliver the DIP Credit Agreement and all other related documents and to perform all things necessary in connection; (iii) Prior to a Final Order, to borrow from the DIP Facility in an amount up to \$7,500,000 (the “Interim Financing”); (iv) Entry of an order approving the Interim Financing; (v) Granting of superpriority administrative expenses; (vi) Authorization to use Cash Collateral; (vii) Granting of valid, enforceable, nonavoidable, and fully perfected security interests and liens to the DIP Agent on all DIP Collateral, subject to and subordinate to only to those pre-existing security interests and liens on DIP Collateral; (viii) Authorization to pay the principal, interest, fees, expenses, and other amounts payable under each of the DIP Loan Documents as they become due; (ix) The provision of adequate protection to the Pre-Petition Lenders to the extent set forth in the Interim Order; (x) Vacating and modifying the automatic stay provisions imposed to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and Interim Order; (xi) Scheduling a final hearing and the entry of a Final Order; and (xii) Granting any related relief.).

³⁷⁷ DIP Financing Motion, *supra* note 368, [11.pdf](#) at 5–10.

Credit Agreement")				subject to certain assets encumbrance by liens securing then-existing project financings and a senior pledge of TWCH's equity in WTV.
Access Industries Credit Facility ("AI Note")	TWC Borrower 2016, LLC	AI International Holdings Ltd.	\$45,500,000	Certain foreign distribution rights, subordinated pledge of TWCH's equity in WTV, pledge of TWC's equity in Weinstein Global Film Corporation.
TWC Production Facility	TWC Production LLC	MUFG Union Bank, N.A.	\$42,500,000	First priority lien on substantially all of TWC Production's assets, pledge of TWC's equity in TWC Production, subordinated pledge of TWC's equity in TWCD.
JCP Credit Agreement	WTV JCP Borrower 2017, LLP	Bank Hapoalim	\$2,100,000	Lien on all of WTV JCP's assets, including their right to receive royalty payments in relation to <i>Project Runway</i> and its spinouts.
Polaroid Credit Agreement	TWC Polaroid SPV, LLC ("Polaroid")	First Republic Bank	\$5,300,000	Lien on substantially all of Polaroid's assets.
Spy Kids Credit Agreement	Spy Kids TV Borrower, LLC ("Spy Kids")	MUFG Union Bank, N.A.	\$13,400,000	Lien on substantially all of Spy Kid's assets to the extent derived from, related to, or in connection to the first and second seasons of TV Series <i>Spy Kids</i> .
Mist Credit Agreement	TWC Mist, LLC ("Mist")	Comerica Bank	\$12,400,000	Lien on substantially all of Mist's assets.
Untouchable Credit Agreement	TWC Untouchable SPV, LLC	First Republic Bank	\$8,900,000	Lien on substantially all of Untouchable's assets.
Waco Credit Agreement	TWC Waco SPV, LLC	Opus Bank	\$5,300,000	Lien on substantially all of Waco's assets.

Fearless Credit Borrower	TWC Fearless Borrower, LLC (“Fearless”)	First Republic Bank	\$2,800,000	Lien on substantially all of Fearless’ assets. ³⁷⁸
Current War Credit Agreement	Current War SPV, LLC (“Current War”)	East West Bank	\$7,000,000	Lien on substantially all of Current War’s domestic assets.

Other Debt³⁷⁹

Debt	Debtor	Creditor	Obligation	Collateral
Scream Advances Agreement	WTV	Viacom Media Networks (“VMN”)	\$8,300,000	Lien on certain of WTV’s and Next Take Productions, Inc, rights to distribution of the <i>Scream</i> series.
Yellowstone Advances Agreement	WTV	VMN	\$20,300,000	Lien on WTV’s rights to distribution of <i>Yellowstone</i> , <i>Mist</i> , and the documentary series <i>The Untitled Kalief Browder Project</i> .
Unlabeled advance agreement	WTV	VMN	\$1,500,000	N.A.
Cast and Crew Payroll Advance	TWC	Next Take Productions, Inc.	\$3,300,000	TWC is serving as guarantor of this obligation.
Demand Note	TWCH	Robert Weinstein	\$11,187,363	Unsecured, dated February 5, 2018.

³⁷⁸ *Id.* (“As a condition to the full commitment under the Fearless Credit Agreement becoming available and as part of the sale of streaming rights to Amazon Digital Services, LLC (“Amazon Digital”), the Fearless Credit Agreement requires Amazon Digital to agree to make all payments to First Republic Bank.”).

³⁷⁹ *Id.* at 11–12.

IV. DIP Financing Prerequisites

In order to obtain approval for DIP Financing, a debtor must demonstrate: (i) an immediate need for postpetition financing and use of cash collateral; (ii) a failed prepetition effort to obtain financing; (iii) that no credit is available on more favorable terms; and (iv) a proper use of the proceeds of the DIP Facility.³⁸⁰

First, a debtor must show that postpetition financing is imperative to continue operations as a going concern. The Debtors intended to sell substantially all of their assets, but in the meantime, they must be capable of continuing operations as a going concern in an effort to “preserve the value of their estates” until completion of the 363 Asset Sale.³⁸¹ Working in conjunction with FTI, the Debtors determined it could sustain operations for a short time without the aid of the DIP Facility, and only if they were to incur more debt through the withholding of certain payments.³⁸² If the Court were to reject this application, the Debtors would be unable to maintain relationships, satisfy payroll, or protect the value of their remaining assets.³⁸³ Additionally, this would impair their ability to restructure in a manner that would maximize shareholder value.

A debtor must also demonstrate that they have made an effort to obtain another form of financing prior to structuring a DIP financing arrangement. Prior to the Petition Date, Debtors hired FTI as their Administrative Agent, making Robert Del Genio, a Senior Managing Director at FTI, the Chief Restructuring Officer.³⁸⁴ With FTI, the Debtors were to complete an Asset Sale as explained in the 363 Sale section herein.³⁸⁵ This ultimately led to extensive negotiations with

³⁸⁰ 11 U.S.C. § 364(d) [<https://perma.cc/XUB9-XHVB>]; *see also* FED. R. BANKR. P. 4001(c) [<https://perma.cc/6BLU-G95X>].

³⁸¹ DIP Financing Motion, *supra* note 368, [11.pdf](#) at 12.

³⁸² *Id.*

³⁸³ *Id.*

³⁸⁴ *Id.* at 13.

³⁸⁵ *Id.*

MediaCo regarding the proposed Asset Sale. Unfortunately, terms that were favorable to both parties were never reached and the deal dissolved.³⁸⁶

Next, a debtor must also demonstrate that they “were unable to obtain credit on more favorable terms.”³⁸⁷ The Debtors went to the extent of soliciting bids from potential lenders, and then made evaluations on numerous factors, including the terms of the agreement, certainty of the agreement, proposed restrictions on the Debtors, and restrictions on the proceeds, as well as what collateral would secure the loan.³⁸⁸ No prospective lenders could offer a DIP facility that was better than that of the DIP Credit parties.³⁸⁹ “Additionally, the DIP Credit Parties [were] familiar with the Debtors, giving them the ability to act more quickly and limiting diligence risk.” This is due to their previous debtor and creditor relations.³⁹⁰

Finally, the DIP Facility proceeds were to be used for “working capital purposes of the debtors, current interest and fees under the facility, the payment of adequate protection payments to the Pre-Petition Agent and the Pre-Petition lenders, the payments of prepetition claims to the extent approved by this Court, and the allowed administrative costs and expenses of the cases.”³⁹¹

V. Adequate Protection

The Debtors need to consider the Pre-Petition Lenders’ interests as they moved forward with their Post-Petition Financing. Their interests in the Pre-Petition Collateral had declined in value as a result of the DIP Agent obtaining priming liens on the same collateral, the authorized use of Cash Collateral, and the automatic stay imposed upon their causes of action.³⁹² For these

³⁸⁶ See discussion regarding pre-petition sale efforts.

