

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

In re:

THE WEINSTEIN COMPANY HOLDINGS
LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 18-10601 (MFW)

(Jointly Administered)

Hearing Date: 6/5/18 at 2:00 p.m.
Obj. Deadline: 5/21/18 at 4:00 p.m.

Re: D.I. 860

**SUPPLEMENTAL OBJECTION BY AUTHOR TO NOTICE OF FILING
OF FINAL LIST OF POTENTIALLY ASSUMED CONTRACTS AND LEASES**

Sybrina Fulton (“Fulton”) and Tracy Martin (“Martin”) (individually and/or jointly, the “Author”), by and through their undersigned counsel, object to the proposed cure amounts set forth in the *Notice of Filing of Final List of Potentially Assumed Contracts and Leases* (the “Notice”) [D.I. 860], and respectfully state as follows:

Background

The Author Enters into a Deal Letter with the Debtors

1. Fulton and Martin, individually and together, are the author of a novel titled *Rest in Power: The Enduring Life of Trayvon Martin* (the “Novel”).
2. On March 8, 2017, the Author and Debtors The Weinstein Company LLC and Weinstein Television LLC (together, the “Debtors”) entered into a “Deal Letter.” The Deal Letter

¹ The last four digits of The Weinstein Company Holdings LLC’s federal tax identification number are (3837). The mailing address for The Weinstein Company Holdings LLC is 99 Hudson Street, 4th Floor, New York, New York 10013. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <http://dm.epiq11.com/twc>.

was previously filed as Exhibit A to Author's Initial Cure Objection (as defined below)² and is incorporated herein by reference.

3. Section 2 of the Deal Letter provides, *inter alia*, an option to purchase rights to the Novel in connection with a possible movie (the "Movie Rights Option") and an option purchase rights to the Novel in connection with a television series (the "TV Rights Option" and together with the Movie Rights Option, the "Options"). Section 3 of the Deal Letter identifies the payments required to exercise each Option. Pre-petition, the Debtors exercised the TV Rights Option but to date, have not exercised the Movie Rights Option.

4. Episodes of a television series have been filmed but not yet aired. Section 6 of the Deal Letter requires the Debtors to pay Author fees for "Executive Producer Services" in connection with the production of the television series. As of the date hereof, the Debtors owe Author an amount not less than \$150,000 for Executive Producer Services.

5. If the television series is aired, additional "Contingent Compensation" will be owed under section 8 of the Deal Letter. Under section 8 of the Deal Letter, this Contingent Compensation must be calculated in accordance with "Exhibit CB-T."

The Debtors' Bankruptcy Pleadings Relating to the Potential Assumption and Assignment of the Deal Letter

6. On April 13, 2018, the Debtors filed the *Notice of Potential Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Amounts* [D.I. 216] (the "Initial Cure Notice"). The Initial Cure Notice identifies the following contracts with Author:

² The Deal Letter contains proprietary information, so it was filed under seal. See D.I. 609. A redacted public version of the Deal Letter appears at D.I. 791.

	Debtors	Contract Counterparty	Description of Contract or Lease	Cure Amount
3062	THE WEINSTEIN COMPANY LLC/ WEINSTEIN TELEVISION LLC	FULTON, SYBRINA	DEAL LETTER DTD 3/8/2017	\$ 0
7395	THE WEINSTEIN COMPANY LLC/ WEINSTEIN TELEVISION LLC	SYBRINA FULTON AND TRACY MARTIN	REST IN POWER - OPTION PURCHASE AGREEMENT DATED AS OF MARCH 8, 2017 AND BETWEEN SYBRINA FULTON/TRACY MARTIN AND TWC/WTV	\$0

7. On April 20, 2018, the Debtors filed the *Notice of Supplemental Potential Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Amounts* [D.I. 282] (the “Supplemental Cure Notice”). The Supplemental Cure Notice identifies the following contract with Author:

