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## Bad Business, Bumble Bee and Bankruptcy

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# Bad Business, Bumble Bee, and Bankruptcy

By: Andrew Gaither, Michael Trotter & William Salisbury



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## Cast of Characters:

### **The Debtor - Bumble Bee Foods**

*Bumble Bee Foods, LLC:* A debtor in the case and the company that produces canned tuna and other packaged seafood products for consumption; the company is filing for Ch. 11.

*Bumble Bee Parent, Inc.:* A debtor in the case and the parent company for Bumble Bee, filing for Ch. 11.

*Bumble Bee Holdings:* A debtor in the case and a holding company for Bumble Bee filing for Ch. 11.

*Anova Food, LLC:* A debtor in the case, one of the North American acquisitions of Bumble Bee filing for Ch. 11.

*Bumble Bee Capital Corp.:* A debtor in the case, and another affiliate filing for Ch. 11.

### **The Bankruptcy Players**

*Internal Revenue Service:* Brought into the case to help the Debtors solve the potential tax consequences of converting from Ch. 11 to Ch. 7.

*Lion Capital LLP:* The largest equity holder, it is a British private equity firm that specializes in investing in the consumer sector.

*FCF:* the stalking horse bidder in this case, FCF is a Taiwanese conglomerate that operates in the global seafood market with Bumble Bee, and is the largest tuna trader in the world.

*U.S. Trustee:* Part of the Department of Justice that specializes in the oversight and administration of bankruptcy cases and private trustees.

*Antitrust Tort Claimants Class:* This class represents the largest unsecured creditor in the Ch. 11.

### **Retained Professionals:**

*Paul, Weiss, Rifkind, Wharton, & Garrison LLP:* International law firm that is located in New York City, that was chosen as Lead Counsel.

*Young Conaway Stargatt & Taylor, LLP*: Delaware law firm that was essential in preparing documents for the Ch. 11; it was chosen as Co-Counsel.

*Alix Partners*: Debtors' restructuring and financial advisor for the duration of Ch. 11 based on the complexity of the transaction.

*Houlihan Lokey Capital, Inc.*: Investment banker and financial advisor that deals with bankruptcy restructuring.

*KPMG (Tax Consultant & Accounting Advisor)*: Tax consultant and accounting advisor that provides audit, tax, and advisory services.

*Prime Clerk LLC*: The claims and noticing agent for the duration of Ch. 11, as well as the chosen administrative advisor.

#### **Unsecured Creditors ("OCC")**

- FCF Co.
- United States Department of Justice
- Envases Universales de Mexico SAPI de CCV
- Walmart, Inc.
- Pataya Food Industries
- R.S. Cannery Co. Ltd.
- Suter Co. Inc.
- Advantage Sales & Marketing Inc.
- Kecker & Van nest LLP
- Thai Union Group PCL
- Mason Integrated Logistics
- Princes Tuna (Mauritius) Limited
- Graal S.A.
- Crider Inc.
- Conagra Brands Inc.
- Peter Pan Seafoods Inc.
- Pacific Fishing Co. Ltd.
- Direct Purchaser Plaintiff Claims
- Commercial Food Preparer Class
- End Payer Plaintiff Class

# Bankruptcy: Chapter 11 Introduction

Specializing in seafood and packaged seafood products, Bumble Bee Foods, LLC is one of the oldest canned seafood companies in the United States. Throughout the 20th century, Bumble Bee Foods proved to be a staple in American and Canadian households as it opened more fisheries and canneries. Although it was purchased and transferred to many different companies, Bumble Bee continued to remain an extremely profitable company. At the beginning of the 21st century there were new concerns Bumble Bee had to contend with, the primary was declining demand for canned seafood.

Chris Lischewski, Bumble Bee's CEO, entered into an illegal agreement with Tri-Union Seafoods and Starkist Company to fix the prices of their seafood products. Olean Wholesale Grocery eventually found out about the agreement and filed a civil suit alleging a violation of the Sherman Anti-Trust Act. Bumble Bee was thrown into dire circumstances when the company was struck with a \$25 million dollar civil penalty for the violation, their CEO stepped down, and then he was thrown into jail for his violations. On November 19, 2019, the company filed for Chapter 11 Bankruptcy and sought reorganization through the Bankruptcy Court.

## Background: Bumble Bee Tuna

### Origins

Bumble Bee Foods, LLC is a marketer and producer of canned albacore tuna, canned salmon, and other types of seafood for American supermarkets.<sup>1</sup> Incorporated in Delaware, Bumble Bee Foods has its primary place of business located in San Diego, California, one of the places where it got its beginning in the fishing and canning industry.<sup>2</sup> Originally created in 1899 under the name of the Columbia River Packers Association (“CRPA”), seven salmon packers with locations in Astoria, Oregon set out to provide canned fish in California and capitalize on the fish-abundant waters of the Pacific Ocean.<sup>3</sup> In 1910, the Bumble Bee brand was officially introduced to create a recognizable national brand.<sup>4</sup> As one of the oldest food brands in the United States, it enjoyed considerable success and, after partnering with Ward’s Cove Packing Company, became the world’s largest salmon packer in 1959.<sup>5</sup>

### Bumble Bee: A History of Changing Hands

In 1960, Castle & Cooke (a Hawaiian-based seafood company) purchased 61% of the ownership stake in the company and officially rebranded the CRPA to Bumble Bee Seafoods Incorporated after its famous brand.<sup>6</sup> From there, two decades of successful canning passed, and the company continued to expand, opening a tuna cannery in Puerto Rico, a fishing operation in Ecuador, and the famous Harbor Industry canner in San Diego, California.<sup>7</sup> Then in 1985 Castle & Cooke decided to auction off and sell

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<sup>1</sup> *About*, Bumble Bee, <https://www.bumblebee.com/about/>.

<sup>2</sup> *Bumble Bee Search Results*, Securities and Exchange Commission EDGAR (Apr. 1, 2021), <https://www.sec.gov/edgar/browse/?CIK=0001491578.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Bumble Bee Seafoods L.L.C. History*, FUNDING UNIVERSE, <http://www.fundinguniverse.com/company-histories/bumble-bee-seafoods-l-l-c-history/>.

<sup>7</sup> *About*, Bumble Bee *supra* note 1.



the company.<sup>8</sup> Patrick Rose, the division president, and the management team of Bumble Bee funded a leveraged buyout and took Bumble Bee private.<sup>9</sup> The team used efficient operational methods to help the company's bottom line, and implemented new strategies. Rose chose not to purchase two of the canneries in San Diego and Hawaii. They declined to use these unprofitable Bumble Bee canning plants, rejected long term contracts with domestic fishermen, bought tuna abroad from less expensive Asian sources, made payroll cuts, and cut the company's advertising budget in half.<sup>10</sup> Within three years, after a dramatic reduction in its accumulated debt, Bumble Bee attracted the attention of Pillsbury, which purchased the company in 1988.<sup>11</sup> Grand Metropolitan PLC then took over Pillsbury and caused Pillsbury to exit the seafood business.<sup>12</sup> In 1989, Uni Group, a U.S. affiliate of the Unicord Company, purchased Bumble Bee Foods for \$269 million dollars.

The 1990's were a time of turmoil for Bumble Bee and the tuna fish canning and seafood industry. Congress reauthorized the Marine Mammal Protection Act of 1972, amending it to include identification of new methods of tuna fishing that would not lead to the incidental capture of dolphins.<sup>13</sup> The tuna industry came under scrutiny, especially with regard to its methods of catching yellowfin tuna,<sup>14</sup> and activists sought companies that used dolphin-safe features to catch tuna and other fish, rather than the purse seine netting procedures.<sup>15</sup> In order to combat a boycott for its food products, Bumble Bee and other

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> National Research Council, *Dolphins and the Tuna Industry*. WASHINGTON, DC: THE NATIONAL ACADEMIES PRESS. <https://doi.org/10.17226/1983>

<sup>14</sup> *Id.*

<sup>15</sup> *Purse Seine Fishing*, INTERNATIONAL SEAFOOD SUSTAINABILITY FOUNDATION, <https://iss-foundation.org/about-tuna/fishing-methods/purse-seine/>.

seafood companies put a dolphin-safe sticker on the side of its can to showcase its environmental efforts.<sup>16</sup>

In 1996, Questor Management Company (“Questor”) and H.J. Heinz (“Heinz”) attempted a joint purchase of Bumble Bee. The attempted deal was structured to give Questor control of product marketing and the Bumble Bee brand name and allow Heinz to buy a number of Bumble Bee’s tuna production facilities. The deal eventually fell through, and an official reason was never given for the deal’s end.<sup>17</sup> As a result, Bumble Bee filed for Chapter 11 bankruptcy protection in 1997.<sup>18</sup> In that proceeding, International Home Foods (“IHF”) purchased substantially all of Bumble Bee’s assets and subsidiaries for \$163 million dollars, and assumed all of Bumble Bee’s liabilities, thus allowing the business to emerge from Chapter 11.<sup>19</sup>

Bumble Bee’s operations changed hands again in 2000 when IHF was acquired by ConAgra Foods. In 2003, Bumble Bee was sold to the private equity firm, Centre Partners and within the year Bumble Bee had merged with Connor Brothers Limited, a Canadian company. By 2005, to strengthen the brand, the company was renamed Bumble Bee Foods, L.L.C. and at that point was the largest branded seafood company in North America, putting itself in an advantageous position for the future.<sup>20</sup> Centre Partners proceeded to acquire Connor Brothers in 2008, thereby acquiring Bumble Bee Foods in 2008 for \$650 million.<sup>21</sup> In December 2009, Bumble Bee Foods was initially going to be taken public, and had filings in place with the Securities and Exchange Commission debt issuance under which \$220 million of

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<sup>16</sup> Philip Shabecoff, *3 Companies to Stop Selling Tuna Netted with Dolphins*, NEW YORK TIMES, <https://www.nytimes.com/1990/04/13/us/3-companies-to-stop-selling-tuna-netted-with-dolphins.html>.

<sup>17</sup> *Bumble Bee Seafoods L.L.C. History supra* note 5.

<sup>18</sup> *International Home Foods to Buy Bumble Bee Seafoods*, New York Times, May 3, 1997 at 39 ([pdf](#))

<sup>19</sup> *Bumble Bee Seafoods L.L.C. History supra* note 5.

<sup>20</sup> *Id.*

<sup>21</sup> Bumble Bee Capital Corp., Bumble Bee Foods, LLC & Connors Bros. Clover Leaf Seafoods Company, Amendment No. 1 to Form S-4 Registration Statement, at 1 (Reg. No. 333-166998), filed June 30, 2010 ([.pdf](#)).

secured notes were to be sold to: Wells Fargo Securities LLC, Jeffries & Company, Inc., and Barclays Capital.<sup>22</sup> But, rather than have an initial public offering, Lion Capital agreed to purchase Bumble Bee from Centre in 2010 for a lofty sum of \$980 million.<sup>23</sup> Bumble Bee was owned by Lion Capital up until allegations of price-fixing and antitrust violations were brought against the company in 2017.<sup>24</sup>

### Antitrust Violations

In the years leading up to the Chapter 11 bankruptcy filing, Bumble Bee had to deal with many issues stemming from a price-fixing antitrust lawsuit. On August 3, 2015, Olean Wholesale Grocery Cooperative (“Olean”) filed a federal complaint against Bumble Bee Foods, Tri-Union Seafoods LLC, and Starkist Company.<sup>25</sup> In its complaint, Olean alleged that Bumble Bee was part of a conspiracy to artificially inflate the cost of packaged seafood products (“PSP”) in the United States.<sup>26</sup> The companies together owned 73% of the nation’s market, Bumble Bee had 29%, Starkist had 25.3%, and Tri Union had 18.4%.<sup>27</sup> Olean alleged that Bumble Bee had violated the Sherman Antitrust Act.<sup>28</sup> In response to this lawsuit, Bumble Bee’s potential merger with Chicken of the Sea was blocked by the U.S. authorities, who found that a merger would be a deterrent to seafood market competition.<sup>29</sup>

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<sup>22</sup> Bumble Bee Capital Corp., Bumble Bee Foods, LLC & Connors Bros. Clover Leaf Seafoods Company, Form S-4 Registration Statement, at 1 (Reg. No. 333-166998), filed May 21, 2010 ([.pdf](#)).

<sup>23</sup> Steve Schaefer, *Meet The Men Who Bought and Sold Bumble Bee Tuna...Twice*, FORBES, <https://www.forbes.com/sites/steveschaefer/2011/02/10/meet-the-men-who-bought-and-sold-bumblebee-tuna-twice/?sh=fa73dfc18b19>

<sup>24</sup> *Id.*

<sup>25</sup> *Olean v. Bumble Bee Foods*, No. 15CV1714W MDD at 1 (S.D. Cal. Aug. 3, 2015) ([pdf](#))

<sup>26</sup> *Id.* at 2.