³⁸⁷ DIP Financing Motion, *supra* note 368, [11.pdf](#) at 13.

³⁸⁸ *Id.*

³⁸⁹ *Id.* at 14.

³⁹⁰ *Id.*

³⁹¹ *Id.* at 14–15.

³⁹² *Id.* at 25.

reasons, the Debtors were required to pay these Pre-Petition Lenders 50% of the amounts arising in relation to that Pre-Petition Collateral.³⁹³

Additionally, Pre-Petition Lenders were to receive five other concessions. First, a superpriority claim “over all administrative expense claims and unsecured claims,” subject only to the claims of the DIP Agent in relation to the DIP Facility, “any Permitted Third-Party DIP Liens, the Pre-Petition Third-Party Liens, and the Carve-Out.”³⁹⁴ They were also to receive “valid, enforceable, fully perfected security interests and replacement liens on the DIP Collateral,” subject only to those same parties.³⁹⁵ Next, the Pre-Petition Lenders were entitled to payment of reasonable “fees, costs and expenses” stemming from “any and all aspects of the chapter 11 cases.”³⁹⁶ Once the DIP Facility closed, the Pre-Petition Lenders would receive payment of “all accrued and unpaid pre-petition interests” that are due under the Pre-Petition Credit Agreement, adjusted at the non-default rate.³⁹⁷ Finally, Pre-Petition Lenders were entitled to “monthly adequate protection payments equal to 50% of funds on deposit in the Collection Account.”³⁹⁸

VI. Basis for Relief

Authorization of Adequate Protection for Prepetition Secured Creditors

Pursuant to Section 363 of the Bankruptcy Code, a debtor may enter into transactions in the ordinary course of business.³⁹⁹ If a prepetition secured creditor has a lien on a debtors’ assets, they must be adequately protected if the debtors intend to use the assets in a manner which the creditor has not consented.⁴⁰⁰ The purpose is to protect the “diminution in the value” of assets

³⁹³ *Id.* at 26.

³⁹⁴ *Id.*

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ *Id.*

³⁹⁸ *Id.*

³⁹⁹ 11 U.S.C. § 363(c) [<https://perma.cc/LJC9-S3J8>].

⁴⁰⁰ DIP Financing Motion, *supra* note 368, [11.pdf](#) at 28 (citing *Resolution Trust Corp. v. Swedeland Dev. Grp (In re Swedeland Dev. Grp)*, 16 F.3d 552, 564 (3d Cir. 1994).

which the creditor has an interest.⁴⁰¹ The Debtors “[believed] that his form of adequate protection . . . [balanced] the Debtors’ need to use the Pre-Petition Collateral and the Pre-Petition Lenders right to adequate protection under the Bankruptcy Code.”⁴⁰²

Appropriate Under Section 364 of the Bankruptcy Code

Section 364 of the Bankruptcy Code allows a debtor to obtain postpetition lending, which can be subjected to various liens.⁴⁰³ The Debtors’ asserted their cash collections would be insufficient to keep the business in operation and that expenses would exceed revenues.⁴⁰⁴ Additionally, the “DIP Facility provides the funding needed to get to a sale of substantially all of the Debtors’ assets.”⁴⁰⁵

Sound Business Judgment

A court will typically accept a debtors’ business judgment regarding a need for funds.⁴⁰⁶ When a court analyzes a debtors’ request under Section 364, they “permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purposes it not so much to benefit the estate as it is to benefit [another] party-in-interest.”⁴⁰⁷ The Debtors maintained that they had reasonable checks in place to manage the postpetition financing and any liens that creditors may have.⁴⁰⁸

⁴⁰¹ *Id.*

⁴⁰² *Id.* at 29.

⁴⁰³ 11 U.S.C. § 364(d) [<https://perma.cc/XUB9-XHVB>].

⁴⁰⁴ DIP Financing Motion, *supra* note 368, [11.pdf](#) at 30.

⁴⁰⁵ *Id.* at 31.

⁴⁰⁶ *Id.* at 32.

⁴⁰⁷ *Id.* (citing *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990)).

⁴⁰⁸ *Id.* at 33 (The Debtors also asserted that financing was needed as soon as possible in order to “avoid immediate and irreparable harm to the . . . estate.”).

Objections and Reservations

I. Limited Objections – Portfolio Funding Company

On March 20, 2018, Professional Funding Company LLC I (“PFC”) filed an omnibus limited objection (the “PFC Omnibus”), including the Debtors’ DIP Financing Motion.⁴⁰⁹ PFC was in privity with Debtors for “a complex series of licensing arrangements.”⁴¹⁰ “PFC’s contractual and property rights [were] protected by security interests [,]” which were granted by the Debtors.⁴¹¹

PFC asserted that Paragraph 10(b) of the proposed interim order, regarding DIP Priming Liens, provided DIP Lenders a certain class of liens subject only to the kind PFC held; however, there were other portions of the proposed order that would result in DIP Lenders holding a lien superior to that of PFC on its collateral.⁴¹² These situations arose under: (i) paragraph 18, which required the Debtors to turn over proceeds derived from any DIP Collateral to the DIP Agent, pursuant to junior liens under Section 364 of the Bankruptcy Code; (ii) section 6.18(a) of the DIP Credit Agreement, which required proceeds from a sale to be used to pay DIP Obligations and Pre-Petition Obligations before PFC; and (iii) paragraph 20 of the Interim DIP Order provided *de facto* priming to Secured Lending Entities.⁴¹³ PFC requested that the Interim Order be modified to have any proceeds deriving from PFC Collateral be applied to PFC’s claims.⁴¹⁴

⁴⁰⁹ Omnibus Limited Objection to and Reservation of Rights in Respect of (A) Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing Continued Use of Existing Cash Management System and Bank Accounts; (II) Waiving Certain United States Trustee Requirements; (III) Authorizing Continued Performance of Intercompany Transactions; and (IV) Granting Related Relief, (B) Debtors’ Motion for Orders (I) Approving Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Granting Related Relief, and (VII) Scheduling a Final Hearing and (C) Other First-Day Motions [68.pdf](#) at 1, *In re The Weinstein Company Holdings LLC, et al.*, No.18-10601 (Bankr. D. Del. Filed Mar. 20, 2018) [hereinafter PFC Omnibus].

⁴¹⁰ *Id.* at 2.

⁴¹¹ *Id.*

⁴¹² *Id.* at 15.

⁴¹³ *Id.* at 15.

⁴¹⁴ *Id.* at 16.

PFC also asserted “paragraph 23 of the Interim DIP Order should be modified to provide PFC with relief from the automatic stay to exercise any rights and remedies . . . against the PFC Collateral.”⁴¹⁵ Along with that PFC requested that they be provided 5 days’ written notice of the occurrence of an Event of Default.⁴¹⁶ Finally, PFC requested that they should “receive notice and the ability to object to any non-material modification or amendment to the DIP Loan Documents in Paragraph 29.”⁴¹⁷

PFC followed up the PFC Omnibus with a limited objection due to what they considered an unsatisfactory response in the DIP Financing Interim Order.⁴¹⁸ It essentially reiterated their requests, which were further acknowledged in the Final Order, which is described below.

