

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

In re:)	Chapter 11
VER TECHNOLOGIES HOLDCO LLC, <i>et al.</i> , ¹)	Case No. 18-10834 (KG)
Debtors.)	(Jointly Administered)

**DECLARATION OF SCOTT WINN
IN SUPPORT OF CONFIRMATION OF THE
THIRD AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION
OF VER TECHNOLOGIES HOLDCO LLC AND ITS DEBTOR AFFILIATES**

I, Scott Winn, hereby state the following:

1. I am a Senior Managing Director at Zolfo Cooper, LLC (“Zolfo”). Zolfo Cooper is a leading financial advisory, interim management and litigation support firm, advising debtors, creditors, investors and court-appointed officials in bankruptcy proceeding and out-of-court workouts. I have more than 30 years of diversified business and professional experience in finance, operations, and strategy, specializing in distressed and underperforming companies. I am currently advising Toys “R” Us – Delaware, Inc., and recently advised Maxus Energy in its chapter 11 proceeding. I also advised Pacific Exploration and Production and served as chief restructuring officer of Milagro Exploration. My expertise in insolvency-related litigation includes performing complex financial analysis, fact-finding and expert witness testimony in *Getty v. Lukoil*, *ResCap*, *DVI*, *MBIA v. Countrywide*, and numerous nonpublic matters. I am a graduate of Georgetown University, and I am a business planning and financial restructuring specialist.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: VER Technologies HoldCo LLC (7239); CPV Europe Investments LLC (2533); FAAST Leasing California, LLC (7857); Full Throttle Films, LLC (0487); Maxwell Bay Holdings LLC (3433); Revolution Display, LLC (6711); VER Finco, LLC (5625); VER Technologies LLC (7501); and VER Technologies MidCo LLC (7482). The location of the Debtors’ service address is: 757 West California Avenue, Building 4, Glendale, California 91203.



2. I submit this declaration (the “Declaration”) in support of confirmation of the Debtors’ *Third Amended Joint Chapter 11 Plan of Reorganization of VER Technologies HoldCo LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (as it may be further modified or amended, the “Plan”).² I have reviewed and am generally familiar with the terms and provisions of the Plan, dated July 23, 2018, and the Disclosure Statement for the Plan, dated June 4, 2018 (the “Disclosure Statement”) [Docket Nos. 611, 418, respectively].

3. Except as otherwise indicated, I have personal knowledge of the matters set forth herein. If called as a witness, I would testify competently to the facts set forth in this Declaration.

Background

4. On March 26, 2018, the Board of Directors approved the formation of a Special Committee to review the leveraged buyout transaction embodied in that certain Unit Purchase Agreement dated December 11, 2014, as amended on February 23, 2015 (the “2014 Transaction”) and to investigate potential estate claims arising out of that transaction. The Board appointed Eugene Davis, in his capacity as the Independent Director, as the sole member of the Special Committee.

5. The Independent Director retained Kramer Levin Naftalis & Frankel LLP (“Kramer Levin”) as counsel and Zolfo as financial advisor to the Special Committee in connection with its investigation of the 2014 Transaction. As the senior member of Zolfo’s team, I supervised Zolfo’s analysis of the Debtors’ financial condition at the time of the 2014 Transaction, and I personally participated in the Special Committee’s interviews of Catterton, the Prepetition Term Loan Lenders and Vincent Dundee, as well as discussions with other parties

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan or Disclosure Statement.

and their legal and financial advisors. I also participated in the Special Committee's discussions concerning the potential litigation claims, the prospects for settlement, and the reasonableness of the settlement that was eventually reached, and in the Special Committee's report to the Board concerning its conclusions.

The Special Committee's Investigation

6. The Special Committee served comprehensive informal document requests on the principal participants in the 2014 Transaction – namely, (i) the Debtors; (ii) *L* Catterton Partners (“Catterton”); (iii) the Prepetition Term Loan Lenders; (iv) the Prepetition ABL Lenders; and (v) Vincent Dundee (together with certain of his family members and affiliates, the “Selling Shareholders”; ((i)-(v) collectively, the “Producing Parties”). Each of the Producing Parties voluntarily produced documents responsive to the diligence requests, ultimately totaling over 75,000 pages in all, including transaction agreements, Board and Board committee minutes and presentations, financial statements, projections, and other financial information developed by or relied on by the parties, as well as memoranda, evaluations and opinions prepared by the Debtors and certain third parties.