<sup>27</sup> *Id.* at 5.

<sup>28</sup> *Id.* at 13.

<sup>29</sup> Madelyn Kearns, *Thai Union nixes Bumble Bee Deal, retains Chicken of the Sea*, SEAFOODSOURCE, <https://www.seafoodsource.com/news/supply-trade/thai-union-nixes-bumble-bee-deal-retains-chicken-of-the-sea>

Olean brought the case to trial in the Southern District of California. On December 2nd, 2019, a jury found evidence of price fixing against Bumble Bee Foods from November 2010 to December 2013.<sup>30</sup> This required them to pay millions of dollars to members of the global market that they had defrauded and scammed. In response, on top of having to pay associated legal and compensatory fees in civil court, the United States also brought criminal charges against the company and CEO, and forced Bumble Bee to pay a \$25 million dollar criminal fine.<sup>31</sup> The court concluded that Bumble Bee's chief executive officer, Christopher Lischewski, conspired with Starkist and Tri Union to fix the prices for seafood, and sentenced him to forty months in prison and a \$100,000 fine.<sup>32</sup> Their reasoning was that the price-fixing conspiracy affected nearly \$600 million worth of tuna and seafood sales, and was a burden on the industry.<sup>33</sup>

In response, Jan Tharp, previously Bumble Bee's Chief Operating Officer, took over leadership of the business to navigate it beyond the antitrust lawsuit.<sup>34</sup>

## Declining Seafood Sales

There are competing narratives for Bumble Bee's Chapter 11 bankruptcy filing, which occurred on November 19, 2019. Although one reason for Bumble Bee's Chapter 11 bankruptcy was the antitrust suit (and the company instability that came with it), another reason (and possibly the more relevant) was declining tuna sales in the United States. Since 1998, tuna sales had declined 42% according to the U.S.

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<sup>30</sup> *Former CEO Convicted of Fixing Prices for Canned Tuna*, THE UNITED STATES DEPT. OF JUSTICE, <https://www.justice.gov/opa/pr/former-ceo-convicted-fixing-prices-canned-tuna>

<sup>31</sup> *Id.*

<sup>32</sup> Cliff White, Chris Lischewski reports to prison; Sentencing dates set for Cameron, Hodge, Worsham, SEAFOODSOURCE, <https://www.seafoodsource.com/news/business-finance/chris-lischewski-reports-to-prison-sentencing-set-for-cameron-hodge-worsham>

<sup>33</sup> Michael Volkov, *Bumble Bee CEO Sentenced to 40 Months in Prison for Price-Fixing*, VOLKOV, <https://blog.volkovlaw.com/2020/06/bumble-bee-ceo-sentenced-to-40-months-in-prison-for-price-fixing/>

<sup>34</sup> Cliff White, *Chris Lischewski out as Bumble Bee CEO following price fixing indictment*, SEAFOODSOURCE, <https://www.seafoodsource.com/news/business-finance/chris-lischewski-out-as-bumble-bee-ceo-following-price-fixing-indictment>

Department of Agriculture.<sup>35</sup> From 2013 to 2018, tuna consumption fell 4% due to changing tastes and an up-and-coming younger market of millennials who aren't purchasing as much tuna.<sup>36</sup> Pre-coronavirus projections of tuna sales were unfavorable to the market, and expected to continue to decline year by year.<sup>37</sup>

### **Global Background: Coronavirus**

With the advent of the coronavirus, as people braced for lockdown, dried, packaged, and canned foods were in extremely high demand as people went into quarantine.<sup>38</sup> Bumble Bee Foods benefited as canned tuna had a temporary resurgence with changing consumer preferences. At the advent of the coronavirus, 30% of American adults said that they would be buying more canned goods and 60% of people said they would be buying the same amounts.<sup>39</sup> Across all demographics, an average of 30.4% of people estimated that their purchases would include larger amounts of canned goods, and those estimates turned out to be correct.<sup>40</sup> In the middle of 2020, there were problems keeping cans of food on the shelves in grocery stores as people bought large quantities in the wake of economic instability and uncertainty.<sup>41</sup> Although this resurgence was most likely temporary, Bumble Bee, like many other canned-goods companies, experienced higher profits in the wake of the pandemic. It is unclear whether this brief change in consumer taste can lead to long term rejuvenation of the canned seafood industry. It is important when

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<sup>35</sup> Jessi Devenyns, *Canned tuna sales suffer amid waves of changing tastes*, FOODDIVE, <https://www.fooddive.com/news/canned-tuna-sales-suffer-amid-waves-of-changing-tastes/543497/>

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Lauren Piek, *Consumer Preferences and Grocery Sales During COVID-19*, KERRY, <https://www.kerry.com/insights/kerrydigest/2020/grocery-sales-during-covid-19>

<sup>39</sup> *How consumers expect to alter their spending on canned goods due to coronavirus in the United States as of March 2020*, STATISTA, <https://www.statista.com/statistics/1105031/canned-goods-purchasing-change-due-to-coronavirus-us/>

<sup>40</sup> *Id.*

<sup>41</sup> Scott Tong, *New supply-chain crisis during pandemic: not enough cans for food*, MARKETPLACE, <https://www.marketplace.org/2020/07/24/new-supply-chain-crisis-during-pandemic-not-enough-cans-for-food/>

analyzing the chapter 11 bankruptcy motions and filings to understand the impact that the coronavirus had on this industry and Bumble Bee Foods LLC.

## First Day Motions

On November 21, 2019 (the “Petition Date”), Bumble Bee Foods, LLC filed in the United States Bankruptcy Court for the District of Delaware.<sup>42</sup> Prior to the filing, Bumble Bee entered into an agreement for a sale of substantially all of its assets, subject to overbidding in the to be filed bankruptcy case with FCF Co., Ltd. (“FCF”).<sup>43</sup> Bumble Bee’s Chapter 11 filing was undertaken to facilitate a sale of Bumble Bee or substantially all of its assets to the highest or otherwise best bidder.<sup>44</sup> The same day, Bumble Bee filed several First Day Motions with the court. First Day Motions can be grouped into three categories: 1) Orders Facilitating the Administration of the Estate; 2) Orders that Smooth Day-to-Day Operations; and 3) Substantive Orders.<sup>45</sup> This section addresses each motion in turn, noting its category, purpose, and role in ensuring a successful Chapter 11 bankruptcy for the company.

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<sup>42</sup> Voluntary Petition for Non-Individuals Filing for Bankruptcy [1.pdf](#), In re Bumble Bee Parent, Inc., No. 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 21, 2019) [hereinafter Voluntary Petition].

<sup>43</sup> Declaration of Kent McNeil in Support Chapter 11 Petitions and First Day Motions 17.pdf at 5, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 21, 2019) [hereinafter Declaration of Kent McNeil].

<sup>44</sup> *Id.* at 28-29.

<sup>45</sup> 19 MICHAEL L. BERNSTEIN & GEORGE W. KUNEY, BANKRUPTCY IN PRACTICE 273–274 (Charles J. Tabb ed., 5th ed. 2015).

## Administration of the Estate

### Joint Administration Motion

Bumble Bee Parent, Inc., along with its four affiliates (collectively “Bumble Bee”), filed a motion seeking joint administration of its cases pursuant to Federal Rule of Bankruptcy Procedure 1015.<sup>46</sup> Bumble Bee asserted that its cases were eligible for joint administration under Federal Rule of Bankruptcy Procedure 1015(b) and Local Rule of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) 1015-1 which permit for joint administration when there are 2 or more petitions pending in the same court, the Debtors are affiliates, and joint administration “is warranted and will ease the administrative burden for the Court and the parties.”<sup>47</sup> Bumble Bee argued that the joint administration of its cases would ease the administrative burden upon the court and any interested parties.<sup>48</sup> As part of the joint administration, Bumble Bee requested that the Clerk of the Court maintain only a single docket for cases to simplify the administrative process.<sup>49</sup> The court granted the motion and entered the Debtor’s proposed order.<sup>50</sup>

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<sup>46</sup> Debtors’ Motion for an Order, Pursuant to Bankruptcy Rule 1015 and Local Rule 1015-1, Authorizing the Joint Administration of the Debtors’ Chapter 11 Cases [2.pdf](#), In re Bumble Bee Parent, Inc., No. 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 21, 2019) [hereinafter Motion for Joint Administration].

<sup>47</sup> Fed. R. Bankr. P. 1015(b); Del. Bankr. L.R. 1015-1; Motion for Joint Administration, *supra* note 37, [2.pdf](#) at 5.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Order, Pursuant to Bankruptcy Rule 1015 and Local Rule 1015-1, Authorizing the Joint Administration of the Debtors’ Chapter 11 Cases [53.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 22, 2019).

## Claims and Noticing Agent

Next, Bumble Bee filed an application to appoint Prime Clerk LLC (“Prime Clerk”) as its claims and noticing agent, as is required by Local Rule 2002 1-f.<sup>51</sup> Bumble Bee stated that by appointing Prime Clerk as the claims and noticing agent “the distribution of notices and the processing of claims will be expedited, and the Office of the Clerk of the Bankruptcy Court . . . will be relieved of the administrative burden of processing what may be an overwhelming number of claims.”<sup>52</sup> The court granted the motion the following day, noting that the appointment of Prime Clerk as the claims and noticing agent would greatly reduce the burden on the Clerk and appeared to be in the best interests of the interested parties.<sup>53</sup>

## Consolidated Creditors

Pursuant to Federal Rule of Bankruptcy Procedure 1007(a) and Local Rule 1007-2(a), Bumble Bee filed a motion for certification of its consolidated list of creditors with the court.<sup>54</sup> This order was granted without objection.<sup>55</sup>

## Cash Management System

Bumble Bee then moved to continue use of its current cash management system, maintain its existing bank accounts, continue using its current business forms, continue making intercompany

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<sup>51</sup> Del. Bankr. L.R. 2002 1-f; Debtors’ Application for Appointment of Prime Clerk LLC as Claims and Noticing Agent [3.pdf](#) at 1, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 21, 2019) [hereinafter Claims and Noticing Agent Motion].

<sup>52</sup> *Id.* at 5.

<sup>53</sup> Order Authorizing Retention and Appointment of Prime Clerk LLC as Claims and Noticing Agent [54.pdf](#) at 1-2, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 22, 2019).

<sup>54</sup> Fed. R. Bankr. P. 1007(a); Del. Bankr. L.R. 1007-2(a); Certification of Debtors’ Consolidated List of Creditors [24.pdf](#) at 1, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 21, 2019) [hereinafter Debtors’ Consolidated List of Creditors].

<sup>55</sup> *Id.*



payments and grant administrative superpriority status to those claims, and interim suspension of § 345(b) deposit and investment requirements.<sup>56</sup> Bumble Bee argued that as a debtor in possession it was authorized to operate its current cash management system under § 363(c)(1) which authorizes the debtor in possession to “use property of the estate in the ordinary course of business without notice or a hearing.”<sup>57</sup> Bumble Bee requested the court's express permission to continue these operations due to how critical the uninterrupted operation of its cash management system, intercompany payments and related administrative functions were to a successful reorganization.<sup>58</sup> All of Bumble Bee’s bank accounts other than its account with Kasikornbank were in compliance with the requirements of § 345(b), which requires that the Debtor’s banks be “insured or guaranteed by the United States. . . or backed by the full faith and credit of the United States.”<sup>59</sup> Bumble Bee requested the interim suspension of the requirements of § 345(b) for its Kasikornbank account because it was used to pay expenses related to its operations in Thailand and closing it would cause a substantial disruption to their operations.<sup>60</sup>

The court agreed and granted an interim order the next day granting all requested relief, followed by a final order granting the motion.<sup>61</sup>

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<sup>56</sup> Debtors’ Motion for Interim and Final Orders Authorizing (A) Continued Use of Cash Management System; (B) Maintenance of Existing Bank Accounts; (C) Continued Use of Existing Business Forms; (D) Continued Performance of Intercompany Transactions in the Ordinary Course of Business and Grant of Superpriority Administrative Expense Status for Postpetition Intercompany Claims; and (E) Interim Suspension of Section 345(b) Deposit and Investment Requirements [11.pdf](#) at 1-2, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 21, 2019) [hereinafter Motion to Operate Cash Management System].

<sup>57</sup> 11 U.S.C. § 363(c)(1); Motion to Operate Cash Management System, *supra* note 46, [11.pdf](#) at 15.