II. Conditional Objection – MUFG Union Bank, N.A.

On April 16, 2018, MUFG Union Bank, N.A. (“MUFG”) filed a conditional objection to the Debtors’ DIP Financing Motion.⁴¹⁹ They filed this objection on behalf of their role as Administrative Agent for two loans.⁴²⁰ First, the TWCP Facility was for \$105 million as a revolving credit facility, set to mature on February 6, 2019.⁴²¹ The TWCP Facility granted MUFG a “first-priority security interest in all foreign distribution/exploitation rights with respect to each Project funded.” Next, there was a credit agreement for \$15,583,775 million (“SK Loan”) related

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*

⁴¹⁷ *Id.*

⁴¹⁸ Limited Objection and Reservation of Rights of Portfolio Funding Company LLC I to Debtors’ Motion for Entry of Interim and Final Orders (I) Approving Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Granting Related Relief, and (VII) Scheduling a Final Hearing [220.pdf](#) at 9-11, *In re* The Weinstein Company Holdings LLC, *et al.*, No.18-10601 (Bankr. D. Del. Filed Apr. 16, 2018).

⁴¹⁹ Conditional Objection and Reservation of Rights of MUFG Union Bank, N.A. to Debtors’ Motion for Orders (I) Approving Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Granting Related Relief, and (VII) Scheduling Final Hearing [159.pdf](#) at 1, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed April 16, 2018) [hereinafter MUFG DIP Objection].

⁴²⁰ *Id.*

⁴²¹ *Id.* at 2.

to the development of an animated series entitled “Spy Kids.”⁴²² MUFG was granted a “first-priority security interest in SK’s assets including, but not limited to, the SK Project, the teleplays for the SK Project, and all distribution and exploitation rights.”⁴²³ Further, the Debtors granted MUFG “a security interest in 100% of the equity in SK.”⁴²⁴ At the time MUFG filed this objection, they had not seen the Proposed Final Order.⁴²⁵ “Out of an abundance of caution,” MUFG stated that they “[did] not consent, and object to, any proposed priming of the liens or any relief that would prejudice, impair, or otherwise impact [MUFG’s] rights and remedies with respect” to their security interest.⁴²⁶ Lastly, MUFG reserved their rights to “amend, modify, or supplement” the objection, seek discovery, and object during the final hearing.⁴²⁷

III. Limited Objection – Technicolor

On April 12, 2018, Technicolor USA, Inc., Technicolor, Inc., Technicolor Cinema Distribution, Technicolor Home Entertainment Services, Inc., Technicolor Videocassette of Michigan, Inc., and Technicolor Creative Services USA, Inc. (collectively, “Technicolor”) filed a limited objection to the Debtors’ DIP Financing Motion.⁴²⁸ Technicolor and the Debtors were parties to seven agreements related to “post-production film and television services, certain distribution services, and home delivery solution requirements” (the “Technicolor Agreements”).⁴²⁹

⁴²² *Id.* at 4.

⁴²³ *Id.*

⁴²⁴ *Id.*

⁴²⁵ *Id.* at 6.

⁴²⁶ *Id.* at 7.

⁴²⁷ *Id.*

⁴²⁸ Limited Objection and Reservation of Rights to Debtors’ Motion for an Order (I) Approving Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief [208.pdf](#) at 1, *In re The Weinstein Company Holdings LLC, et al.*, No. 18-10601 (Bankr. D. Del. Filed April 16, 2018) [hereinafter Technicolor Objection].

⁴²⁹ *Id.* at 4–5.

Under the Technicolor Agreements, a lien was provided “on all materials deposited by, or on behalf of [the Debtors] with Technicolor that [were] owned and subject to the control of [the Debtor] . . . to secure payment of the entire outstanding balance.”⁴³⁰ Additionally, California laws “[granted] Technicolor a senior secured lien in the Collateral pursuant to California Civil Code, which provides “every person who . . . renders any service . . . has a special lien thereon.”⁴³¹ Along with that, California Commercial Code provides that “a possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.”⁴³²

Technicolor objected to the DIP Financing Motion “only to the extent . . . it [would] (i) impair, prejudice, or otherwise affect the extent, validity, enforceability, or priority of the Technicolor Liens . . . (ii) grant to the DIP Agent any liens, claims, rights, or interests” upon Technicolor’s Collateral with a senior interest, and “(iii) grant to the DIP Agent or any other party any rights or remedies that could interfere with, impair or otherwise affect Technicolor’s rights, claims, or interests in the Technicolor Collateral.”⁴³³

IV. Guild of America Reservation of Rights

On April 16, 2018, the Directors Guild of America, Inc., Screen Actors Guild-American Federation of Television and Radio Artists, and the Writers Guild of America, West, Inc. (collectively, the “Guilds”) filed a reservation of rights in relation to the DIP Financing Motion.⁴³⁴ “Each Guild [was] the collective bargaining representative for directors, performers or writers . . .

⁴³⁰ *Id.* at 6.

⁴³¹ CAL. CIV. CODE § 3051 [<https://perma.cc/4CGP-EXUL>].

⁴³² CAL. COMM. CODE § 9333 [<https://perma.cc/8MWZ-U6H4>].

⁴³³ Technicolor Objection, *supra* note 428, [208.pdf](#) at 8–9.

⁴³⁴ Reservation of Rights by the Directors Guild of America, Inc., Screen Actors Guild-American Federation of Television and radio Artists , the Writers Guild of America, West, Inc., Their Respective Pension and Health Plans, and the Motion Picture Industry Pension and Health Plans to Debtors’ Motion for an Order (I) Approving Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Providing Superpriority Administrative Expenses Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief [219.pdf](#) at 1, *In re The Weinstein Company Holdings LLC, et al.*, No. 18-10601 (Bankr. D. Del. Filed Apr. 16, 2018) [hereinafter Guilds Reservation of Rights].

in the television and motion picture industry.”⁴³⁵ Guild-represented employees receive compensation through “Residuals,” which are fees payable in coordination with production, but subject to Guild collective bargaining agreements.⁴³⁶ Additionally, “each Guild Pension and health plan is a multi-employer ERISA fund, supported by contributions based on initial compensation and fringe payments calculated in the same fashion as Residuals.”⁴³⁷ Typically, these collective bargaining agreements are secured with “valid and perfected security interests, intended to secure performance of collective bargaining obligations, including payment of Residuals.”⁴³⁸ The Debtors had maintained these agreements throughout the years and paid millions of dollars related to these employee pension and health plans.⁴³⁹

The Guilds were uncertain in whether or not their secured liens were adequately protected upon the chapter 11 filing and DIP Financing Motion.⁴⁴⁰ A main factor of that concern stemmed from not being mentioned in the DIP Financing Motion.⁴⁴¹ Given this uncertainty and the wide variety of potential outcomes, the Guilds reserved “all rights, arguments and remedies.”⁴⁴² They hoped to resolve these issues through discussions, but “if these concerns [were] not resolved, then the Guilds [requested] such relief as this Court may order in furtherance of adequate protection for secured Guild Claims.”⁴⁴³

⁴³⁵ *Id.* at 2.

⁴³⁶ *Id.*

⁴³⁷ *Id.*

⁴³⁸ *Id.*

⁴³⁹ *Id.*

⁴⁴⁰ *Id.* at 3.

⁴⁴¹ *Id.* at 4.

⁴⁴² *Id.* at 7.

