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Chapter 11 Cases Driven by Sexual Abuse Tort Claims

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There are mixed feelings about the insolvency issues surrounding and the bankruptcies filed in the wake of sexual assault tort claims, claims which are often times on a mass level. News headlines convey painful sentiments of delay of justice for abuse survivors, while representatives of the organizations cite the bankruptcy filings as a means to a fair and just resolution of claims without "bringing down the house." Divorced from the emotionally charged rhetoric, a review of the lessons learned from avoided and pending cases and tools to identify property of the estate coupled with mechanisms available in bankruptcy court evidences how bankruptcy or out of court restructure provides for an efficient process for addressing sexual abuse tort claims.

I. The Court of Public Opinion – High Profile Case Studies Involving Sexual Abuse Claims

A. Harvey Weinstein, A Toxic Asset

The Harvey Weinstein saga was unable to avoid bankruptcy. In October 2017, after years of "whispers" around Hollywood, the *New York Times* and the *New Yorker* published allegations that Harvey Weinstein ("Weinstein") sexually assaulted multiple women over nearly three decades.² The allegations ranged from sexual harassment to rape.³ By the time The Weinstein Company Holdings, LLC ("TWC") filed for Chapter 11 relief in March 2018, over 80 women had accused Weinstein of inappropriate behavior.⁴ These allegations lead TWC to terminate Weinstein, who was the Co-Chairman and figurehead of TWC, for cause.⁵

Prior to the public disclosure of Weinstein's conduct, TWC was a mini-major film and television production studio.⁶ TWC produced very successful films and television shows, including *The King's Speech* and *Project Runway*.⁷ TWC productions won 23 Academy Awards and were nominated for hundreds of others. Indeed, at the annual Hollywood awards ceremonies, prior to TWC's bankruptcy case, Weinstein had been thanked more than God (but less than Steven Spielberg).⁸

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² Declaration in Support of First Day Relief, *In re The Weinstein Company Holdings LLC*, No. 18-10601 (Bankr. D. Del. March 20, 2018) ECF No. 7 at pp. 14-15.

³ *Id.* at p. 15.

⁴ *Id.* at p. 14-15.

⁵ *Id.* at p. 15.

⁶ *Id.* at p. 4.

⁷ *Id.* at p. 4.

⁸ Ronan Farrow, *Catch and Kill: Lies, Spies, and a Conspiracy to Protect Predators* p. 9. (Little, Brown and Co. 2019).

After the allegations against Weinstein became public, TWC suffered enormous backlash. For example, Ketchum, the world's leading communications firm terminated its production and distribution agreement with TWC.⁹ Apple Inc., Lexus, Hachette Book Group, A+E Networks, Amazon Studios, and countless celebrities terminated agreements with TWC.¹⁰ In fact, by early 2017, TWC was unable to pay Debevoise to conduct an investigation related to Weinstein's conduct.¹¹ Within weeks of the story breaking, a majority of TWC's board of directors resigned, as did a quarter of its workforce.¹² In light of the accusations, TWC became subject to numerous lawsuits.¹³

In order to monetize TWC's and its affiliates' assets, beginning in October 2018, TWC began exploring an asset sale.¹⁴ In the months leading to bankruptcy, TWC sold two projects for approximately \$10 million, in order to survive.¹⁵

Immediately prior to the bankruptcy filing, TWC's board decided that TWC would expressly release any confidentiality provisions to the extent these had prevented individuals who suffered or witnessed any form of sexual misconduct from Weinstein from sharing their stories.¹⁶

On March 20, 2018, TWC and 55 of its related entities filed voluntary petitions for relief pursuant to Chapter 11 of the Bankruptcy Code.¹⁷ The Chapter 11 "first day" pleadings contemplated an asset sale to Lantern Capital, the stalking-horse bidder.¹⁸ Lantern Capital ultimately acquired TWC's assets after no other qualified bids were received.¹⁹ The sale to Lantern Capital faced numerous challenges, primarily from contract counter-parties, as the "assets" of TWC and its affiliates are largely contractual rights. Interestingly, many of these objectors were celebrities and their affiliated companies, including Meryl Streep and Leonardo DiCaprio.

On the closing date of the TWC sale, TWC ceased to operate and effectively ceded power to the Unsecured Creditors' Committee.

The TWC bankruptcy itself is somewhat of a generic "Chapter 3" bankruptcy. Notably, however, the Official Unsecured Creditors' Committee contained two individuals, who publically accused Weinstein of sexual misconduct.²⁰ After the asset sale, TWC's remaining assets are causes

⁹ *Id.* at p. 16.

¹⁰ *Id.* at pp. 16-17.

¹¹ *Id.* at p. 16.

¹² *Id.* at p. 18.

¹³ *Id.* at pp. 18-19.

¹⁴ *Id.* at p. 19.

¹⁵ *Id.* at pp. 20-21.

¹⁶ *Id.* at p. 27.

¹⁷ Voluntary Petition for Non-Individuals Filing for Bankruptcy, *In re The Weinstein Company Holdings LLC*, No. 18-10601 (Bankr. D. Del. March 19, 2018) ECF No. 1.

¹⁸ Debtors' Motion for Entry of Orders Approving Bidding Procedures for Sale of Substantially All of the Debtors' Asset, *In re The Weinstein Company Holdings LLC*, No. 18-10601 (Bankr. D. Del. March 20, 2018) ECF No. 8.

¹⁹ Debtors' Motion for Entry of Orders (I) Converting Their Chapter 11 Cases to Cases Under Chapter 7 of the Bankruptcy Code and (II) Related Relief, *In re The Weinstein Company Holdings LLC*, No. 18-10601 (Bankr. D. Del. May 15, 2018) ECF No. 8 at p. 4.

²⁰ Committee Formation Notice, *In re The Weinstein Company Holdings LLC*, No. 18-10601 (Bankr. D. Del. March 28, 2018) ECF No. 122.

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