<sup>58</sup> *Id.*

<sup>59</sup> 11 U.S.C. § 345(b); Motion to Operate Cash Management System, *supra* note 46, [11.pdf](#) at 24.

<sup>60</sup> *Id.* at 24-25

<sup>61</sup> Interim Order Authorizing (A) Continued Use of Cash Management System; (B) Maintenance of Existing Bank Accounts; (C) Continued Use of Existing Business Forms; (D) Continued Performance of Intercompany Transactions in the Ordinary Course of Business and Grant of Superpriority Administrative Expense Status for Postpetition Intercompany Claims; and (E) Interim Suspension of Section 345(b) Deposit and Investment Requirements [61.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 22, 2019); Final Order Authorizing (A) Continued Use of Cash Management System; (B) Maintenance of Existing Bank Accounts; (C) Continued Use of Existing Business Forms; (D) Continued Performance of Intercompany Transactions in the Ordinary Course of Business and Grant of Superpriority Administrative Expense Status for Postpetition

# Day-to-Day Operations

## Utilities Motion

As a part of the first day motions, the debtors filed a motion to prevent utilities companies from discontinuing services due to the debts from prepetition invoices.<sup>62</sup> At the time, the Debtors had a reasonably good credit history with their utility companies, and likely intended to continue making payments throughout the bankruptcy process.<sup>63</sup> They hoped that after the sale, the majority of their assets would remain intact, and that the majority of its ordinary operations would be able to continue unhindered under a potential buyer.

However, under § 366 of the Bankruptcy Code, Bumble Bee was required to provide its utility companies adequate assurance of future performance.<sup>64</sup> To meet this requirement, the Debtors proposed paying a deposit of \$175,000 which would amount to roughly half of their aggregate monthly cost for the period after the petition.<sup>65</sup> The motion also provided that the individual companies could request additional payments if they found the proposal to be insufficient assurance.<sup>66</sup> However, it exempted several entities from the order, namely, San Diego Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and Atlantic City Electric Company due to their

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Intercompany Claims; and (E) Interim Suspension of Section 345(b) Deposit and Investment Requirements [152.pdf](#), In re Bumble Bee Parent, Inc., 19-2502 (LSS) (Bankr. D. Del. Filed Dec. 18, 2019).

<sup>62</sup> Motion Prohibiting Utilities from Discontinuing Service , Deeming Utility Companies Adequately Assured of Future Payment, Establishing Procedures for Determining Additional Adequate Assurance of Payment, and Granting Related Relief, Including Setting a Final Hearing Related Thereto [4.pdf](#) at 1, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 21, 2019) [hereinafter Utilities Motion].

<sup>63</sup> *Id.* at 3.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 4.

<sup>66</sup> *Id.* at 5 .

objections that the adequate assurance proposed by Bumble Bee was insufficient.<sup>67</sup> Before any objections were filed, the court instituted an interim order that approved the Debtor's motion.<sup>68</sup> However, it also provided a mechanism for the companies to object before the final order was instituted. Several of the companies subsequently filed objections.<sup>69</sup>

Several utility companies raised objections to the proposed assurance amount. The California companies joined in an objection which raised several important issues.<sup>70</sup> The first of these was that the plain language of § 366 does not recognize the debtors' proposed assurance account, and second, that these utilities bill on a monthly basis, and the debtors' proposed two-week account balance was insufficient to provide adequate assurance of performance, as required by the statute.<sup>71</sup> Alternatively, they proposed that the order be amended to require payment two months in advance to achieve adequate assurance.<sup>72</sup>

In its separate objection, Atlantic City Electric Company argued that the proposed procedures by the debtors required the utility company to serve notice and provide information regarding the account,

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<sup>67</sup> Final Order, Pursuant to Sections 105(a) and 366 of the Bankruptcy Code, (I) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services (II) Deeming Utility Companies Adequately Assured of Future Payment, (III) Establishing Procedures for Determining Additional Adequate Assurance of Payment, (IV) and Granting Related Relief [148.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 18, 2019) [hereinafter Utilities Final Order].

<sup>68</sup> Interim Order, Pursuant to Sections 105(a) and 366 of the Bankruptcy Code, (I) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services (II) Deeming Utility Companies Adequately Assured of Future Payment, (III) Establishing Procedures for Determining Additional Adequate Assurance of Payment, (IV) and Granting Related Relief, Including Setting a Final Hearing [55.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 11, 2019) [ hereinafter Utilities Interim Order].

<sup>69</sup> *Id.* at 2.

<sup>70</sup> Objection of San Diego Gas and Electric Company, Southern California Edison Company and Southern California Gas Company To the Debtors' Motion For Interim and Final Orders, Pursuant To Sections 105(a) and 366 of the Bankruptcy Code, (I) Prohibiting Utility Companies From Altering, Refusing, or Discontinuing Utility Services, (II) Deeming Utility Companies Adequately Assured of Future Payment, (III) Establishing Procedures For Determining Additional Adequate Assurance of Payment, and (IV) Granting Related Relief, Including Setting a Final Hearing [114.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 10, 2019). [hereinafter California Utility Objection].

<sup>71</sup> *Id.* at 2.

<sup>72</sup> *Id.*

and that these requirements were extraneous, and not required under § 366.<sup>73</sup> In addition, they requested two months of payment in an advance account as adequate assurance.<sup>74</sup> This, among other issues, prompted the Debtors to present a revised motion, which omitted the objecting companies from enforcement under the standard assurances, which was approved by the court and excluded the objecting companies from the agreement and their treatment was instead resolved through an out of court settlement.<sup>75</sup>

### Employee Wages Motion

To keep the day-to-day operations of Bumble Bee running smoothly, Bumble Bee next filed a motion requesting the authorization to pay its employees, independent contractors, and staffing agencies their accrued prepetition wages.<sup>76</sup> As of the petition date, Bumble Bee employed approximately 500 employees.<sup>77</sup> In addition to the employees there were a number of independent contractors and supplemental workers hired through staffing agencies. As of the petition date there was approximately \$4,386,000 of outstanding wages, benefits, and related expenses.<sup>78</sup> Bumble Bee argued that without the

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<sup>73</sup> Objection of Atlantic City Electric Company To Debtors Motion For Interim And Final Orders, Pursuant To Sections 105(A) And 366 Of The Bankruptcy Code, (I) Prohibiting Utility Companies From Altering, Refusing, Or Discontinuing Utility Services, (II) Deeming Utility Companies Adequately Assured Of Future Payment, (III) Establishing Procedures For Determining Additional Adequate Assurance Of Payment, And (IV) Granting Related Relief, Including Setting A Final Hearing Related Thereto [118.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 10, 2019). [hereinafter Atlanta Utility Objection].

<sup>74</sup> *Id.*

<sup>75</sup> Utilities Final Order, *supra* note 58, [148.pdf](#) at 2.

<sup>76</sup> Debtors' Motion for Entry of Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 363(c), 507(a)(4), and 507(a)(5) of the Bankruptcy Code, (A) Authorizing (I) Payment of Prepetition Employee Wages, Salaries, and Other Compensation; (II) Payment of Prepetition Employee Business Expenses; (III) Contributions to Prepetition Employee Benefit Programs and Continuation of Such Programs in the Ordinary Course; (IV) Payment of Workers' Compensation Obligations; (V) Payments for Which Prepetition Payroll Deductions Were Made; (VI) Payment of All Costs and Expenses Incident to the Foregoing Payments and Contributions; and (VII) Payment to Third Parties of All Amounts Incident to the Foregoing Payments and Contributions; (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto; and (C) Granting Related Relief [5.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 21, 2019). [hereinafter Motion for Prepetition Wages]

<sup>77</sup> *Id.* at 3.

<sup>78</sup> *Id.* at 6.

authorization to pay prepetition wages the disruption to its operations would cause irreparable harm to both the company and its relationship with the employees and staffing agencies.<sup>79</sup> Further, claims for unpaid wages from the 180 days immediately preceding the petition date are entitled to priority status in an amount not exceeding \$13,650 under § 507(a)(4).<sup>80</sup> Bumble Bee asserted that in light of the priority status granted wage and benefits claims and the irreparable harm both the employees and company would likely have suffered if wages were not paid, the court should grant the relief requested.<sup>81</sup>

The following day the court granted an interim order allowing for payment of all prepetition claims in an amount not to exceed the \$13,650 statutory cap in each claimant and limits the aggregate amount of all payments to \$1,486,000 pending the entry of the final order.<sup>82</sup> The final order kept in place the \$13,650 section 507(a)(4) statutory cap but raised the aggregate cap to \$4,836,000.<sup>83</sup> Additionally, in the final order the court lifted the section 362(a) automatic stay for all aspects of workers' compensation claims.<sup>84</sup>

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<sup>79</sup> *Id.* at 20.

<sup>80</sup> 11 U.S.C. 507(a)(4).

<sup>81</sup> Motion for Prepetition Wages, *supra* note 59, [5.pdf](#) at 21-23.

<sup>82</sup> Interim Order, Pursuant to Sections 105(a), 363(b), 363(c), 507(a)(4), and 507(a)(5) of the Bankruptcy Code, (A) Authorizing (I) Payment of Prepetition Employee Wages, Salaries, and Other Compensation; (II) Payment of Prepetition Employee Business Expenses; (III) Contributions to Prepetition Employee Benefit Programs and Continuation of Such Programs in the Ordinary Course; (IV) Payment of Workers' Compensation Obligations; (V) Payments for Which Prepetition Payroll Deductions Were Made; (VI) Payment of All Costs and Expenses Incident to the Foregoing Payments and Contributions; and (VII) Payment to Third Parties of All Amounts Incident to the Foregoing Payments and Contributions; (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto; and (C) Granting Related Relief [56.pdf](#) at 3, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 22, 2019).

<sup>83</sup> Final Order, Pursuant to Sections 105(a), 363(b), 363(c), 507(a)(4), and 507(a)(5) of the Bankruptcy Code, (A) Authorizing (I) Payment of Prepetition Employee Wages, Salaries, and Other Compensation; (II) Payment of Prepetition Employee Business Expenses; (III) Contributions to Prepetition Employee Benefit Programs and Continuation of Such Programs in the Ordinary Course; (IV) Payment of Workers' Compensation Obligations; (V) Payments for Which Prepetition Payroll Deductions Were Made; (VI) Payment of All Costs and Expenses Incident to the Foregoing Payments and Contributions; and (VII) Payment to Third Parties of All Amounts Incident to the Foregoing Payments and Contributions; (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto; and (C) Granting Related Relief [149.pdf](#) at 3, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 18, 2019).

<sup>84</sup> *Id.* at 4.

## Motion to Pay Prepetition Taxes

As one of its first day motions Bumble Bee moved for authorization to pay certain prepetition taxes, including sales and use taxes, gross receipts taxes, real and personal property taxes, franchise taxes, and other miscellaneous taxes.<sup>85</sup> As of the petition date, Bumble Bee had approximately \$350,000 due in current taxes.<sup>86</sup> Bumble Bee proposed that the interim order grant them the authority to pay up to \$50,000 in taxes and that the final order grant them the authority to pay the full \$350,000.<sup>87</sup>

First, Bumble Bee argued that the court should grant its motion under the power of the debtor in possession to use property of the estate outside of the regular course of business upon notice and hearing found in section 363(b)(1) and the court's ability to use its equitable powers under section 105(a).<sup>88</sup> Bumble Bee requested the court grant its motion pursuant to these powers because the payment of its prepetition taxes was critical to Bumble Bee's continued functioning and necessary to maximize the value of the estate.<sup>89</sup> Next, Bumble Bee argued that to the extent the taxes are entitled to postpetition priority, the court should grant its motion because paying the taxes now would only alter the timing of the payment not the amount. Finally, Bumble Bee argued that because many of the taxes are "trust fund" taxes and as such it had no right to the amounts collected on account of those taxes.<sup>90</sup> The court agreed and entered an interim order followed by a final order granting the requested relief.<sup>91</sup>

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<sup>85</sup> Debtors' Motion for Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 507(a)(8), 541, 1107(a), and 1108 of the Bankruptcy Code, (I) Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees and Related Obligations and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto [6.pdf](#) at 1, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 21, 2019) [hereinafter Motion to Pay Prepetition Taxes].

<sup>86</sup> *Id.* at 4.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 5 (citing 11 U.S.C. § 363(b)(1); 11 U.S.C. 105(a)).

<sup>89</sup> *Id.* at 6-7.

<sup>90</sup> *Id.* at 7.