⁴⁴³ *Id.*

Interim Order
I. Interim Order

The DIP Financing Motion was approved, and the Interim Order was effective immediately.⁴⁴⁴ The Debtors were authorized to borrow and guaranty an aggregate principal amount up to \$7,500,000.⁴⁴⁵

II. Budget for DIP Facility

The DIP Parties created a cash-flow budget, which projected all cash receipts and disbursements extending 18-weeks out from the Petition Date.⁴⁴⁶ At the discretion of the DIP Agent, Majority DIP Lenders, and the Pre-Petition Agent, the budget could be amended or supplemented by Debtors, provided they delivered a supplement every four weeks.⁴⁴⁷ This proposed budget was created with the intention to allow the Debtors to pursue and complete their 363 Asset Sale and pay postpetition obligations.⁴⁴⁸

The Debtors provided a weekly budget report regarding their adherence to the Approved Budget for “the preceding one-week period and the preceding four-week period.”⁴⁴⁹ Additionally, these report contained an explanation for any variances.⁴⁵⁰ Specifically, the reports addressed “the actual disbursements and receipts of the debtors for the preceding week with the disbursements and receipts contained in the Approved Budget, on a line by line basis.”⁴⁵¹ In the event that actual

⁴⁴⁴ Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e), 364(d)(1), and 364(e) and (B) Utilize Cash Collateral of Pre-Petition Secured Entities, (II) Granting Adequate Protection to Pre-Petition Secured Entities, (III) Scheduling a Final hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c), and (IV) Granting Related Relief [76.pdf](#) at 17, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (filed Mar. 20, 2018) [hereinafter DIP Financing Interim Order].

⁴⁴⁵ *Id.*

⁴⁴⁶ *Id.* at 10.

⁴⁴⁷ *Id.*

⁴⁴⁸ *Id.* at 11.

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.*

disbursements for any four-week period exceed the Approved Budget, it did not result in an event of default if it is for less than \$600,000 in aggregate.⁴⁵²

III. Pre-Petition Secured Parties' Adequate Protection

The Pre-Petition Secured Parties were entitled to repayment of their Pre-Petition Obligations.⁴⁵³ Until this was completed, they were to receive adequate protection on their interests.⁴⁵⁴ The Pre-Petition Secured Parties were granted five forms of Adequate Protection.⁴⁵⁵

First, they received payment of their pre-petition interest.⁴⁵⁶ Once the DIP Facility closed, Debtors applied the proceeds of the DIP Loans to pay “all accrued and unpaid pre-petition interest” under those Pre-Petition Credit Agreements.⁴⁵⁷

Second, the Debtors paid the “reasonable, documented, pre-petition and post-petition fees, costs, and expenses incurred or accrued by the Pre-Petition Secured Parties in connection with any and all aspects of the Chapter 11 Cases.”⁴⁵⁸

Third, Debtors made Monthly Adequate Protection Payments.⁴⁵⁹ On the last Friday of each month (each, a “Settlement Date”), the DIP Agent took all cash receipts, collections, income (“Collection Account”) and applied 50% towards outstanding DIP Obligations and 50% to outstanding Pre-Petition Obligations.⁴⁶⁰ That said, these payments were subject to the DIP Agent

⁴⁵² *Id.*

⁴⁵³ *Id.*

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.* at 25–30.

⁴⁵⁶ *Id.* at 25.

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.* at 26 (This includes, without limitation, “the fees and disbursements of counsel, appraisers, financial advisors and other professionals hired by or on behalf of the Pre-Petition Agent or the Pre-Petition Lenders.”).

⁴⁵⁹ *Id.* at 27.

⁴⁶⁰ *Id.*

revoking consent and applying those funds to outstanding DIP Obligations and “disgorgement to the extent of a final and non-appealable Challenge.”⁴⁶¹

Fourth, the Pre-Petition Lenders were entitled to Adequate Protection Liens.⁴⁶² These liens were “valid, enforceable, unavoidable, and fully perfected replacement liens and security interests in all DIP Collateral.”⁴⁶³ These liens were subordinate to DIP Liens, Pre-Petition Third-Party Liens and any Permitted Third-Party DIP Liens, but “senior to the Pre-Petition Liens,” and subject to the Carve-Out provision.⁴⁶⁴ Unless stated otherwise, these liens were not to be made equal to or less than any Priming Liens under Section 364(d) of the Bankruptcy Code.⁴⁶⁵

Finally, the Pre-Petition Agent was granted superpriority administrative expense claims in the event the Adequate Protection Liens failed in “[protecting] against the diminution in value of Pre-Petition Collateral.”⁴⁶⁶ Section 503 of the Bankruptcy Code permits a request for payment of administrative expenses upon the showing of cause.⁴⁶⁷ “After a notice and a hearing, there were allowed administrative expenses . . . including the actual, necessary costs and expenses of preserving the estate.”⁴⁶⁸ These claims, however, were junior to DIP Superpriority Claims.⁴⁶⁹

⁴⁶¹ *Id.* at 27–29 (This monthly payment will be applied against “all fees and expenses not otherwise paid, . . . payment of all accrued and unpaid post-petition interest owing, . . . and repayment of outstanding principal amounts of the Pre-Petition Loans and any other Pre-Petition Obligations.”).

⁴⁶² *Id.* at 29.

⁴⁶³ *Id.*

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.* at 30.

⁴⁶⁷ 11 U.S.C. § 503 [<https://perma.cc/42NM-ZC5E>]; 11 U.S.C. § 1112(b)(4) (“Cause includes . . . substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.”) [<https://perma.cc/J6W6-BADL>].

⁴⁶⁸ 11 U.S.C. § 503(b) [<https://perma.cc/42NM-ZC5E>]

⁴⁶⁹ DIP Financing Interim Order, *supra* note 444, [76.pdf](#) at 31.

IV. Restriction on Use of DIP Lenders' Funds

There were 5 overarching restrictions on the use of the DIP Facility, which included:⁴⁷⁰

- (i) "Payment of interest and principal" on any indebtedness that is subordinate to the DIP Facility;
- (ii) Financing any "adversary action, suit, arbitration, proceeding, application, motion, other litigation, examination or investigation" related to the DIP Loan Documents;
- (iii) Financing "any suit, arbitration, proceeding application, motion, other litigation, examination or investigation: related to the rights and remedies of the DIP Secured Parties;
- (iv) "[Making] any distribution under a plan of reorganization or liquidation in any Chapter 11 Case" without the DIP Agent's written consent;
- (v) "[Making] any payment in settlement of a claim, action or proceeding" without the DIP Agent's written consent.

V. Events of Default

There were 7 named events of default, all of which were triggered upon the Debtors failure to act in some way. Notably, most related to the Debtors plan to conduct a 363 Asset Sale and laid out a process of steps that had to be completed along the way.⁴⁷¹ This allowed the DIP Agent to keep checks in place to reduce the risk of default on behalf of the Debtors.

VI. Termination

The use of the DIP Facility Loans and Cash Collateral were also set to terminate at the earliest of eight separate events. These were in place because upon the occurrence of any, the need

⁴⁷⁰ *Id.* at 49.

⁴⁷¹ *Id.* at 43–44 (The specific events of default included: (i) File a 363 motion, on the Petition Date, to sell all or substantially all of their assets; (ii) Obtain Bankruptcy Court Approval for the proposed Bidding Procedures within 35 days after the 363 motion; (iii) Conduct an auction within 60 days after entry of the Bidding Procedures Order; (iv) Obtain an order authorizing the Asset Sale within 10 days after the Auction; (v) Consummate the Asset Sale within 125 days after the Petition date; (vi) In the event that Debtors elect to not proceed with an Asset Sale, they shall proceed subject to the DIP Agent's and Pre-Petition Agent's credit bid rights of the Pre-Petition Collateral; (vii) Subject to entry of the Final Order, commence an adversary proceeding within 10 days of written notice by the DIP Agent against a third party who has "failed to make material payment" to Debtors, continue to prosecute and use best efforts to collect such amounts, and consult with the DIP Agent and Pre-Petition Agent regarding pleadings to be filed.).

for these funds became nonexistent. Ultimately, the use of the DIP Facility Loans took place once the Debtors conducted their 363 Asset Sale.⁴⁷²

VII. Collection and Disbursements

Until the DIP Obligations had been satisfied, “all cash receipts, Cash Collateral and all proceeds” were subject to the DIP Liens and Adequate Protection Liens.⁴⁷³ Also, “to the extent” that cash receipts, Cash Collateral, and proceeds were related to Pre-Petition Collateral, they were deposited into the Collection Account.⁴⁷⁴

