



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

April 30, 2018

To: Participants in The Weinstein Company Bankruptcy Cases

I write in advance of the May 4, 2018 scheduled auction of the assets of The Weinstein Company (“TWC”) to ask that all stakeholders in the sale process use it as an opportunity to help survivors of past misconduct and ensure that current workers are protected. Based on prior communications with many of you, my staff and I believe that making and supporting enhanced bids in the auction will advance these objectives to the benefit of survivors of the misconduct, the business and the bankruptcy estates, and the film and television community as a whole. Industry participants who are reluctant to deal with TWC because of past misconduct may change this stance toward an acquiring company that shows its commitment to making things right. The first—and in our view, best—way to show that commitment is now, through proposal and acceptance of enhanced bids that provide support for those harmed by Harvey Weinstein and the company he founded and led, as well as meaningful protections for future employees and others retained by the post-sale business.

My office has a direct interest in this issue for two reasons. First, we have spoken with many survivors of misconduct, and have heard their stories, as part of our ongoing investigation. Based on that investigation, as well as lawsuits and published reports consistent with what we have learned, we believe that many dozens of people—employees and third parties alike—were traumatized and permanently injured by Harvey Weinstein and the workplace he maintained at TWC. This is not a conventional “mass tort” bankruptcy in which a faulty product injured otherwise-unknown purchasers. Indeed, many of the survivors of misconduct played roles in building TWC into the company it is today.

Second, the mission of the Office of the Attorney General (“OAG”), and the objectives of our investigation and enforcement action, include vindicating New York State law and public policy prohibiting sexual harassment and other forms of gender discrimination and sexual misconduct in the workplace. As part of that mission, earlier this year my team and I helped TWC and a group led by Maria Contreras-Sweet craft a non-bankruptcy proposal that would have contained meaningful compensation for survivors and protections for employees, and would not have rewarded wrongdoers. While that purchase was not consummated and TWC ultimately filed for bankruptcy, our efforts to advance these same interests have continued since the filing. We have advocated for appointment of survivors’ representatives to the Unsecured Creditors’ Committee (“UCC”), and we have sought to explain to TWC, the UCC, and prospective bidders our determination that efforts to help survivors and protect employees through the bankruptcy process were available, were proper, and were in the interests of all stakeholders. We believe that

the upcoming auction represents a unique opportunity to advance those public interests in a case that the world is watching.

Our requests of each of the stakeholders are straightforward. Bidders should propose bid enhancements that set aside financial resources to compensate and provide support services for injured employees and industry talent, both of whom are essential to the company's future success. Bid enhancements also should include nonmonetary terms that protect future employees and contractors and avoid rewarding wrongdoers.<sup>1</sup> To support bid enhancements and encourage their acceptance, we have suggested, and we reiterate here, that bidders proposing such bid enhancements structure them to include benefits for all creditors and make them contingent on acceptance of the entire package of enhancements.

TWC and its Board of Representatives should stay true to their commitment to seek justice for victims by making clear the company will assign value to, and view favorably, bids containing such enhancements. TWC already has taken significant steps in the right direction by releasing individuals from relevant provisions of their nondisclosure agreements ("NDAs"), and by cooperating with investigations by the OAG and other law enforcement agencies. It can take the next step to secure justice for victims by supporting these enhanced bids.

Creditors—both secured and unsecured—should recognize the value of bid enhancements that include relief for survivors and protections for future employees. Bids with these terms will unlock value by helping the acquiror restore business relationships and rebuild public confidence in the company and its assets. These enhancements can be structured to provide benefits to each creditor class. Moreover, creditors who operate in the film and television industry, or who did business with the company while having reason to know of at least some of Harvey Weinstein's misconduct, have a moral responsibility and direct interest in working to remedy past harms and protecting people who are employed by or do business with the company. Doing so will make the company a better business partner in the future and can set a new standard for improved working conditions in the industry as a whole.

If a bidder demonstrates its commitment to redressing past wrongs and preventing future misconduct, it would also send a strong message to those in the industry who sought to end business relationships with TWC after discovery of Harvey Weinstein's misconduct, or who have avoided entering into new ones. Such a bidder will be able to sustain the costs of relief for survivors, and industry-leading protections in the office and on set, only if the bidder receives needed support from business partners in the industry.

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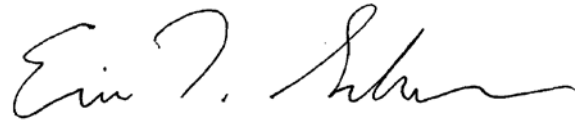
<sup>1</sup> Nonmonetary terms should include, *e.g.*, commitments to not use overly broad or otherwise abusive nondisclosure agreements in future hiring; investment in industry-leading equal employment opportunity ("EEO") workplace policies such as an independent hotline for reporting of complaints, and meaningful investigation of those complaints; and regular in-person EEO training for employees and corporate leadership. When the post-sale entity contracts with vendors, creative talent, or others, it should commit to following industry-leading, readily accessible, and clear rules of conduct to protect contractors as well. Those responsible for wrongdoing at TWC should not be rewarded, and the acquiring entity should commit to ongoing cooperation with those investigating past misconduct.

Although the circumstances leading to TWC's bankruptcy filing may be unprecedented, bankruptcy courts, as courts of equity, have shown that they are equipped to deal with unique harms while protecting the interests of all stakeholders. Dioceses around the country, including the Diocese of Wilmington, Delaware, used bankruptcy to help restructure while providing meaningful relief to survivors of sexual misconduct. Bankruptcy courts in cases such as *In re Nuverra Env'tl. Solutions, Inc.*, Case No. 17-10949 (KJC) (Bankr. D. Del.), *plan aff'd*, 2017 WL 3326453 (D. Del. Aug. 3, 2017), have enabled companies to provide compensation necessary to preserve business relationships and corporate reputations, thus enhancing value to all creditors. We believe compensation to survivors and protections for employees and contractors will accomplish the same here.

Finally, debtors are permitted to use their business judgment to select not only the bid or bids that are highest in dollar value, but bids that are "*highest and best.*" See, e.g., Howard J. Berman and Nancy A. Peterman, "Highest Dollar Bid Not Always the Best," *N.Y.L.J.* (June 17, 2011) (describing cases in which preservation of jobs or advancing other important public interests may be considered when evaluating which bid is best); *In re After Six, Inc.*, 154 B.R. 876, 882 (Bankr. E.D. Pa. 1993) (noting that companies may consider "an element as lacking in direct economic impact as 'societal needs'" in a bid's favor). Here, as in perhaps no other bankruptcy case in recent memory, societal needs align with the interests of each stakeholder, and thus weigh in favor of bid enhancements.

We look forward to further productive discussions with stakeholders prior to, during, and after the auction.

Sincerely,



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Eric T. Schneiderman  
Attorney General of the State of New York