<sup>91</sup> Interim Order, Pursuant to Sections 105(a), 363(b), 507(a)(8), 541, 1107(a), and 1108 of the Bankruptcy Code, (I) Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees and Related Obligations and (II) Authorizing

## Insurance Policies Motion

Next, Bumble Bee moved for authorization to continue and if necessary renew its current insurance policies, as well as to pay policy premiums and other fees arising under the policies, including prepetition obligations.<sup>92</sup> Bumble Bee argued that maintaining its insurance policies was a crucial ordinary course of business transaction, vital to its continued operations.<sup>93</sup> Bumble Bee asserted that should its policies be allowed to lapse it would expose them to substantial liability and could result in its insurers refusing to enter into new policies.<sup>94</sup> As a result, Bumble Bee asked the court to explicitly grant them the authority to maintain the current insurance policies and renew them as needed, pursuant to sections 363(b) and 105(a) of the Bankruptcy Code.<sup>95</sup> The court granted both the proposed interim and final orders.<sup>96</sup>

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Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto [57.pdf](#) at 2, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 22, 2021); Pursuant to Sections 105(a), 363(b), 507(a)(8), 541, 1107(a), and 1108 of the Bankruptcy Code, (I) Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees and Related Obligations and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto [165.pdf](#) at 2, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 19, 2021).

<sup>92</sup> Debtors' Motion for Interim and Final Orders, Pursuant to Sections 105(a) and 363 of the Bankruptcy Code, (I) Authorizing Payment of Prepetition Obligations Incurred in the Ordinary Course of Business In Connection With Insurance Programs, Including Payment of Policy Premiums and Broker Fees; and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto [7.pdf](#) at 1, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 19, 2021).

<sup>93</sup> *Id.* at 4.

<sup>94</sup> *Id.* at 5.

<sup>95</sup> *Id.* at 6.

<sup>96</sup> Interim Order, Pursuant to Sections 105(a) and 363 of the Bankruptcy Code, (I) Authorizing Payment of Prepetition Obligations Incurred in the Ordinary Course of Business In Connection With Insurance Programs, Including Payment of Policy Premiums and Broker Fees; and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto [58.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 22, 2019); Final Order, Pursuant to Sections 105(a) and 363 of the Bankruptcy Code, (I) Authorizing Payment of Prepetition Obligations Incurred in the Ordinary Course of Business In Connection With Insurance Programs, Including Payment of Policy Premiums and Broker Fees; and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto [150.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 18, 2019).

## Customer Programs Motion

Next, in order to keep day to day operations running smoothly, Bumble Bee moved for authorization to continue its customer programs and honor related prepetition obligations in the ordinary course of business.<sup>97</sup> Bumble Bee's motion explained that in order to keep its business operational it was necessary to continue the customer programs in the ordinary course of business.<sup>98</sup> The customer programs include various marketing, loyalty, and pricing programs designed to retain its current customers and remain competitive in the marketplace.<sup>99</sup> First, Bumble Bee argued that under section 363(b) they had the authority to continue the programs in the ordinary course of business as a debtor in possession.<sup>100</sup> Next, Bumble Bee argued that even if they lacked such authority, the court should grant it to them pursuant to section 363(c) and the court's equitable powers under section 105(a).<sup>101</sup> Bumble Bee emphasized that the continuation of these programs and honoring related prepetition obligations was crucial to maintaining its customer base and thus imperative to a successful reorganization.<sup>102</sup> The court agreed and entered an interim order allowing for continuation of the customer programs and allowing Bumble Bee to honor the related prepetition obligations, so long as the amount of cash paid on account of the prepetition customer obligations did not exceed \$400,000 pending entry of a final order.<sup>103</sup> The court

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<sup>97</sup> Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Honor and Continue Customer Programs and Customer Obligations in the Ordinary Course of Business and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto [8.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 21, 2021) [hereinafter Customer Programs Motion].

<sup>98</sup> *Id.* at 3.

<sup>99</sup> *Id.* at 4-5.

<sup>100</sup> *Id.* at 9.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> Interim Order (I) Authorizing the Debtors to Honor and Continue Customer Programs and Customer Obligations in the Ordinary Course of Business and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto [59.pdf](#) at 2, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 22, 2019) [hereinafter Interim Customer Programs Order].



subsequently entered a final order increasing the cap on payment of prepetition customer obligations to \$1,200,000.<sup>104</sup>

## Substantive Motions

### Enforcement of the Section 362 Automatic Stay

Bumble Bee also moved the court for an order instituting and confirming the applicability of the automatic stay of Bankruptcy Code section 362 with regard to their assets and operations, wherever located.<sup>105</sup> Bumble Bee argued this would merely confirm its authority to continue normal operations.<sup>106</sup> However, because many of its distributors were foreign companies from nations unfamiliar with Chapter 11, Bumble Bee requested the authority to notify these distributors of the automatic stay and its relevant protections.<sup>107</sup> In addition, they requested that this notice inform the foreign distributors that Bumble Bee was authorized to continue normal operations pursuant Bankruptcy Code sections 1107 and 1108.<sup>108</sup> However, the court believed that the initially proposed language describing the scope of the automatic stay protections was overly broad.<sup>109</sup> After receiving comments from the court Bumble Bee proposed

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<sup>104</sup> Final Order (I) Authorizing the Debtors to Honor and Continue Customer Programs and Customer Obligations in the Ordinary Course of Business and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto [151.pdf](#) at 2, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 18, 2019) [hereinafter Final Customer Programs Order].

<sup>105</sup> Motion Regarding Chapter 11 First Day Motions // Debtors' Motion for an Order Enforcing Section 362 of the Bankruptcy Code and Confirming the Debtors' Authority with Respect to Postpetition Operations [9.pdf](#) at 1, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 21, 2019) [hereinafter Section 362 Motion].

<sup>106</sup> *Id.* at 3.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> Certification of Counsel Submitting Revised Proposed Order Confirming Section 362 of the Bankruptcy Code and the Debtors' Authority with Respect to Postpetition Operations [74.pdf](#) at 1, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 25, 2019).

new language which more narrowly defined the scope of the automatic stay.<sup>110</sup> The court entered the order as amended and allowed notification of the foreign distributors.<sup>111</sup>

### Goods Ordered Prepetition & Received Postpetition

Through its first day motions, Bumble Bee also sought to secure the continued delivery of goods through a motion granting administrative expense priority for goods ordered prepetition and received postpetition under § 503 of the Bankruptcy Code, this would allow business operations to continue unhindered.<sup>112</sup> Without this motion being granted, Bumble Bee expressed concerns that the flow of critical goods could be slowed, damaging the company's market value and revenue stream.<sup>113</sup> The proposed order was approved without issue and gave the Debtor's the flexibility to pay pre-petition charges at their option in order to continue regular day-to-day operations.<sup>114</sup>

### Debtor in Possession Financing Motion

In order to successfully effectuate the bidding and sale process, Bumble Bee required additional liquidity to continue operating in the ordinary course of business.<sup>115</sup> Bumble Bee asserted that acquiring

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<sup>110</sup> *Id.*

<sup>111</sup> Order Confirming Section 362 of the Bankruptcy Code and the Debtors' Authority with Respect to Postpetition Operations [78.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 26, 2019) [hereinafter Section 362 Final Order].

<sup>112</sup> Motion Regarding Chapter 11 First Day Motions // Debtors' Motion for Entry of an Order (I) Granting Administrative Expense Priority to All Undisputed Obligations for Goods Ordered Prepetition and Received Postpetition and Authority to Satisfy Such Obligations in the Ordinary Course of Business, and (II) Granting Related Relief [10.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 21, 2019) [hereinafter Administrative Expense Motion].

<sup>113</sup> *Id.* at 4.

<sup>114</sup> Order (I) Granting Administrative Expense Priority to All Undisputed Obligations for Goods Ordered Prepetition and Received Postpetition and Authority to Satisfy Such Obligations in the Ordinary Course of Business, and (II) Granting Related Relief [60.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 22, 2019) [hereinafter Administrative Expense Order].

<sup>115</sup> Debtors' Motion for Entry of interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral; (II) Granting Liens and Superpriority Administrative Expense Claims; (III) Granting Adequate Protection; (IV) Modifying Automatic Stay; (V) Scheduling Final Hearing; and

the additional funding to support its ongoing operations and continue as a going concern was of the utmost importance to the success of its Chapter 11.<sup>116</sup> The proposed funding consists of two different facilities: (a) a new money multiple draw term loan (“Term Loan DIP Facility”) of up to \$80 million provided by Bumble Bee’s prepetition term loan providers; and (b) an asset based revolving credit facility (“ABL DIP Facility”) of up to \$200 million provided by Bumble Bee’s prepetition ABL lenders.<sup>117</sup> At the moment it is sufficient to say that the Court granted Bumble Bee’s motion for debtor in possession financing.<sup>118</sup> The [Debtor in Possession Financing section](#) addresses this issue in greater detail.<sup>119</sup>

### Critical Trade Vendors Motion

To keep operations flowing smoothly during the transition to Chapter 11, Bumble Bee requested authorization to pay the prepetition claims of certain: (a) foreign vendors and service providers (“Foreign Vendor Claims”); (b) critical domestic trade vendors (“Domestic Critical Vendors”); and (c) shippers, warehousemen, and lien holders (“Lien Claims”).<sup>120</sup>

Regarding the Foreign Vendor Claims, Bumble Bee expressed concern that, in the absence of continued payments, many of its foreign vendors, who were unfamiliar with Chapter 11, might attempt to

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(VI) Granting Related Relief [12.pdf](#) at 3, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 21, 2019) [hereinafter DIP Financing Motion].

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral; (II) Granting Liens and Superpriority Administrative Expense Claims; (III) Granting Adequate Protection; (IV) Modifying Automatic Stay; (V) Scheduling Final Hearing; and (VI) Granting Related Relief [173.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 19, 2019) [hereinafter DIP Financing Final Order].

<sup>119</sup> See *infra* [Debtor in Possession Financing](#).

<sup>120</sup> Debtors’ Motion for Entry of Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 503(b), 1107(a), and 1108 of the Bankruptcy Code, (I) Authorizing the Debtors to Pay Certain Prepetition Claims of (A) Foreign Vendors; (B) Domestic Critical Vendors; and (C) Lienholders; (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto; and (III) Granting Certain Related Relief [16.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 19, 2019).

obtain and collect judgments against property of the estate.<sup>121</sup> Accordingly, Bumble Bee wished to continue making uninterrupted payments to its critical foreign vendors to avoid costly and time consuming litigation.<sup>122</sup> Bumble Bee estimated that as of the petition date, in the aggregate, they owed \$58.4 million on the Foreign Vendor Claims, with \$28.6 million that would be due within the first thirty days of the Chapter 11 case.<sup>123</sup>

Bumble Bee took pains to emphasize the importance of its relationship with FCF, which supplied Bumble Bee with nearly all of its fish products and held a 23% passive, minority equity position in Bumble Bee. Bumble Bee argued that it should be authorized to continue making payments in the ordinary course of business to FCF, because, as its single most important supplier, as well as potential purchaser, it was of paramount importance to maintain a good relationship.<sup>124</sup> Further, Bumble Bee asserted that even without critical vendor status, in any realistic Chapter 11 scenario FCF would ultimately be paid in full on its prepetition claims. Because of the critical nature of the supply relationship, any feasible Chapter 11 outcome would require assumption of FCF's supply contract and any default upon it would naturally have to be cured as required by 11 U.S.C. section 365(b).<sup>125</sup>

Bumble Bee argued that authorization to continue paying the Domestic Critical Trade Vendors Claims was necessary because many of the goods and services they provided were unique to those specific vendors and could not easily be acquired elsewhere should their relationship deteriorate.<sup>126</sup> Bumble Bee further asserted that failure to maintain these critical vendor relationships would result in a

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<sup>121</sup> *Id.* at 4.

<sup>122</sup> *Id.* at 5.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 8-9.

<sup>125</sup> *Id.* at 10.

<sup>126</sup> *Id.*

substantial disruption to its operations.<sup>127</sup> This interruption would then lead to a decrease in the value of the estate, and in order to avoid this outcome, the court should grant Bumble Bee authorization to continue making payments on the prepetition claims.

The Lien Claims consisted of claims largely held by shipping companies and warehousing companies who physically possessed large quantities of Bumble Bee’s products and supplies.<sup>128</sup> Bumble Bee argued that the court should authorize payment of the Lien Claims because failure to do so could result in the lien holders asserting their possessory liens over the goods in question.<sup>129</sup> Such an outcome would have had a serious impact on Bumble Bee’s supply chain and would have been detrimental to the estate.<sup>130</sup>

In order to avoid the above-mentioned undesirable outcomes, Bumble Bee proposed the following payment caps for the interim and final orders:

	<b>Proposed Interim Order Cap</b>	<b>Proposed Final Order Cap</b>
<b>Lien Claims</b>	\$3.6 million	\$3.6 million
<b>Domestic Critical Vendor Claims</b>	\$4.3 million	\$4.4 million
<b>Foreign Vendor Claims</b>	\$28.6 million	\$58.4 million

Table 1: Proposed Interim and Final Order Cap<sup>131</sup>

The court ruled on the interim order at a telephonic hearing on November 25, 2019. The court indicated that it would grant the interim relief requested other than with respect to FCF. Regarding FCF, the court allowed the interim relief requested only to the extent of FCF’s claim under section 503(b)(9) of the

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<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 11.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 11-12.