VIII. DIP Superpriority

Under Section 364(c)(1) of the Bankruptcy Code, the DIP Obligations were granted a superpriority expense claim.⁴⁷⁵ They were to have priority over “all administrative expenses, adequate protection claims, diminution claims and all other claims against the Debtors.”⁴⁷⁶ These claims were, however, subject to the “Carve-Out and any Permitted Third-Party Indebtedness.”⁴⁷⁷

IX. DIP Priming Liens

The DIP Agent was granted “valid, binding and fully perfected, security interests” on all of Debtors’ property.⁴⁷⁸ These liens were “subject only to any Permitted Third-Party DIP Liens and the payment of the Carve-Out.”⁴⁷⁹ These superior liens included those under Section 364(d)

⁴⁷² DIP Financing Interim Order, *supra* note 444, [76.pdf](#) at 18 (The full scope of events of termination included: (i) the Scheduled Termination Date; (ii) an Event of Default; (iii) the Debtors termination of any commitments; (iv) the expiration of the Interim Order, provided the Final Order had not taken effect; (v) the conversion to chapter 7; (vi) dismissal of the chapter 11 case; the date of the 363 Asset Sale; and (vii) the date a plan or reorganization or liquidation became effective.).

⁴⁷³ *Id.*

⁴⁷⁴ *Id.* at 18–19.

⁴⁷⁵ *Id.* at 22.

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.*

⁴⁷⁸ *Id.* at 23.

⁴⁷⁹ *Id.*

of the Bankruptcy Code,⁴⁸⁰ Section 364(c)(3) of the Bankruptcy Code,⁴⁸¹ and Section 364(c)(2) of the Bankruptcy Code.⁴⁸² “The DIP Liens and the Adequate Protection Liens” were not subordinate to any lien that was avoidable under Section 551 of the Bankruptcy Code or “any intercompany or affiliate liens” of the Debtors.⁴⁸³ The purpose of these liens was to guarantee to the DIP Agent that their interests are protected beyond those of any other creditor.

X. Carve-Out

A carve out is a provision within a DIP facility that protects the interests of all retained professionals for a chapter 11 case. In effect, it is a concession by the DIP lender that the Debtor’s and Committee’s counsel and other professionals must be paid in order for the case to move forward, and the lender agrees that the carve out amount from the loan proceeds can be used to pay the professionals their allowed fees and expenses. Due to the superiority liens that come with a motion for DIP financing, there is an increased likelihood that these professionals may not otherwise recover for their work.⁴⁸⁴ Increasingly required by courts, a carve-out preserves a form of payment to these professionals despite the presence of a multi-layer lien protection in favor of the DIP lender.⁴⁸⁵ In this case, once a DIP Agent provided written notice of an Event of Default, “the DIP Liens, DIP Superpriority Claims, Adequate Protection Superpriority Claims, Adequate Protection Liens, and Pre-Petition Liens [would] be subject to” fees for the clerk of the Bankruptcy Court and to the Office of the United States Trustee and the documented, unpaid fees incurred by

⁴⁸⁰ *Id.* (These liens have a “first priority, senior priming” status on all DIP Collateral and are subordinate only to any liens on Pre-Petition Collateral.); *see also* 11 U.S.C. § 364(d) [<https://perma.cc/XUB9-XHVB>].

⁴⁸¹ DIP Financing Interim Order, *supra* note 444, [76.pdf](#) at at 24 (These liens are a “junior, perfected, ‘silent second’ lien and security interest [on] . . . all DIP Collateral.”); *see also* 11 U.S.C. § 364(c)(3) [<https://perma.cc/XUB9-XHVB>].

⁴⁸² DIP Financing Interim Order, *supra* note 444, [76.pdf](#) at 24 (These lines are “a continuing, enforceable, first priority, fully-perfected lien and security interest [on] . . . all DIP Collateral.”); *see also* 11 U.S.C. § 364(c)(2) [<https://perma.cc/XUB9-XHVB>].

⁴⁸³ DIP Financing Interim Order, *supra* note 444, [76.pdf](#) at 25.

⁴⁸⁴ Richard M. Kohn, Alan P. Solow & Douglas P. Taber, *Pure Debtor-In-Possession Financing*, GOLDBERG KOHN, https://www.goldbergekohn.com/media/site_files/51_kohn_DebtorinPossession.pdf [<https://perma.cc/RU2X-PE6F>].

⁴⁸⁵ *Id.*

retained Professionals.⁴⁸⁶ The payment to these Professionals could not exceed \$250,000.⁴⁸⁷ Additionally, any money or collateral secured under the DIP contract could not be used for any claims related to a party with a secured interest.

Provided there had not been a Carve-Out Trigger, the Debtors were permitted to pay expenses under Section 330 of the Bankruptcy Code.⁴⁸⁸ These payments will not reduce the Carve-Out. Once there has been a Carve-Out Trigger, any amounts paid will reduce the Carve-Out dollar-for-dollar.⁴⁸⁹

XI. Protection of DIP Lenders' Rights

If there were any outstanding DIP Facility Loans, DIP Obligations, or obligations under the DIP Credit Agreement, then the Pre-Petition Secured Parties were not permitted to attempt to foreclose or recover their liens or exercise rights with the DIP Collateral.⁴⁹⁰ Further, the Pre-Petition Secured Parties would “be deemed to have consented to any release of DIP Collateral authorized under the DIP Loan Documents.”⁴⁹¹ Also, the Pre-Petition Secured Parties could not “take any action to perfect their security interests in the DIP Collateral,” unless the DIP Agent filed to perfect their liens under the Interim Order.⁴⁹² Finally, they could not “terminate or modify the use of Cash Collateral.”⁴⁹³

XII. Permitted Third-Party Indebtedness

⁴⁸⁶ DIP Financing Interim Order, *supra* note 444, [76.pdf](#) at 32.

⁴⁸⁷ *Id.* at 33.

⁴⁸⁸ *Id.* at 34. These expenses include the “reasonable compensation for actual, necessary services . . . and reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a) [<https://perma.cc/Z682-WBMT>].

⁴⁸⁹ DIP Financing Interim Order, *supra* note 444, [76.pdf](#) at 34.

⁴⁹⁰ *Id.* at 37.

⁴⁹¹ *Id.*

⁴⁹² *Id.*

⁴⁹³ *Id.*

The Debtors were permitted to incur “senior secured, superpriority debtor-in-possession indebtedness in an aggregate principal amount not to exceed \$10,000,000.”⁴⁹⁴ This indebtedness could obtain superpriority administrative claim status and could only be secured with all of “Weinstein Television LLC’s right, title, and interest in . . . all personal property and other assets” (“Permitted Third-Party DIP Collateral”).⁴⁹⁵

XIII. Asset Disposition

Per the DIP Credit Agreement, and subject to both the Court’s authorization and satisfaction of Pre-Petition Third-Party Liens, Debtors paid to the DIP Agent all proceeds resulting from the sale, lease, or disposition of DIP Collateral.⁴⁹⁶ With that, any proceeds related to the Pre-Petition Collateral were placed in the Collection Account and subjected to Monthly Adequate Protection Payments.⁴⁹⁷

XIV. 506(c) Waiver

Once the Final Order was entered, the Debtors irrevocably waived the ability to assert any claim under Section 506(c) of the Bankruptcy Code for costs related to the “preservation, protection, or enhancement of . . . the DIP Secured Parties or the Pre-Petition Secured Parties.”⁴⁹⁸ Upon the entry of Final Order, the Secured Lending Entities would not be “subject to the equitable doctrine of ‘marshaling’ . . . with respect to the DIP Collateral or the Pre-Petition Collateral.”⁴⁹⁹

The doctrine of marshaling is applicable when “two or more creditors claim against one debtor and the first creditor can reach two properties held by the debtor where the second can only reach one.” One essential element is that a senior secured creditor has a right to all of the

⁴⁹⁴ *Id.* at 38.