7. In addition to undertaking a comprehensive review and analysis of these documents, the Special Committee interviewed Vincent Dundee and representatives of Catterton and the Prepetition Term Loan Lenders. At the same time, Kramer Levin identified and assessed potential claims and defenses arising out of the 2014 Transaction, and Zolfo conducted an in-depth evaluation of the Debtors' financial condition, projections and capital sources following the 2014 Transaction. Throughout this process, Kramer Levin and Zolfo engaged in numerous informal discussions with counsel and financial advisors for the Debtors and the other Producing Parties. In all, the Special Committee's investigation took approximately three months.

The Special Committee's Conclusions

8. Based on the analysis conducted and the advice given by Kramer Levin and Zolfo, the Special Committee reported to the Board that it had reached the following conclusions, among others:

- a. The Debtors may have certain potentially colorable claims arising out of the 2014 Transaction – principally, constructive fraudulent transfer claims against the Selling Shareholders, the Prepetition Term Loan Lenders and the Prepetition ABL Lenders. However, these claims would be hotly contested. They would be subject to motions to dismiss and for summary judgment, as well as extensive fact and expert discovery on a range of issues, including whether the Debtors' financial condition following the 2014 Transaction left the Debtors insolvent or with unreasonably small capital. It is highly uncertain whether any such claims would ultimately prevail at trial.
- b. A constructive fraudulent transfer suit against the Selling Shareholders, the Prepetition Term Loan Lenders and the Prepetition ABL Lenders would be protracted and expensive. The suit could take several years to reach judgment, and any judgment could be followed by lengthy appeals and perhaps also by litigation to collect the judgment obtained against certain defendants. In addition, any recoveries would be reduced by the expense of litigation, which could include a substantial contingency fee.
- c. In the event the Debtors were to prevail at trial on these claims, the recoveries available for distribution to trade creditors would be subject to very substantial dilution. Any litigation recoveries would be distributed *pro rata* among all unsecured creditors, including the Prepetition Term Loan Lenders, unless the Prepetition Term Loan Lenders' claims were to be subordinated, which the Special Committee believes is highly unlikely. Because the Prepetition Term Loan Lenders' unsecured claim would comprise at least 90% of general unsecured claims, unsecured creditors other than the Prepetition Term Loan Lenders in all likelihood would receive 10% or less of any monies recovered in the suit.

The Proposed Settlement

9. Based on these conclusions, the Special Committee determined that the interests of all parties would best be served by a settlement of these potential claims – ideally, a prompt settlement, before the Debtors were forced to spend large sums litigating in Bankruptcy Court over how these claims should be treated in a plan of reorganization.

10. At the direction of the Special Committee, Kramer Levin and Zolfo reached out to the principal parties to share our conclusions as to the merits of the fraudulent transfer claims, as well as the risks, costs and potential outcomes of this litigation. I understand that vigorous arms-length negotiations among the Debtors, the Official Committee of Unsecured Creditors (the “Creditors’ Committee”) and the principal potential defendants ensued, resulting in the proposed settlement, under which: (i) the Selling Shareholders are making a cash contribution of \$10.5 million; (ii) the Restructuring Support Parties are contributing an additional \$500,000 in cash; and (iii) the Selling Shareholders and the Restructuring Support Parties are each waiving the right to receive distributions on account of their unsecured claims – including the Prepetition Term Loan Lenders’ estimated \$298 million deficiency claim – thereby enabling trade creditors to receive the entire \$11 million in settlement proceeds, without dilution.

11. I understand the Creditors’ Committee has reviewed and approved this settlement, having concluded (after undertaking its own discovery, as well as legal and financial analysis) that the settlement is in the best interests of the Debtors’ creditors.

12. The Special Committee also concluded, and reported to the Board, that in its view the settlement is in the best interests of the Debtors and their creditors for a number of reasons. The settlement gives unsecured creditors other than the Prepetition Term Loan Lenders a substantial and prompt cash recovery – a distribution on their claims that I understand amounts to approximately 33 cents on the dollar. In contrast, the litigation claims that are being settled are of highly uncertain value. The litigation would be costly, would probably take several years to achieve any recovery, and could very well result in no recovery at all. Moreover, as noted, trade creditors would receive only a very small share of any potential recovery, given the dilution they would suffer on account of the Prepetition Term Loan Lenders’ deficiency claim.

13. The settlement benefits the Debtors in several additional ways as well. It resolves the Creditors' Committee's objections to the releases given to the Restructuring Support Parties under the Plan. This significantly smooths the Debtors' path to confirmation and eliminates potential obstacles to consummation of the Plan and the proposed merger. In addition, the settlement will enable the Debtors to emerge from bankruptcy without the overhang of costly and protracted litigation, which could have distracted and burdened management for years.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

New York, New York

Dated: July 24, 2018

/s/ Scott Winn

Scott Winn

Senior Managing Director at Zolfo Cooper, LLC