<sup>131</sup> *Id.* at 13.

bankruptcy code.<sup>132</sup> Under section 503(b)(9) a claim is given priority as an administrative expense to the extent of “the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.”<sup>133</sup> In its revised proposed interim order Bumble Bee disallowed all payments to FCF, reducing the amount authorized for payment to foreign vendors from \$28.6 million to \$3.9 million.<sup>134</sup> The court granted this interim order.<sup>135</sup>

Upon the formation of the official unsecured creditors’ committee (the “Creditors’ Committee”), the committee promptly filed a notice of reservation of rights regarding FCF’s proposed treatment under final critical vendor’s order.<sup>136</sup> The Creditors’ Committee began by establishing that, within the definition of sections 101(a)(31)(E) and 101(a)(2) of the Bankruptcy Code, FCF is an insider of Bumble Bee because they own greater than 20% of Bumble Bees equity through its affiliate Big Catch 1, L.P.<sup>137</sup> Moving forward with this information in mind, the Creditors’ Committee asserted they believed that Bumble Bee and FCF were colluding to control its liquidity “by buying mass quantities of fish and

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<sup>132</sup> Certification of Counsel Submitting Revised Proposed Interim Order, Pursuant to Sections 105(a), 363(b), 503(b), 1107(a), and 1108 of the Bankruptcy Code, (I) Authorizing the Debtors to Pay Certain Prepetition Claims of (A) Foreign Vendors; (B) Domestic Critical Vendors; and (C) Lienholders; (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto; and (III) Granting Certain Related Relief [73.pdf](#) at 1-2, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 25, 2019) [hereinafter Revised Proposed Interim Critical Vendor Order].

<sup>133</sup> 11 U.S.C. 503(b)(9).

<sup>134</sup> Revised Proposed Interim Critical Vendor Order, *supra* note 121, [73.pdf](#) at 4.

<sup>135</sup> Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 503(b), 1107(a), and 1108 of the Bankruptcy Code, (I) Authorizing the Debtors to Pay Certain Prepetition Claims of (A) Foreign Vendors; (B) Domestic Critical Vendors; and (C) Lienholders; (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto; and (III) Granting Certain Related Relief [77.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 26, 2019).

<sup>136</sup> Official Committee of Unsecured Creditors’ Reservation of Rights in Connection With Debtors’ Motion for Entry of Interim and Final Orders, Pursuant to Sections 105(a), 365(b), 503(b), 1107(a), and 1108 of the Bankruptcy Code, (I) Authorizing the Debtors to Pay Certain Prepetition Claims of (A) Foreign Vendors; (B) Domestic Critical Vendors; and (C) Lienholders; (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto; and (III) Granting Certain Related Relief [145.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 17, 2019).

<sup>137</sup> *Id.* at 2.

holding on to excessive amounts of inventory.”<sup>138</sup> The Creditors’ Committee further claimed that it was necessary to perform further investigation into the nature of the relationship between FCF and Bumble Bee to determine how they arrived at the \$51 million prepetition amount FCF was allegedly owed.<sup>139</sup> The Creditors’ Committee argued that it was critical to investigate these transactions further because the suggested payments to FCF would have the effect of draining the estate of all liquidity and further reduce the likelihood of a competing bid for substantially all of Bumble Bee’s assets.<sup>140</sup> The Creditors’ Committee acknowledged that while Bumble Bee and FCF were likely to arrive at an agreed upon stipulation settling the issue, the nature of FCF and Bumble Bee’s relationship required close scrutiny of any agreement as well.<sup>141</sup>

The court granted a final order which expressly disallowed any payments to FCF on account of its prepetition claims.<sup>142</sup> Eventually, FCF’s status as a critical or foreign vendor claimant was resolved through a court approved stipulated order.<sup>143</sup> Under the stipulation, FCF agreed not to pursue any of its prepetition claims until one of three triggering events occurred: (1) the effective date of the assumption of Bumble Bee’s tuna supply contract with FCF under section 365 of the Bankruptcy Code; (2) the effective date of the rejection of Bumble Bee’s tuna supply contract with FCF under section 365 of the Bankruptcy Code; or (3) the consummation date of the sale of Bumble Bee or substantially all of Bumble Bee’s

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<sup>138</sup> *Id.* at 5.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> Final Order, Pursuant to Sections 105(a), 363(b), 503(b), 1107(a), and 1108 of the Bankruptcy Code, (I) Authorizing the Debtors to Pay Certain Prepetition Claims of (A) Foreign Vendors; (B) Domestic Critical Vendors; and (C) Lienholders; (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto; and (III) Granting Certain Related Relief [172.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 19, 2019).

<sup>143</sup> Order Approving Stipulation Resolving Critical and Foreign Vendor Relief for FCF Co. Ltd [201.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 27, 2019).

assets.<sup>144</sup> The court found this to be an acceptable compromise and granted an order approving the stipulation.<sup>145</sup>

## Motions to Retain Professionals

Bumble Bee next moved the court for authorization to retain and employ the professionals they believed necessary to complete a successful reorganization. Bumble Bee also requested that all of the professionals be appointed *nunc pro tunc* effective as of the petition date, as the motions were not filed until several days after the petition date.<sup>146</sup> Bumble Bee sought to retain the necessary professionals to execute a successful restructuring pursuant to section 327(a) of the Bankruptcy Code which provides for that a debtor subject to court approval:

may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor] in carrying out the [debtor's] duties under this title.<sup>147</sup>

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<sup>144</sup> *Id.* at 5.

<sup>145</sup> *Id.* at 1.

<sup>146</sup> See Debtors' Application for an Order, Pursuant to Section 327(a) of the Bankruptcy Code, Authorizing the Retention and Employment of Young Conaway Stargatt & Taylor, LLP as Cocounsel to the Debtors, Nunc Pro Tunc to the Petition Date [85.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 27, 2019) [hereinafter Motion to Employ Stargatt & Taylor as Co Counsel]; Debtors' Application for Entry of an Order Authorizing the Employment and Retention of AlixPartners, LLP as Financial Advisor for the Debtors Nunc Pro Tunc to the Petition Date [86.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 27, 2019) [hereinafter Motion to Employ AlixPartners as Financial Advisor]; Application of the Debtors, Pursuant to 11 U.S.C. §§ 327(a) and 328(a), Fed. R. Bankr. P. 2014 and 5002, and Del. Bankr. L.R. 2014-1 and 2016-2(h), for Entry of an Order (I) Authorizing Employment and Retention of Houlihan Lokey Capital, Inc. as Financial Advisor and Investment Banker for the Debtors Nunc Pro Tunc to the Petition Date, and (II) Modifying Certain Information Requirements of Del. Bankr. L.R. 2016-2 [87.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 27, 2019) [hereinafter Motion to Employ Houlihan Lokey as Investment Banker]; Debtors' Application for an Order Authorizing the Retention and Employment of KPMG LLP as Tax Consultant and Accounting Advisor to the Debtors, Nunc Pro Tunc to the Petition Date [88.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 27, 2019) [hereinafter Motion to Employ KPMG as Tax and Accounting Advisor]; Debtors' Application for an Order Authorizing Employment and Retention of Prime Clerk LLC as Administrative Advisor Nunc Pro Tunc to the Petition Date [89.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 27, 2019) [hereinafter Motion to Employ Prime Clerk as Administrative Advisor]; Debtors' Application for an Order Authorizing the Retention and Employment of Paul, Weiss, Rifkind, Wharton & Garrison LLP as Attorneys for the Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date [91.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 27, 2019) [hereinafter Motion to Employ Paul Weiss].

<sup>147</sup> 11 U.S.C. § 327(a).



Each motion for an order authorizing retention and employment of professionals is addressed below in turn.

## Lead Counsel - Paul, Weiss, Rifkind, Wharton, & Garrison LLP

Bumble Bee sought to employ Paul, Weiss, Rifkind, Wharton, & Garrison LLP (“Paul, Weiss”) as its lead counsel for purposes of its Chapter 11 cases.<sup>148</sup> Bumble Bee primarily argued that Paul, Weiss’s extensive experience in representing successful Chapter 11 Debtors and their ability as a full service law firm able meet all needs, qualified them to represent Bumble Bee.<sup>149</sup> Bumble Bee also noted that Paul Weiss had represented Bumble Bee in the civil antitrust litigation leading up to the filing and helped perform substantial work to prepare for the Chapter 11 filing.<sup>150</sup> Bumble Bee asserted that replacing Paul Weiss at this stage would be time consuming and costly to the estate and that because they are more than qualified to continue representation of Bumble Bee, the court should authorize their employment<sup>151</sup>

Bumble Bee asserted that Paul, Weiss’s hourly rates were reasonable and designed to fairly compensate them for the work provided. Paul, Weiss’s hourly rates at the time were:

<u>Billing Category<sup>3</sup></u>	<u>U.S. Range</u>
Partners	\$1,225.00 - \$1,650.00
Counsel	\$1,160 - \$1,200.00
Associates	\$665.00 - \$1,110.00
Paraprofessionals	\$115.00 - \$380.00

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<sup>148</sup> Motion to Employ Paul Weiss as Debtors Counsel, *supra* note 148, [91.pdf](#) at 1.

<sup>149</sup> *Id.* at 3.

<sup>150</sup> *Id.* at 4.

<sup>151</sup> *Id.* at 5-6.

## Table 2: Paul Weiss Billing Rates<sup>152</sup>

Prior to the petition date Bumble Bee paid Paul, Weiss \$7,151,204.70 as a general retainer.<sup>153</sup> Also prior to the petition date, Paul, Weiss had billed Bumble Bee for \$6,805,882.40 for work performed in connection with its attempted restructuring.<sup>154</sup> As of the petition date Bumble Bee did not owe Paul, Weiss any outstanding fees and it had \$345,322.30 remaining on the retainer.<sup>155</sup>

Upon an informal request by the U.S. Trustee, Bumble Bee amended the proposed order to include language requiring application of any remaining prepetition retainer amount to postpetition fees incurred<sup>156</sup> and stipulating that Paul, Weiss shall not seek payment for any fees incurred during any fee disputes with the Debtor, without prior court authorization.<sup>157</sup> The court accepted the revised proposed order and granted the order as amended.<sup>158</sup>

## Co-Counsel - Young Conaway Stargatt & Taylor, LLP

Bumble Bee next requested an order authorizing employment of Young Conaway Stargatt & Taylor, LLP (“Young Conaway”) as co-counsel.<sup>159</sup> Bumble Bee primarily argued that because Young

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<sup>152</sup> *Id.* at 6.

<sup>153</sup> *Id.* at 7.

<sup>154</sup> *Id.* at 8.

<sup>155</sup> *Id.*

<sup>156</sup> The U.S. Trustee required the professionals to waive any prepetition claim, so they did not hold “an interest adverse to the estate” and remained a disinterested party as defined in section 101(14) of the Bankruptcy Code and required by section 327(a) of the Bankruptcy Code. 11 U.S.C. 101(14); 11 U.S.C. 327(a).

<sup>157</sup> Certification of Counsel Regarding Revised Proposed Order Authorizing the Retention and Employment of Paul, Weiss, Rifkind, Wharton, & Garrison LLP as Attorneys for the Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date [135.pdf](#) at 12, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 17, 2019) [hereinafter Revised Proposed Order Authorizing Employment of Paul, Weiss].

<sup>158</sup> Order Authorizing the Retention and Employment of Paul, Weiss, Rifkind, Wharton & Garrison LLP as Attorneys for the Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date [155.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 18, 2019).

<sup>159</sup> Motion to Employ Stargatt & Taylor as Co Counsel, *supra* note 148, [85.pdf](#).