⁴⁹⁵ *Id.*

⁴⁹⁶ *Id.*

⁴⁹⁷ *Id.*

⁴⁹⁸ *Id.* at 39.

⁴⁹⁹ *Id.*

collateral.⁵⁰⁰ They must exhaust all assets or funds in one piece of collateral before moving on to the next assets, thus allowing the junior secured creditor an opportunity to enforce its claim against those assets.⁵⁰¹ DIP Lenders in this case, therefore, wanted to avoid losing their senior priority over the DIP Collateral.

XVI. Automatic Effectiveness of Liens

Once the DIP Financing Interim Order was entered, the DIP Liens and Adequate Protection Liens were “valid, perfected, enforceable, nonavoidable and effective by operation of law, and not subject to challenge.”⁵⁰²

XVII. Automatic Stay

Once the DIP Financing Interim Order was entered, all applicable automatic stay provisions were vacated so that the DIP Secured Parties could exercise their rights against the Debtors without being barred until the end of the bankruptcy.⁵⁰³ Therefore, if the Debtors defaulted in any way, those parties could seek immediate remedies.

XVIII. Credit Bid

The Bankruptcy Code permits a holder of a secured claim to credit bid at a 363 Asset Sale of its collateral.⁵⁰⁴ In other words, when an asset is being sold that is subject to a lien, the creditor may use the amount of that claim as part of the offer of the purchase price of such property.⁵⁰⁵

⁵⁰⁰ Howard Karasik & Robert Kolodney, *The Doctrine of Marshaling Under the Bankruptcy Code*, 89 Com. L.J. 102 (1984) [<https://perma.cc/4AEE-WBC8>].

⁵⁰¹ DIP Financing Interim Order, *supra* note 444, [76.pdf](#) at 39.

⁵⁰² *Id.*

⁵⁰³ *Id.* at 40–41 (The permitted remedies included: (i) termination fo the Debtors use of Cash Collateral; (ii) ability to declare all DIP Obligations immediately due; (iii) ability to charge the default rate of interest; (iv) ability to freeze the Debtors’ accounts; (v) ability to set off any and all amounts in the Debtors’ accounts; and (vi) ability to take any other actions or exercise any other rights.).

⁵⁰⁴ 11 U.S.C. § 363(k) [<https://perma.cc/LJC9-S3J8>].

⁵⁰⁵ *Id.*

Here, the DIP Agent was permitted to credit bid the amount of all DIP Obligations in any 363 Asset Sale, a plan of reorganization or liquidation, or a sale by a chapter 7 trustee.⁵⁰⁶

Subject to the Code, the Pre-Petition Agent could also credit bid any remaining Pre-Petition Obligations in any Asset Sale, provided all DIP Obligations, Third-Party Pre-Petition Liens, and any Additional Permitted DIP Liens are satisfied.⁵⁰⁷

Final Order

I. Approval and Ratification of Orders

The Final Order was approved and became effective immediately.⁵⁰⁸ “The terms and conditions of the Interim Order . . . are hereby ratified and confirmed on a final basis.”⁵⁰⁹

II. Authorization to Borrow DIP Facility Loans and Use Cash Collateral

The DIP Borrowers were authorized to borrow up to \$25,000,000 under the DIP Facility.⁵¹⁰ Additionally, the Debtors placed in a reserve “all payments received pursuant to that License and Amendment Agreement” entered by and between Anchor Bar Entertainment, LLC and Debtors on December 4, 2014 (“Anchor Bay Cash Collateral”).⁵¹¹

III. Carve-Out

The maximum amount applicable to Carve-Out expenses was increased to \$500,000 under the Final Order.⁵¹²

⁵⁰⁶ DIP Financing Interim Order, *supra* note 444, [76.pdf](#) at 45.

⁵⁰⁷ *Id.*

⁵⁰⁸ Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1) and 364(e) and (B) Utilize Cash Collateral of Pre-Petition Secured Entities, (II) Granting Adequate Protection to Pre-Petition Secured Entities, and (III) Granting Related Relief [267.pdf](#) at 20, *In re The Weinstein Company Holdings LLC, et al.*, No. 18-10601 (filed Apr. 19, 2018).

⁵⁰⁹ *Id.*

⁵¹⁰ *Id.* at 21.

⁵¹¹ *Id.*

⁵¹² *Id.* at 40.

IV. Stalking Horse Bid

If the Stalking Horse Bid was determined to be the best bid and was supported by the Committee, then the Committee will have waived “any right to challenge a sale pursuant to such bid.”⁵¹³

V. Guild Liens

The DIP Lenders recognize that “the Directors Guild of America, Inc., the Screen Actors Guild – American Federation of Television and Radio Artists, and the Writers Guild of America West, Inc. assert a first lien” on certain assets of TWCH.⁵¹⁴ These liens are Pre-Petition Third-Party Liens and are Permitted Priority Liens.⁵¹⁵

VI. Technicolor Liens

The DIP Lenders recognize that “Technicolor USA, Inc. and its affiliates assert a priority possessory lien and related rights under Cal. Civ. Code § 3051 and Cal. Comm. Code § 9333” on everything deposited with Technicolor as collateral for amounts owed.⁵¹⁶ These liens were Pre-Petition Third-Party Liens and were Permitted Priority Liens.⁵¹⁷

VII. PFC Liens

The DIP Lenders recognize that “PFC asserts that it has Pre-Petition Third-Party Liens” as collateral for debts owed to PFC. These liens were Permitted Priority Liens.⁵¹⁸

⁵¹³ *Id.* at 54.

⁵¹⁴ *Id.* at 55.

⁵¹⁵ *Id.*

⁵¹⁶ *Id.*

⁵¹⁷ *Id.* at 56.

⁵¹⁸ *Id.*

CONVERSION TO CHAPTER 7

Under the Bankruptcy Rules, a debtor “may convert out of chapter 11 and into chapter 7 at any time, with three exceptions...[they] cannot convert if:

- (i) [H]e is not a DIP (*i.e.*, if a trustee has been appointed);
- (ii) [T]he case was begun as an involuntary 11; or
- (iii) [T]he case was converted to 11 other than at the request of the debtor.”⁵¹⁹

Specifically, after the Debtors sold substantially all of its assets to Lantern Entertainment, they moved for an order of conversion and sought approval of “[the] Procedures for the conversion of the Debtors’ chapter 11 cases.”⁵²⁰ The conversion procedures included provisions that detailed how professionals would seek final compensation, provided for the dissolution of the unsecured creditors committee, and listed the number of clerical and administrative steps the Debtors would take when sending information to the chapter 7 trustee.⁵²¹

⁵¹⁹ BANKRUPTCY IN PRACTICE, *Supra* note 289 at 138; *see also* § 1112(a)(1)-(3).

⁵²⁰ Motion to Convert Chapter 11 Case to a Case Under Chapter 7 [2357.pdf](#), *In re The Weinstein Co.*, No. 18-10601 (Bankr. D. Del. Filed Mar. 19, 2018) (hereinafter “Motion to Convert”).

⁵²¹ *Id.* at 9-11. (“(a) Professional Fees. To the extent applicable, professionals retained in the chapter 11 cases (excluding professionals retained in the ordinary course of business pursuant to the Order Authorizing the Debtors to Employ and Compensate Professionals Utilized in the Ordinary Course of Business, Effective Nunc Pro Tunc to the Petition Date [Docket No. 253]) shall submit final fee applications (the “Final Fee Applications”) in accordance with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and orders of this Court by no later than 14 days after the Conversion Date (the “Final Fee Application Deadline”). The Court will schedule a hearing, at the Court’s convenience, on such Final Fee Applications on or before the date that is 28 days after the Final Fee Application Deadline. All approved amounts owed for professionals’ fees and expenses shall be paid (x) first, from each professional’s retainer, to the extent such retainers exist; and thereafter (y) from the Debtors’ chapter 7 estates.