	Debtors	Contract Counterparty	Description of Contract or Lease	Cure Amount
6168	THE WEINSTEIN COMPANY LLC/ WEINSTEIN TELEVISION LLC	FULTON, SYBRINA AND MARTIN, TRACY	RE: "REST IN POWER: THE ENDURING LIFE OF TRAYVON MARTIN" - SYBRINA FULTON AND TRACY MARTIN	\$0

8. On May 8, 2018, the Author filed the [SEALED] *Objection by Author to Notice of Potential Assumption and Assignment of Executory Contract and Reservation of Rights* [D.I. 609] (the “Initial Cure Objection”)

9. The Initial Cure Objection objects to the assignment and assumption of the Deal Letter, unless all current amounts doing and owing under the Deal Letter are paid in full. At the time of the filing of the Initial Cure Objection, the Author noted at least \$150,000 was due under the Deal Letter with potentially additional amounts owed.

10. The hearing on the Initial Cure Objection initially was scheduled for May 8, but was later adjourned to May 22.

11. On May 9, 2018, the Court entered the *Order (I) Authorizing the Sale of All or Substantially All of the Debtors Assets Free and Clear of All Liens, Claims, Interests, Encumbrances and Other Interests, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith, and (III) Granting Related Relief* [D.I. 846] (the “Sale Order”).

12. Paragraph 32 of the Sale Order provides:

On the Closing Date or as soon as reasonably practicable thereafter, the Debtors shall file and serve a notice (the “**Final Cure Notice**”), which identifies which Assumed Contracts and Leases are Assumed Contracts (as defined in the APA) (the “**Assumed Contracts Schedule**”) and the Cure Amount, if any, which amount shall include the Cure Amount listed on the Contract Notice attached hereto plus any cure amounts that may become due and payable from the applicable Assumption Objection Date (as defined in the Bidding Procedures Order) through and including the Closing Date (the “**Additional Cure Amount**”). To the extent a Counterparty to such Assumed Contract disagrees with such proposed Additional Cure Amount, such Assumed Contract shall be deemed a Disputed Contract (as defined in the APA) and such Counterparty must file an objection (a “**Final Cure Objection**”) with the Court by **no later than ten (10) calendar days after the date of service of the Assumed Contracts Schedule** (the “**Final Cure Objection Deadline**”). All such objections must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, and (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Additional Cure Amounts the Counterparty believes is required to cure defaults under the relevant Contract or Lease that arose between the applicable Assumption Objection Date and the Closing Date. Any Counterparty whose Contract or Lease is identified on the Assumed Contracts Schedule that fails to file a Final Cure Objection by the Final Cure Objection Deadline shall be estopped from asserting or claiming any Additional Cure Amounts against the Debtors or the Purchaser that is greater than the Additional Cure Amount set forth on the Assumed Contracts Schedule. Notwithstanding the foregoing, starting one (1) Business Day after the Final Cure Objection Deadline, the Debtors may assume any Disputed Contract and assign such Disputed Contract to the Purchaser free and clear of all Claims if, prior to such assumption and assignment, the Purchaser deposits into a segregated account cash equal to the lesser of (i) the Cure Amount and, if applicable, any Additional Cure Amount that the Counterparty asserts is due and owing and (ii) such other amount as is agreed to between the Purchaser and such Counterparty. Any Disputed Contract that is assumed and assigned pursuant to the preceding sentence shall be deemed to be an Assumed Contract, subject to paragraph 31 below. Further, the Purchaser reserves the right after the Closing Date to

determine that any Contract or Lease not listed on the Assumed Contracts Schedule shall be an Assumed Contract, subject to satisfaction of the cure and adequate assurance of future performance requirements for assumption and assignment.

13. On May 10, the Debtors filed the *Notice of Filing of Final List of Potentially Assumed Contracts and Leases* [D.I. 860] (the "Final Cure Notice").