Conaway was intimately familiar with the details of its case and their rates were reasonable, the court should authorize their employment.<sup>160</sup> Prior to filing for bankruptcy, Bumble Bee had retained Young Caraway to assist in preparing the documents necessary to file for Chapter 11.<sup>161</sup> In the motion Bumble Bee argued that their prepetition relationship should be allowed to continue to ensure a smooth transition into Chapter 11. Young Conaway proposed the following hourly rates:

Professional	Hourly Rate
Pauline K. Morgan	\$975.00 per hour
Ryan M. Bartley	\$530.00 per hour
Ashley E. Jacobs	\$530.00 per hour
Elizabeth S. Justison	\$485.00 per hour
Jared W. Kochenash	\$325.00 per hour
Catherine C. Lyons	\$325.00 per hour
Michelle E. Smith	\$285.00 per hour

Table 3: Young Conaway Billing Rates<sup>162</sup>

Upon an informal request by the U.S. Trustee, Bumble Bee amended the proposed order to include language requiring application of any prepetition retainer, remaining after reconciliation of

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<sup>160</sup> *Id.* at 3.

<sup>161</sup> *Id.* at 7.

<sup>162</sup> *Id.* at 5.

prepetition fees, to postpetition fees incurred.<sup>163</sup> The court approved the revised proposed order without further objection.<sup>164</sup>

## Financial Advisor - AlixPartners, LLP

Bumble Bee next requested authorization to employ AlixPartners, LLP (“AlixPartners”) as financial advisor.<sup>165</sup> Bumble Bee asserted that it was necessary to employ a financial advisor because of the complex nature of its business and because Bumble Bee needed assistance in pursuing transactions that “are crucial to the success of the Chapter 11 Cases.”<sup>166</sup> Bumble Bee argued that in light of AlixPartners experience in large Chapter 11 cases, outstanding reputation, and prepetition relationship with Bumble Bee they were the best choice for financial advisor.<sup>167</sup> Bumble Bee asserted that AlixPartners would primarily help management with negotiations concerning Bumble Bee’s restructuring, assist in cash management, and assist in preparing and implementing a Chapter 11 plan.<sup>168</sup>

AlixPartners proposed the following compensation rates:

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<sup>163</sup> Certification of Counsel Regarding Revised Proposed Order, Pursuant to Section 327(a) of the Bankruptcy Code, Authorizing the Retention and Employment of Young Conaway Stargatt & Taylor, LLP as CoCounsel to the Debtors, Nunc Pro Tunc to the Petition Date [127.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 16, 2019); *See supra* note 158.

<sup>164</sup> Order Pursuant to Section 327(a) of the Bankruptcy Code, Authorizing the Retention and Employment of Young Conaway Stargatt & Taylor, LLP as CoCounsel to the Debtors, Nunc Pro Tunc to the Petition Date [153.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 18, 2019).

<sup>165</sup> Motion to Employ AlixPartners as Financial Advisor, *supra* note 148, [86.pdf](#).

<sup>166</sup> *Id.* at 3.

<sup>167</sup> *Id.* at 4.

<sup>168</sup> *Id.* at 6-7.

<b>Title</b>	<b>Hourly Rate</b>
Managing Director	\$990 – \$1,165
Director	\$775 – \$945
Senior Vice President	\$615 – \$725
Vice President	\$440 – \$600
Consultant	\$160 – \$435
Paraprofessional	\$285 – \$305

Table 4: Alix Partners Hourly Rates<sup>169</sup>

Bumble Bee asserted that these rates were consistent with compensation for professional services rendered by comparable firms under similar circumstances.<sup>170</sup> In the 90 days prior to the petition date, Bumble Bee had paid AlixPartners roughly \$2,492,192.74 and at the time of the petition AlixPartners held a \$100,000 advance retainer.<sup>171</sup> Bumble Bee requested that the court grant AlixPartners approval to apply the retainer to fees and expenses incurred, but not billed, immediately prior to, and subsequent to, the filing.<sup>172</sup> Bumble Bee stated that without the requested relief they would be deprived of the assistance of qualified financial assistance, which would harm the estate and all interested parties.<sup>173</sup>

After informal discussions with the U.S. Trustee, Bumble Bee submitted a revised proposed order that removed language allowing for the application of the retainer to any unbilled prepetition fees and

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<sup>169</sup> *Id.* at 7.

<sup>170</sup> *Id.* at 8.

<sup>171</sup> *Id.* at 9.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.* at 10.

expenses.<sup>174</sup> The new language allowed for AlixPartners's remaining retainer to only be applied to postpetition fees and expenses as they become payable.<sup>175</sup> After a hearing on the motion and the revised proposed order, in order to address concerns raised by the Court at the hearing, Bumble Bee filed a second revised proposed order with a supplemental declaration from Alex Orlofsky, the Managing Director of Alix Partners, as an exhibit stating that AlixPartners was not acting on behalf of Bumble Bee's non-filing affiliates or subsidiaries.<sup>176</sup> The Court was satisfied by the supplemental declaration and approved the revised proposed order without further objection.<sup>177</sup>

## Financial Advisor & Investment Banker - Houlihan Lokey Capital, Inc.

Bumble Bee next requested authorization to employ Houlihan Lokey Capital, Inc. ("Houlihan Lokey") as its investment banker and financial advisor.<sup>178</sup> Bumble Bee asserted that Houlihan Lokey was highly qualified to provide advice as one of the largest and most successful financial restructuring firms.<sup>179</sup> Bumble Bee argued that it was necessary to employ an investment banker in order to effectuate the sale of its assets and that based on Houlihan Lokey's extensive experience advising Debtors in Chapter 11 cases they were the most appropriate investment banker to employ.<sup>180</sup>

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<sup>174</sup> Certification of Counsel Regarding Revised Proposed Order Authorizing the Employment and Retention of AlixPartners, LLP as Financial Advisor for the Debtors Nunc Pro Tunc to the Petition Date [129.pdf](#) at 12-13, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 16, 2019).

<sup>175</sup> *Id.* See *supra* note 158.

<sup>176</sup> Certification of Counsel Regarding Revised Proposed Order Authorizing the Employment and Retention of AlixPartners, LLP as Financial Advisor for the Debtors Nunc Pro Tunc to the Petition Date [187.pdf](#) at 4, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 23, 2019).

<sup>177</sup> Order Authorizing Debtors to Employ and Retain AlixPartners, LLP as their Financial Advisor for the Debtors Nunc Pro Tunc to the Petition Date [195.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 26, 2019).

<sup>178</sup> Motion to Employ Houlihan Lokey as Investment Banker, *supra* note 148, [87.pdf](#).

<sup>179</sup> *Id.* at 4.

<sup>180</sup> *Id.* at 5.

Prepetition, Houlihan Lokey had been employed by various debtor and non-debtor affiliates of Bumble Bee to perform a variety of services.<sup>181</sup> In the months leading up to the filing Houlihan Lokey helped to establish bidding procedures for the sale of Bumble Bee's assets, solicit bids, and negotiate DIP financing.<sup>182</sup> Bumble Bee argued that in light of Houlihan Lokey's extensive relationship with it prepetition they are well situated to provide effective and efficient services postpetition.<sup>183</sup>

For the attributable period of April 24, 2019 through December 23, 2019, Bumble Bee paid Houlihan Lokey approximately \$1,200,000 for services rendered.<sup>184</sup> Further, prior to the petition date, Bumble Bee paid Houlihan Lokey \$23,775 for expenses incurred prepetition and paid \$25,000 towards an expense retainer to cover any expenses attributable to the prepetition period.<sup>185</sup> In addition, Bumble Bee requested that any remaining balance on the retainer be applied towards any postpetition expenses incurred by Houlihan Lokey.<sup>186</sup> Houlihan Lokey's proposed compensation consisted of a monthly \$150,000 flat fee, a contingent fee based on a variable percentage Bumble Bee's sale price, and a variable percentage of any DIP financing acquired.<sup>187</sup> Bumble Bee also requested that, subject to court approval, Houlihan Lokey's legal fees arising out of the services provided be paid out of the estate.<sup>188</sup>

Next, Bumble Bee requested that Houlihan Lokey be excused from the requirements of Local Rule 2016 2(d).<sup>189</sup> Local Rule 2016 2(d) requires that professionals employed by the Debtor file time

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<sup>181</sup> *Id.* at 5-6.

<sup>182</sup> *Id.* at 6.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.* at 8.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* at 9-13.

<sup>188</sup> *Id.* at 14.

<sup>189</sup> *Id.* at 15.

records with the court.<sup>190</sup> Bumble Bee argued that because Houlihan Lokey was not being compensated on an hourly rate it was unnecessary to keep detailed records of their hours worked.<sup>191</sup>

After informal negotiations with the U.S. Trustee and the Creditors' Committee, Bumble Bee submitted a revised proposed order.<sup>192</sup> The revised proposed order: (a) allowed the U.S. Trustee to evaluate the reasonableness Houlihan Lokey's fees not solely on the basis of time committed or length of the Chapter 11 case;<sup>193</sup> (b) required Houlihan Lokey's full compliance with Local Rule 2016 2(d), which mandates a detailed accounting of hours worked on for the Debtor;<sup>194</sup> (c) provided that Houlihan Lokey's contribution obligations in relation to their indemnification was not limited by the amount of any fees Houlihan Lokey received, meaning that should Bumble Bee have paid to indemnify Houlihan Lokey for any costs or expenses that are later adjudged by to have arisen out of Houlihan Lokey's bad faith, willful misconduct or gross negligence,<sup>195</sup> Houlihan Lokey's obligation to repay Bumble Bee for their indemnification is not limited by its fees received;<sup>196</sup> (d) provided that Houlihan Lokey may not request reimbursement of fees or costs related to disputes arising out of their monthly fee statements or applications;<sup>197</sup> and (d) provided that, notwithstanding any provision to the contrary in Houlihan Lokey's

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<sup>190</sup> Del. Bankr. L.R. 2016 2(d).

<sup>191</sup> Motion to Employ Houlihan Lokey as Investment Banker, *supra* note 148, [87.pdf](#) at 15.

<sup>192</sup> Certification of Counsel Regarding Revised Proposed Order, Pursuant to 11 U.S.C. §§ 327(a) and 328(a), Fed. R. Bankr. P. 2014 and 5002, and Del. Bankr. L.R. 2014-1 and 2016-2(h), for Entry of an Order (I) Authorizing Employment and Retention of Houlihan Lokey Capital, Inc. as Financial Advisor and Investment Banker for the Debtors Nunc Pro Tunc to the Petition Date, and (II) Modifying Certain Information Requirements of Del. Bankr. L.R. 2016-2 [136.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 17, 2019) [hereinafter Revised Proposed Order Authorizing Employment of Houlihan Lokey].

<sup>193</sup> *Id.* at 13.

<sup>194</sup> *Id.* at 14.

<sup>195</sup> Motion to Employ Houlihan Lokey as Investment Banker, *supra* note 148, [87.pdf](#) at 71.

<sup>196</sup> Revised Proposed Order Authorizing Employment of Houlihan Lokey, *supra* note 193, [136.pdf](#) at 15.

<sup>197</sup> *Id.*; *See supra* note 158.



prior engagement agreement, the court retained exclusive jurisdiction to construe and enforce the terms of the order during the pendency of Houlihan Lokey's engagement.<sup>198</sup>

To address concerns raised by the court during a hearing on the motion, Bumble Bee filed a supplemental declaration from one of Houlihan Lokey's managing directors which emphasized that Houlihan Lokey's team working for Bumble Bee reported only to Bumble Bee and not to any of the non-debtor affiliates who also employed Houlihan Lokey.<sup>199</sup> The Court approved the order without further objection.<sup>200</sup>

## Tax Consultant & Accounting Advisor - KPMG LLP

Next, Bumble Bee requested the court enter an order authorizing retention and employment of KPMG LLP ("KPMG") as both tax and accounting advisor as of the petition date.<sup>201</sup> Additionally, Bumble Bee requested authorization to enter into additional agreements with KPMG as necessary.<sup>202</sup> Bumble Bee proposed that instead of requiring court authorization for each individual agreement they merely send notice of them to the interested parties, file them with the court, and wait 14 days for any

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<sup>198</sup> Revised Proposed Order Authorizing Employment of Houlihan Lokey, *supra* note 193, [136.pdf](#) at 15.

<sup>199</sup> Supplemental Declaration of Eric Winthrop in Support of the Application of the Debtors Pursuant to 11 U.S.C. §§ 327(a) and 328(a), Fed. R. Bankr. P. 2014 and 5002, and Del. Bankr. L.R. 2014-1 and 2016-2(h), for Entry of an Order (I) Authorizing Employment and Retention of Houlihan Lokey Capital, Inc. as Financial Advisor and Investment Banker for the Debtors Nunc Pro Tunc to the Petition Date, and (II) Modifying Certain Information Requirements of Del. Bankr. L.R. 2016-2 [184.pdf](#) at 2-3, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 23, 2019).