(b) The Committee. On the Conversion Date, the Committee shall be immediately dissolved, and all professionals retained by the Committee shall be immediately discharged, with no further action required by the Debtors or the Committee.

(c) Books and Records. As soon as reasonably practicable, but in no event more than fourteen (14) days after the assumption of duties by the chapter 7 trustee, the Debtors shall turn over to the chapter 7 trustee the books and records of the Debtors in the Debtors’ possession and control, as required by Bankruptcy Rule 1019(4). For purposes hereof, the Debtors may provide copies (including electronic copies) of such books and records to the chapter 7 trustee, or instructions for locating and accessing such books and records, and may retain copies of such books and records to the extent necessary to complete the reports required herein.

(d) Lists and Schedules. To the extent not already filed with the Court, within 14 days of the Conversion Date, the Debtors shall file the statements and schedules required by Bankruptcy Rules 1019(1)(A) and 1007(b).

(e) Schedule of Unpaid Debts. Within 14 days of the Conversion Date, the Debtors shall file a schedule of unpaid debts incurred after commencement of the Debtors’ chapter 11 cases, including the name and address of each creditor, as required by Bankruptcy Rule 1019(5).

(f) Final Report. Within thirty (30) days after the Conversion Date, the Debtors shall file and transmit to the chapter 7 trustee a final report and account in accordance with Bankruptcy Rule 1019(5)(A).

(g) Claims. Within 14 days of the Conversion Date, Epiq shall (i) forward to the Clerk of this Court an electronic version of all imaged claims; (ii) upload the creditor mailing list into CM/ECF; (iii) docket a final claims register in the Debtors’ chapter 11 cases; and (iv) box and transport all original claims to the Philadelphia Federal Records Center,

TWC also defended the case for conversion based on three rationales including (1) that there was not enough liquidity to ultimately confirm a chapter 11 plan, (2) that TWC had sold substantially all of its assets and that it no longer maintained a viable business, (3) and that chapter 7 would ultimately provide the best method for prosecuting director & officer claims for the benefit of all creditors.⁵²²

Objections & Responses

In response to the Debtor's motion, High Technology Video objected to the conversion motion in principle,⁵²³ the Estate of Harold Jensen reserved its right to receive "rightful holdings" but declined to outright object,⁵²⁴ and MUFU Union Bank filed a Reservation of Rights "in order to highlight certain issues relating to the administration of the Debtors' estates that will need to be addressed regardless of whether the Conversion Motion is granted."⁵²⁵ None of the reservations, or the unsupported High Technology Video objection, prevented the case from being converted for liquidation.

14470 Townsend Road, Philadelphia, PA 19154 and docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

⁵²² *Id.* at 12–13.

⁵²³ Objection to Debtors' Motion for an Order (I) Converting their Chapter 11 Cases to Cases Under Chapter 7 of the Bankruptcy Code and (II) Granting Related Relief. (related document(s)2357) [Filed by High Technology Video](#), Inc (LAM), *In re The Weinstein Co.*, No. 18-10601 (Bankr. D. Del. Filed Mar. 19, 2018) [hereinafter "High Technology Video Objection"] (This particular objection simply stated that the party "objected" without supporting documentation or a declaration.).

⁵²⁴ Response to Debtors' Motion for an Order (I) Converting their Chapter 11 Cases to Cases Under Chapter 7 of the Bankruptcy Code and (II) Granting Related Relief. (related document(s)2357) [Filed by Harold Jensen \(LAM\)](#), *In re The Weinstein Co.*, No. 18-10601 (Bankr. D. Del. Filed Mar. 19, 2018) [hereinafter "Reservation Rights of Estate of Harold Jensen"].

⁵²⁵ Response Statement and Reservation of Rights of MUFU Union Bank, N.A. and UnionBanCal Equities, Inc. Regarding Debtors Motion for an Order (I) Converting their Chapter 11 Cases to Cases Under Chapter 7 of the Bankruptcy Code and (II) Granting Related Relief Filed by MUFU Union Bank (Prepetition and DIP Agent), UnionBanCal Equities, Inc. (related document(s)2357) [2390.pdf](#), *In re The Weinstein Co.*, No. 18-10601 (Bankr. D. Del. Filed Mar. 19, 2018) [hereinafter "Reservation of Rights MUFU-Union Bank"].

HARVEY WEINSTEIN'S FALLOUT

A Timeline of Events

After the New York Times initially broke the stories of Harvey Weinstein and his sexual misconduct, investigations began both in the United States and the United Kingdom.⁵²⁶ Days apart in November and December of 2017, civil actions were filed in the United Kingdom and New York.⁵²⁷ One of these was a class action from six women, who sought to represent “hundreds of other women” that Weinstein allegedly preyed upon.⁵²⁸ Then in February of 2018, New York state prosecutors filed a lawsuit against The Weinstein Company after a four-month investigation indicated that the company “failed to protect employees from his alleged harassment and abuse.”⁵²⁹ Despite his lawyer asserting that the allegations were “legally defective or factually not supported,” Weinstein turned himself into New York Police on May 25, 2018, and was charged with rape and sexual abuse.⁵³⁰ A grand jury indicted Weinstein, which led to him pleading not guilty in front of the New York Supreme Court.⁵³¹ In June of 2018, a third case was brought against Weinstein, in which he pleaded not guilty.⁵³² On October 11, 2018, Weinstein had one of six sexual assault charges dropped due to a victim giving conflicting stories.⁵³³ On January 9, 2019, another victim had her lawsuit dismissed because “the allegation did not fall within the scope of the statute she sued under.”⁵³⁴

⁵²⁶ *Harvey Weinstein Timeline: How the Scandal Unfolded*, BBC NEWS (Feb. 24, 2020), <https://www.bbc.com/news/entertainment-arts-41594672> [hereinafter Weinstein Timeline] [<https://perma.cc/4AE3-JH5Y>]; see also Amelia Schonbek, *The Complete List of Allegations Against Harvey Weinstein*, THE CUT (Jan. 6, 2020), <https://www.thecut.com/2020/01/harvey-weinstein-complete-list-allegations.html> (As of January 6, 2020, at least 100 women had spoken out about their experiences as a victim to Harvey Weinstein’s sexual assault or misconduct.).

⁵²⁷ Weinstein Timeline, *supra* note 525 [<https://perma.cc/4AE3-JH5Y>].

⁵²⁸ Sam Levin, *Six Women File Class-Action Lawsuit Against Harvey Weinstein and ‘Complicit Producers’*, THE GUARDIAN (Dec. 6, 2017), <https://www.theguardian.com/film/2017/dec/06/six-women-file-class-action-lawsuit-against-harvey-weinstein-and-complicit-producers> [<https://perma.cc/8RU6-3G7J>].

⁵²⁹ Weinstein Timeline, *supra* note 525 [<https://perma.cc/4AE3-JH5Y>].