14. The Final Cure Notice (which is 2,059 pages) identifies the following contracts with Author:

	Debtors	Contract Counterparty	Description of Contract or Lease	Cure Amount
9209	THE WEINSTEIN COMPANY LLC/ WEINSTEIN TELEVISION LLC	FULTON, SYBRINA	DEAL LETTER DTD 3/8/2017	\$0
9210	THE WEINSTEIN COMPANY LLC/WEINSTEIN TELEVISION LLC	FULTON, SYBRINA AND MARTIN, TRACY	RE: "REST IN POWER: THE ENDURING LIFE OF TRAYVON MARTIN" - SYBRINA FULTON AND TRACY MARTIN	\$0
22680	THE WEINSTEIN COMPANY LLC/WEINSTEIN TELEVISION LLC	SYBRINA FULTON AND TRACY MARTIN	Rest In Power - Option Purchase Agreement dated as of March 8, 2017 and between Sybrina Fulton/Tracy Martin and TWC/WTV	\$0

Supplemental Objection

15. Author incorporates the Initial Cure Objection herein by reference.

16. It is unclear why the Debtors identify three separate contracts with Author. The Deal Letter is the sole contract between Author and the Debtors. Author objects to any purported assumption of certain provisions of the Deal Letter but not others. The Deal Letter is a single contract and must be assumed in its entirety. To the extent the Debtors take the position they can cherry pick which provisions of the Deal Letter to assume and assign, Author expressly reserves

the right to submit additional briefing, assert a higher cure claim, and argue that such assumption is improper under applicable law.

17. Notwithstanding the Debtors' identification of three separate contracts in the Final Cure Notice, it appears the Debtors are seeking to assume and assign the Deal Letter. Out of an abundance of caution, the Author makes this objection with respect to all contracts listed in the Initial Cure Notice, Supplemental Cure Notice and Final Cure Notice³.

18. The Proposed Cure Amount listed for all three contracts is \$0. Author objects to this proposed cure amount.

19. Under Section 6 of the Deal Letter, the Debtors owe Author at least \$150,000 for Executive Producer Services.

20. If the television series is aired, additional amounts will be owed under section 8 of the Deal Letter for Contingent Compensation. The Contingent Compensation must be calculated in accordance with Exhibit CB-T.

21. If the Debtors or assignee exercise the Movie Rights Option, they must pay all amounts owed under section 3 of the Deal Letter, and if a movie is released, the "Contingent Box Office Bonus(es)" under section 9 of the Deal Letter.

Reservation of Rights

22. Author reserves the right to amend or supplement this Objection and to assert any other rights, objections and remedies under and relating to the Deal Letter, the Bankruptcy Code or other applicable law.

³ Author believes they have listed all the relevant contracts identified in the 2,056 page Final Cure Notice. However, this objection applies to any contract between Author, Fulton and/or Martin that the Debtors are seeking to assume.

23. Author reserves all rights and fees that may become due under the Deal Letter going forward with respect to any assignee including, without limitation, the fee required to exercise the Movie Rights Option under section 3, the Contingent Compensation under section 8, and the Contingent Box Office Bonus(es) under section 9.

WHEREFORE, for the foregoing reasons, Author respectfully requests this Court:

A. Require that an Order authorizing the assumption of the Deal Letter (or any other contracts with Author, Martin and/or Fulton) affirmatively require the Debtors to pay the actual cure amount as set forth herein, as may be revised from time to time, subject to Author's express reservation of rights;

B. Require the assignee of the Deal Letter to assume all of the Debtors' obligations to Author under the Deal Letter including, without limitation, the fee required to exercise the Movie Rights Option, the Contingent Compensation and the Contingent Box Office Bonus(es); and

C. Grant Author such other and further relief as this Court deems just and proper under the circumstances.

Dated: May 18, 2018
Wilmington, Delaware

THE ROSNER LAW GROUP LLC

/s/ Scott J. Leonhardt

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