<sup>200</sup> Order, Pursuant to 11 U.S.C. §§ 327(a) and 328(a), Fed. R. Bankr. P. 2014 and 5002, and Del. Bankr. L.R. 2014-1 and 2016-2(h), for Entry of an Order (I) Authorizing Employment and Retention of Houlihan Lokey Capital, Inc. as Financial Advisor and Investment Banker for the Debtors Nunc Pro Tunc to the Petition Date, and (II) Modifying Certain Information Requirements of Del. Bankr. L.R. 2016-2 [196.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 26, 2019).

<sup>201</sup> Motion to Employ KPMG as Tax and Accounting Advisor, *supra* note 148, [88.pdf](#).

<sup>202</sup> *Id.* at 3.

objections.<sup>203</sup> Barring any objections, KPMG's employment would continue as authorized, including any additional agreements.<sup>204</sup>

Bumble Bee asserted that because KPMG was one of the premier tax and accounting firms in the nation and the complex nature of this case they were eminently qualified to assist it to maximize its value.<sup>205</sup> Bumble Bee argued that hiring KPMG would be in the best interest of all interested parties and as such the court should authorize their employment.<sup>206</sup>

Bumble Bee further argued that hiring KPMG was a good value for the estate, because it had managed to negotiate approximately a 25% reduction in fees for tax services and a 30% reduction in fees for accounting services.<sup>207</sup> Those rates are reflected below:

<b>Tax Consulting Services</b>	<b>Discounted Rates</b>
Partners	\$1,035 - \$1,185
Managing Directors	\$960 - \$1,095
Senior Managers	\$900
Managers	\$795 - \$840
Senior Associates	\$645
Associates	\$390
Para-Professionals	\$315

Table 5: KPMG Tax Services Rates<sup>208</sup>

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<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.* at 9.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.* at 10.

<sup>208</sup> *Id.*

<b>Accounting Advisory Services</b>	<b>Discounted Rates</b>
Partners	\$760 - \$784
Managing Directors	\$753
Directors	\$623 - \$676
Managers	\$574
Senior Associates	\$452

Table 6: KPMG Accounting Services Rates<sup>209</sup>

During the 90 days leading up to the petition date, KPMG received \$229,033 from Bumble Bee in compensation for services provided.<sup>210</sup> Additionally, KPMG agreed to waive any amounts due to them as of the petition date.<sup>211</sup>

Upon receipt of informal comments from the U.S. Trustee Bumble Bee filed a revised proposed order which was updated to reflect the specific amount that KPMG had agreed to waive of \$10,874.38 that it was owed as of the petition date.<sup>212</sup> The court then held a hearing on the motion at which it expressed concerns regarding KPMG's work for Bumble Bee's non-debtor affiliates.<sup>213</sup> To address these concerns Bumble Bee filed a supplemental declaration from one of KPMG's partners declaring that during the pendency of the Bumble Bee's Chapter 11 case they would only perform services for the

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<sup>209</sup> *Id.*

<sup>210</sup> *Id.* at 31.

<sup>211</sup> *Id.*; *See supra* note 158.

<sup>212</sup> Certification of Counsel Regarding Revised Proposed Order Authorizing the Debtors to Retain and Employ KPMG LLP as Tax Consultant and Accounting Advisor Nunc Pro Tunc to the Petition Date [130.pdf](#) at 16, In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 16, 2021).

<sup>213</sup> Supplemental Declaration of Howard Steinberg in Further Support of the Debtors' Application to Retain and Employ KPMG as Tax Consultant and Accounting Advisor Nunc Pro Tunc to the Petition Date [188.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 23, 2019).

Debtor.<sup>214</sup> The declaration emphasized that while KPMG LLP Canada was performing services for some of Bumble Bee's non-debtor affiliates they are a separate entity from KPMG in the U.S.<sup>215</sup> Bumble Bee then refiled the revised proposed order with the supplemental declaration as an attachment.<sup>216</sup> The court confirmed the revised proposed order without further objection.<sup>217</sup>

## Administrative Advisor - Prime Clerk, LLC

Bumble Bee next moved to employ Prime Clerk as its Administrative Advisor.<sup>218</sup> Bumble Bee sought to employ Prime Clerk as administrative advisor as well as claims and noticing agent to allow for them to provide a greater range of services than authorized as claims and services agent.<sup>219</sup> Bumble Bee asserted that it was necessary to employ Prime Clerk as administrative advisor so that they could help with voting procedures and tabulation related to any plan confirmation, assist with any distributions, and assist with the scheduling of assets and liabilities.<sup>220</sup> Bumble Bee argued that in light of Prime Clerk's extensive experience assisting debtors in large Chapter 11 cases they were imminently qualified to assist in its case.<sup>221</sup> The court approved the order without objection.<sup>222</sup>

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<sup>214</sup> *Id.* at 2.

<sup>215</sup> *Id.*

<sup>216</sup> Certification of Counsel Regarding Debtors' Application for an Order Authorizing the Retention and Employment of KPMG LLP as Tax Consultant and Accounting Advisor to the Debtors Nunc Pro Tunc to the Petition Date [189.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 23, 2019).

<sup>217</sup> Order Authorizing the Debtors to Retain and Employ KPMG LLP as Tax Consultant and Accounting Advisor Nunc Pro Tunc to the Petition Date [197.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 26, 2019).

<sup>218</sup> Motion to Employ Prime Clerk as Administrative Advisor, *supra* note 148, [89.pdf](#).

<sup>219</sup> *Id.* at 3.

<sup>220</sup> *Id.* at 5.

<sup>221</sup> *Id.* at 3-4.

<sup>222</sup> Order Authorizing Employment and Retention of Prime Clerk LLC as Administrative Advisor Nunc Pro Tunc to the Petition Date [154.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 18, 2021).

# Motion to Establish Interim Compensation Procedures

Bumble Bee next moved to establish interim compensation procedures for Paul, Weiss, Young Conaway, AlixPartners, Houlihan Lokey, KPMG, and Prime Clerk (collectively, the “Professionals”).<sup>223</sup> Bumble Bee proposed that each of the Professionals seeking interim allowance of fees be allowed to file an application with the court for services rendered and expenses incurred no earlier than the 15th day of each month following the month for which compensation was sought.<sup>224</sup> The Professionals were then required to serve notice upon a number of interested parties (the “Noticed Parties”).<sup>225</sup> The Noticed Parties then had 20 days after service of the monthly fee application to object to the requested fees and expenses.<sup>226</sup> Upon expiration of the objection period each Professional was allowed to file a certificate of no objection with respect to the unopposed portion of its fees and expenses.<sup>227</sup> After the certificate of no objection was filed Bumble Bee was authorized to pay the lesser of “(i) 80% of the fees and 100% of the expenses requested in the Monthly Fee Application . . . or (ii) 80% of the fees and 100% of the expenses not subject to an objection.”<sup>228</sup>

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<sup>223</sup> Debtors’ Motion for an Order, Pursuant to Sections 105(a) and 331 of the Bankruptcy Code, Bankruptcy Rule 2016(a), and Local Rule 2016-2, Establishing Procedures for Interim Compensation and Reimbursement of Professionals [105.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 05, 2019) [hereinafter Motion to Compensate Professionals].

<sup>224</sup> *Id.* at 4.

<sup>225</sup> *Id.*

<sup>226</sup> *Id.* at 5.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

If there was an objection to a Professional's monthly fee application the objecting party was required to file it with the court and serve notice upon the Professional and Noticed Parties.<sup>229</sup> The Professional could then file a response or forego the portion of its fee objected to.<sup>230</sup>

Every three-month period each Professional was required to file an application (an "Interim Fee Application") for interim allowance of fees and expenses held back in the monthly fee applications sought in the monthly fee applications filed during the three-month interim period.<sup>231</sup> Bumble Bee was then required to request that the court schedule a hearing on the Interim Fee Applications.<sup>232</sup> Upon the court's approval of a Professional's Interim Fee Application, Bumble Bee was required to pay all requested fees and expenses not previously paid.<sup>233</sup> Further, any professional that failed to file a monthly fee application or an Interim Fee Application when due was not eligible to receive further monthly or interim payments with respect to any subsequent period until the delinquent fee applications were properly filed and served.<sup>234</sup>

Bumble Bee also requested that the Committee Counsel be allowed to collect expense statements from each member of the Creditors' Committee and submit them for reimbursement in accordance with the above outlined compensation procedure.<sup>235</sup>

Bumble Bee argued that the court should approve its compensation procedures because absent an order from the court section 331 of the Bankruptcy Code limits the payment of Professionals rendering

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<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.* at 5-6.

<sup>232</sup> *Id.* at 6.

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> *Id.* at 7.

services to only three times per year.<sup>236</sup> Bumble Bee asserted that the court should approve the outlined compensation procedures because it would streamline the professional compensation process and reduce administrative burden.<sup>237</sup> Bumble Bee also argued that the increased payment frequency would allow for the court to better review the professional fees for reasonableness and necessity on an ongoing basis.<sup>238</sup>

Following informal comments from the U.S. Trustee Bumble Bee submitted a revised proposed order which altered the earliest day of each month upon which the Professionals were able to file their monthly fee application from the 15th calendar day of each month to the 20th.<sup>239</sup> The court approved the order without further objection.<sup>240</sup>

## Motion to Retain Professionals in the Ordinary Course

Next, Bumble Bee moved to employ various attorneys, accountants, and other professionals in the ordinary course of business (each an “OCP” and, collectively, the “OCPs”), nunc pro tunc to the petition date.<sup>241</sup> Bumble Bee asserted that it was in the best interest of all involved parties to continue the employment of the OCPs as a class rather than individually due to the sheer number of them and the

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<sup>236</sup> *Id.* at 8.

<sup>237</sup> *Id.* at 8-9.

<sup>238</sup> *Id.* at 9.

<sup>239</sup> Certification of Counsel Regarding Revised Proposed Order, Pursuant to Sections 105(a) and 331 of the Bankruptcy Code, Bankruptcy Rule 2016(a), and Local Rule 2016-2, Establishing Procedures for Interim Compensation and Reimbursement of Professionals [132.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 16, 2019).

<sup>240</sup> Order, Pursuant to Sections 105(a) and 331 of the Bankruptcy Code, Bankruptcy Rule 2016(a), and Local Rule 2016-2, Establishing Procedures for Interim Compensation and Reimbursement of Professionals [156.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 18, 2019).

<sup>241</sup> Debtors’ Motion for Entry of an Order, Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code, Authorizing the Debtors to Retain and Compensate Certain Professionals Utilized in the Ordinary Course of Business, Nunc Pro Tunc to the Petition Date [106.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 05, 2019) [hereinafter Motion to Employ Professionals in the Ordinary Course].

relatively modest fees they would receive.<sup>242</sup> Bumble Bee argued that the OCP Procedures would relieve the court, U.S. Trustee, and other interested parties of the burden involved with reviewing individual fee applications.<sup>243</sup> Accordingly, Bumble Bee requested entry of the proposed order that, (i) authorized retention of the OCPs without submission of separate retention pleadings for each OCP, and (ii) authorized payment of the OCPs, without application to the court, 100% of their postpetition fees and expenses, subject to certain limitations.<sup>244</sup>

The proposed OCP procedures required each OCP to submit a declaration of disinterestedness, and, 14 days prior to submission of an invoice, serve notice to the Notice Parties including a copy of its declaration of disinterestedness.<sup>245</sup> The OCP procedures required any objection to the retention of any OCP to be filed with the Court and served to the affected OCP within ten days of service of the OCP's declaration of disinterestedness.<sup>246</sup> Bumble Bee requested authorization to pay 100% of any OCP's postpetition fees and expenses, provided however, that without further court authorization, Bumble Bee could not pay any individual OCP more than \$35,000 per month, on average, over a prior three month rolling period.<sup>247</sup> Under the proposed order, Bumble Bee was required to file a list of all OCPs and their aggregate compensation for services and expenses every three months.<sup>248</sup>

Bumble Bee asserted that it did not believe that the OCP's were professionals whose retention required court approval under section 327 of the Bankruptcy Code.<sup>249</sup> Rather, Bumble Bee opined that

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<sup>242</sup> *Id.* at 3.

<sup>243</sup> *Id.*

<sup>244</sup> *Id.* at 4.

<sup>245</sup> *Id.* at 5.

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> *Id.* at 5-6.