⁵³⁰ *Id.*

⁵³¹ *Id.*

⁵³² *Id.*

⁵³³ *Id.*

⁵³⁴ *Id.*

The Settlement

On May 24, 2019, CNBC reported that Weinstein, in his personal capacity, reached a “tentative \$44 million deal to settle civil lawsuits.”⁵³⁵ This amount would be paid by insurance policies, \$30 million of which would go to the victims with the rest going towards legal fees.⁵³⁶

In March of 2020, seven women wrote a letter to New York Attorney General Letitia James in opposition to the proposed settlement.⁵³⁷ Their main contention with the settlement was that it “is insulting to all of the survivors in that it represents a small fraction of what should be paid by Mr. Weinstein, his former directors and officers, and large multibillion-dollar insurance companies.”⁵³⁸ Additionally, they took issue with the fact that a significant portion of the settlement will go to lawyers of the Weinstein brothers and other multi-millionaires.⁵³⁹

⁵³⁵ Yen Nee Lee, *Harvey Weinstein Has a Tentative \$44 Million Deal to Settle Sexual Misconduct Lawsuits*, CNBC (May 24, 2019), <https://www.cnn.com/2019/05/24/harvey-weinstein-tentative-44-million-deal-for-sexual-misconduct-lawsuits-reports.html> [<https://perma.cc/7QWQ-UH4C>].

⁵³⁶ Sasha Ingber, *Harvey Weinstein ‘Reaches \$44 Million Deal’ With Accusers*, NPR (May 24, 2019), <https://www.npr.org/2019/05/24/726507389/harvey-weinstein-reaches-44-million-deal-with-accusers> [<https://perma.cc/UU8K-DT5T>].

⁵³⁷ Greg Evans & Erik Pederson, *Harvey Weinstein’s Accusers Urge NY Attorney General to Reject Civil Settlement*, DEADLINE (March 9, 2020), <https://deadline.com/2020/03/harvey-weinstein-accusers-urge-new-york-attorney-general-to-reject-civil-settlement-1202877854/> [<https://perma.cc/PJ2R-NCHS>]

⁵³⁸ *Id.*

⁵³⁹ *Id.*

Schedule A – Compensation

First Omnibus Compensation Order⁵⁴⁰

Applicant	Period	Fees	Expenses	Reductions	Approved Fees	Approved Expenses
Berkeley	3/30/18 – 6/30/18	\$962,299.00	\$5,722.63	N/A	100%	100%
Richards Layton	3/19/18 – 6/30/18	\$1,985,197.50	\$59,633.55	N/A	100%	100%
Cravath	3/19/18 – 6/30/18	\$6,926,274.50	\$145,886.99	N/A	100%	100%
Pachulski Stang	3/28/18 – 6/30/18	\$2,106,125.00	\$72,934.22	\$1,500.00 of Expenses	100%	100%, less the amount for reduction

Moelis Final Compensation⁵⁴¹

Period	Fees	Expenses	Reductions	Approved Fees	Approved Expenses
3/19/18 – 7/13/18	\$7,200,806.46	\$63,562.40	N/A	100%	100%

⁵⁴⁰ First Omnibus Order Awarding Interim Allowance of Compensation for Services Rendered and Reimbursement of Expenses [1528.pdf](#), *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Sept. 24, 2018).

⁵⁴¹ Order Granting Final Application of Moelis & Company LLC for Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses as Investment Banker to the Debtors for Specified Purposes from March 19, 2018 Through July 13, 2018 [1529.pdf](#) at 2, *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Sept. 24, 2018).

Second Omnibus Compensation Order⁵⁴²

Applicant	Period	Fees	Expenses	Reductions	Approved Fees	Approved Expenses
Berkeley	7/1/18 – 6/30/18	\$623,505.50	\$17,372.89	N/A	100%	100%
Richards Layton	7/1/18 – 6/30/18	\$614,672.50	\$19,844.78	N/A	100%	100%
Cravath	7/1/18 – 6/30/18	\$1,686,503.00	\$14,410.44	N/A	100%	100%
Pachulski Stang	7/1/18 – 6/30/18	\$874,887.75	\$24,290.28	N/A	100%	100%
Seyfarth Shaw	6/19/18/ - 9/30/18	\$331,557.50	\$3,525.30	N/A	100%	100%
Withum	6/18/18 – 9/30/18	\$323,067.00	\$430.15	N/A	100%	100%

⁵⁴² Second Omnibus Order Awarding Interim Allowance of Compensation for Services Rendered and Reimbursement of Expenses [1851.pdf](#), *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Dec. 14, 2018).

Third Omnibus Compensation Order⁵⁴³

Applicant	Period	Fees	Expenses	Reductions	Approved Fees	Approved Expenses
Berkeley	10/1/18 – 12/31/18	\$162,045.50	\$2,732.41	N/A	100%	100%
Pachulski Stang	10/1/18 – 12/31/18	\$450,540.50	\$8,808.21	\$1,125.00 Fees	100%, less the amount of reduction	100%
Richards Layton	10/1/18 – 12/31/18	\$605,255.00	\$6,904.83	N/A	100%	100%
Cravath	10/1/18 – 12/31/18	\$589,018.75	\$2,444.98	N/A	100%	100%
Seyfarth Shaw	10/1/18 – 12/31/18	\$310,780.50	\$619.88	N/A	100%	100%
Withum	10/1/18 – 12/31/18	\$8,871.50	\$0.00	N/A	100%	100%

⁵⁴³ Third Omnibus Order Awarding Interim Allowance of Compensation for Services Rendered and Reimbursement of Expenses [2235.pdf](#), *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Mar. 28, 2018).

Fourth Omnibus Compensation Order⁵⁴⁴

Applicant	Period	Fees	Expenses	Reductions	Approved Fees	Approved Expenses
Pachulski Stang	1/1/19 – 3/31/19	\$554,565.25	\$29,197.86	N/A	100%	100%
Pachulski Stang	4/1/19 – 6/30/19	\$310,596.50	\$8,156.48	N/A	100%	100%
Seyfarth Shaw	1/1/19 – 3/31/19	\$120,664.00	\$21.54	N/A	100%	100%
Seyfarth Shaw	4/1/19 – 6/30/19	\$79,343.50	\$473.41	N/A	100%	100%
Berkley	1/1/19 – 3/31/19	\$146,277.50	\$24.25	N/A	100%	100%
Berkeley	4/1/19 – 6/30/19	\$172,765.50	\$1,930.18	N/A	100%	100%
Richard Layton	1/1/19 – 3/31/19	\$315,621.00	\$6,230.90	N/A	100%	100%
Richards Layton	4/1/19 – 6/30/19	\$220,940.00	\$3,497.72	N/A	100%	100%
Cravath	1/1/19 – 3/31/19	\$193,299.50	\$717.64	N/A	100%	100%
Cravath	4/1/19 – 6/30/19	\$294,114.50	\$2,854.93	N/A	100%	100%
Withum	10/1/18 – 6/30/19	\$119,181.00	\$0.00	N/A	100%	100%

⁵⁴⁴ Fourth Omnibus Order Awarding Interim Allowance of Compensation for Services Rendered and Reimbursement of Expenses [2584.pdf](#), *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Sept. 24, 2019).

Fifth Omnibus Compensation Order⁵⁴⁵

Applicant	Period	Fees	Expenses	Reductions	Approved Fees	Approved Expenses
Cravath	7/1/19 – 9/30/19	\$87,217.00	\$159.14	N/A	100%	100%
Richards Layton	7/1/19 – 9/30/19	\$116,930.00	\$991.81	\$23.91 Expenses	100%	100%, less the amount of expenses
Seyfarth Shaw	7/1/19 – 9/30/19	\$59,779.00	\$0.00	N/A	100%	100%
Berkeley	7/1/19 – 9/30/19	\$70,035.50	\$141.61	N/A	100%	100%
Pachulski Stang	7/1/19 – 9/30/19	\$160,672.50	\$3,325.03	N/A	100%	100%

⁵⁴⁵ Fifth Omnibus Order Awarding Interim Allowance of Compensation for Services Rendered and Reimbursement of Expenses [2663.pdf](#), *In re* The Weinstein Company Holdings LLC, *et al.*, No. 18-10601 (Bankr. D. Del. Filed Dec. 17, 2019).