<sup>249</sup> *Id.* at 7.



they were seeking court approval and authorization to retain the OCPs out of an abundance of caution and desire to avoid controversy regarding the OCPs employment and payment.<sup>250</sup>

After receiving informal comments from the U.S. Trustee, Bumble Bee amended the proposed order to require greater disclosure of the nature of services provided by the OCPs in the declarations of disinterestedness.<sup>251</sup> The court approved the revised proposed order without further objection.<sup>252</sup>

## Appointment of the Committee of Unsecured Creditors

On December 3rd, 2019, the U.S. Trustee appointed the following members to the Official Committee of Unsecured Creditors (the “OCC”) pursuant to section 1102(a)(1) of the Bankruptcy Code: Super Valu Inc., Olean Wholesale Grocery Cooperative, The Kroger Co., Capitol Hill Supermarket, and Elizabeth Twitchell on behalf of End Payor Plaintiff Class.<sup>253</sup> The OCC obtained court approval to retain Lowenstein Sandler as counsel, Bayard, P.A. as co-counsel, and Berkeley Research Group, LLC as

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<sup>250</sup> *Id.*

<sup>251</sup> Certification of Counsel Regarding Revised Proposed Order, Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code, Authorizing the Debtors to Retain and Compensate Certain Professionals Utilized in the Ordinary Course of Business, Nunc Pro Tunc to the Petition Date [133.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 16, 2019).

<sup>252</sup> Order, Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code, Authorizing the Debtors to Retain and Compensate Certain Professionals Utilized in the Ordinary Course of Business, Nunc Pro Tunc to the Petition Date [157.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 18, 2019).

<sup>253</sup> Notice of Appointment of Creditors’ Committee Filed by U.S. Trustee [97.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 03, 2019).

financial advisor to the OCC.<sup>254</sup> The following table lists the twenty largest Unsecured Creditors' Claims:<sup>255</sup>

Creditor Name	Amount of Claim
FCF Co., Ltd.	\$ 50,536,218.00
United States Department of Justice	\$ 17,000,000.00
Envases Universales de Mexico SAPI de CV	\$ 2,379,843.00
Walmart Inc.	\$ 2,372,000.00
Pataya Food Industries Ltd.	\$ 1,753,973.00
R S Cannery Co. Ltd.	\$ 1,412,789.00
Suter Co Inc.	\$ 1,367,385.00
Advantage Sales & Marketing Inc.	\$ 1,248,736.00
Keker & Van nest LLP	\$ 1,077,431.00
Thai Union Group PCL	\$ 1,016,855.00

<sup>254</sup> Order Authorizing and Approving the Employment and Retention of Lowenstein Sandler LLP as Counsel to the Official Committee of Unsecured Creditors, Effective Nunc Pro Tunc as of December 3, 2019 [342.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 01, 2020); Order Authorizing Employment and Retention of Bayard, P.A. as Co-Counsel to the Official Committee of Unsecured Creditors Nunc Pro Tunc to December 3, 2019 [343.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 01, 2020); Order Authorizing Official Committee of Unsecured Creditors to Employ Berkeley Research Group, LLC as Financial Advisor, Nunc Pro Tunc to December 6, 2019 [344.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 01, 2020).

<sup>255</sup> Voluntary Petition, *supra* note 44, [1.pdf](#) at 17-20.

Mason Integrated Logistics	\$	993,099.00
Princes Tuna (Mauritius) Limited	\$	625,923.00
Graal S.A.	\$	613,761.00
Crider Inc.	\$	596,903.00
Conagra Brands Inc.	\$	571,442.00
Peter Pan Seafoods Inc.	\$	550,848.00
Pacific Fishing Co. Ltd.	\$	479,461.00
Direct Purchaser Plaintiff Class		Undetermined
Commercial Food Preparer Class		Undetermined
End Payer Plaintiff Class		Undetermined

Unsecured Creditors: Table 7

## Debtor in Possession Financing

As of the petition date Bumble Bee owed \$151,452,405.00 on its U.S. Prepetition ABL Facility and \$35,365,193 on its Canadian Prepetition ABL Facility, and owed \$505,902,964 on its U.S. Prepetition Term Loan Facility and 143,500,000 on its Canadian Prepetition Term Loan Facility, which was due to mature on August 15, 2023.<sup>256</sup> Bumble Bee requested that because the Canadian Facilities were fully guaranteed and secured by the U.S. Debtor's and vice versa, the court should administer the

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<sup>256</sup> DIP Financing Motion, *supra* note 108, [12.pdf](#) at 13.

Canadian and U.S. facilities jointly as part of the case.<sup>257</sup> The prepetition ABL Facility accrued interest at a variable rate depending on the size and nature of a particular loan, whereas, the prepetition Term Loan accrued interest at a rate of prime plus 9.00%.<sup>258</sup> Bumble Bee’s primary ABL Facility Lender was Wells Fargo Capital Finance, LLC (“Wells Fargo”), who also served as administrative agent (“ABL DIP Agent”).<sup>259</sup> Bumble Bee’s lead term loan lender was Brookfield Principal Credit, LLC, who served as administrative agent and collateral agent (“Term Loan DIP Agent”) for the term loan lenders.<sup>260</sup> As of the petition date Bumble Bee was up to date on all interest payments to both the ABL Facility and the Term Loan Facility.<sup>261</sup>

Bumble Bee moved for entry of interim and final orders authorizing debtor in possession financing (the “DIP Financing Motion”).<sup>262</sup> Bumble Bee’s proposed order: (a) requested authority to acquire postpetition secured financing;<sup>263</sup> (b) requested authority to grant liens and postpetition super-priority with respect to the financing;<sup>264</sup> (c) requested authority to use of cash collateral;<sup>265</sup> (d) requested approval of the form of adequate protection to be provided to the prepetition secured parties;<sup>266</sup> (e) requested modification of the automatic stay, as necessary, to effectuate the proposed orders;<sup>267</sup> and (f)

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<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> *Id.* at 10.

<sup>260</sup> *Id.* at 12.

<sup>261</sup> *Id.* at 13.

<sup>262</sup> *Id.*

<sup>263</sup> *Id.* at 1.

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Id.* at 2.

<sup>267</sup> *Id.*

granting related relief.<sup>268</sup> The proposed order, the revised proposed order, the interim order, and the final order will be evaluated in turn below.

## The DIP Financing Motion and Proposed Order

Bumble Bee argued that access to additional liquidity was necessary to both fund the Chapter 11 case and preserve the business as a going concern so as to maximize the estate's value.<sup>269</sup> Further they asserted that the terms proposed in the motion were the best available terms because they spent significant time prepetition negotiating for favorable postpetition DIP financing terms.<sup>270</sup> The proposed DIP financing in essence requested that the court continue Bumble Bee's prepetition financing and priorities into the postpetition DIP facility. The proposed DIP facility was made up of two different financing facilities (the "DIP Facilities").<sup>271</sup> Bumble Bee proposed that the DIP collateral include all "tangible and intangible prepetition and postpetition property and interests in property of the Debtors, whether existing on or as of the Petition Date or thereafter acquired."<sup>272</sup>

First, Bumble Bee proposed a new money multiple draw term loan (the "Term Loan DIP Facility") of up to \$80 million provided by Bumble Bee's prepetition term loan lenders (the "Term Loan Lenders"), of which \$40 million would be available upon entry of the interim order and the full \$80 million would be available upon entry of the final order.<sup>273</sup> Second, Bumble Bee Proposed a roll up of its prepetition asset based revolving credit facility (the "ABL DIP Facility") in an amount not to exceed \$200

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<sup>268</sup> *Id.*

<sup>269</sup> *Id.* at 3.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> *Id.* at 82.

<sup>273</sup> *Id.* at 3.

million.<sup>274</sup> Bumble Bee argued that the roll up was appropriate here because the ABL lenders were oversecured and therefore by paying it off in full would only impact timing of the payment and not amount because oversecured creditors are entitled to full payment of their claims.<sup>275</sup> The ABL DIP Facility was to be provided by Bumble Bee’s prepetition ABL lenders (the “ABL Lenders”).<sup>276</sup> The availability of the entire \$200 million of financing was subject to a borrowing base limitation calculated based on Bumble Bee’s eligible accounts receivable, cash reserves, and inventory.<sup>277</sup> The \$200 million of funding from the ABL DIP Facility was to be split with \$160 million available to the U.S. ABL Borrowers and \$40 million to the Canadian ABL Borrower.<sup>278</sup> However, the U.S. ABL Borrowers could use the Canadian ABL Borrowers borrowing base to calculate the amount of ABL financing available and vice versa.<sup>279</sup>

## Section 364 Priority

Bumble Bee requested that the court grant the DIP Facilities’ security interests priority in the proposed collateral, by priming the prepetition lienholders security interests pursuant to sections 364(d)(1) and 364(c)(3) of the Bankruptcy Code.<sup>280</sup> Section 364(d)(1) provides of the Bankruptcy Code provides:

The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if — (A) the trustee is unable to obtain such credit otherwise; and (B) there is *adequate*

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<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> *Id.* at 3.

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> *Id.* at 5.

*protection* of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.<sup>281</sup>

Section 364(c)(3) allows for the court upon notice and hearing to grant a junior lien on previously encumbered property of the estate, provided that the debtor is unable to secure financing through granting administrative expense status to the lender.<sup>282</sup>

Bumble Bee asserted that prepetition they entered into substantial negotiations with various lenders in an attempt to obtain the best available DIP financing terms.<sup>283</sup> First, Bumble Bee determined that based on the capital market conditions prior to filing they would be unable to obtain unsecured financing.<sup>284</sup> Bumble Bee argued that because they were unable to obtain unsecured DIP financing the court should approve administrative super priority claims, junior secured claims, and secured claims on unencumbered property pursuant to section 364(c) of the Bankruptcy Code.<sup>285</sup> Bumble Bee further argued that it should be authorized to obtain post petition financing secured by first priority priming liens pursuant to section 364(d)(1) of the Bankruptcy Code.<sup>286</sup> Bumble Bee asserted that the prepetition secured creditors had consented to the priming liens under the DIP facilities and the interim/final orders carved out certain prepetition permitted prior liens for adequate protection purposes.<sup>287</sup> Bumble Bee submitted that in light of the prepetition secured lenders consent and the adequate protection, the court should grant the requested first priority priming liens.<sup>288</sup>

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<sup>281</sup> 11 U.S.C. 364(d)(1) (emphasis added).

<sup>282</sup> 11 U.S.C. 364(c)(3).

<sup>283</sup> DIP Financing Motion, *supra* note 108, [12.pdf](#) at 32.

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

<sup>286</sup> *Id.* at 33.

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

Bumble Bee requested that the court grant the ABL DIP Facility debt senior status in Bumble Bee's accounts receivable, inventory, and cash reserves under section 364(d)(1), subject only to certain carve outs and certain permitted prior liens,<sup>289</sup> and except in that collateral which was subject to a senior security interest in favor of the Term Loan DIP Facility debt.<sup>290</sup> Regarding the Term Loan DIP Facility, Bumble Bee requested the court grant the debt senior status in its prepetition collateral pursuant to section 364(d)(1), subject only to certain carve outs and certain permitted prior liens,<sup>291</sup> and except in that collateral which was subject to a senior security interest in favor of the ABL DIP Facility debt.<sup>292</sup> Bumble Bee also requested that, pursuant to 364(c)(3), all of the DIP Facilities' security interests be junior to all adequate protection liens granted to secure the Prepetition ABL/Term Loan Facilities and junior to all existing, valid, perfected, and non-avoidable liens securing the Prepetition ABL/Term Loan Facilities.<sup>293</sup>

The relative priorities among the prepetition secured parties were governed by an intercreditor agreement.<sup>294</sup> Bumble Bee requested that the prepetition intercreditor agreement continue to govern the respective priorities of all prepetition secured creditors postpetition.<sup>295</sup> Further, Bumble Bee asserted that it would enter into a new intercreditor agreement with the post petition secured creditors ("DIP

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<sup>289</sup> See *infra* [Carve Out](#); [Adequate Protection](#).

<sup>290</sup> DIP Financing Motion, *supra* note 108, [12.pdf](#) at 5.

<sup>291</sup> See *infra* [Carve Out](#); [Adequate Protection](#).

<sup>292</sup> DIP Financing Motion, *supra* note 108, [12.pdf](#) at 5.

<sup>293</sup> *Id.* at 5-6.

<sup>294</sup> *Id.* at 14.

<sup>295</sup> *Id.*



Intercreditor Agreement”) to clearly outline their respective priorities.<sup>296</sup> Additionally, Bumble Bee requested the following priority waterfall govern postpetition security interests:<sup>297</sup>

		US	
		Interim Order	Final Order
1.	<b>DIP ABL Priority Collateral</b>	<ol style="list-style-type: none"> <li>1. Carve Out</li> <li>2. Permitted Prior Liens</li> <li>3. DIP ABL Liens</li> <li>4. ABL Adequate Protection Liens</li> <li>5. Prepetition ABL Credit Agreement Liens</li> <li>6. DIP Term Loan Liens</li> <li>7. Term Loan Adequate Protection Liens</li> <li>8. Prepetition Term Loan Credit Agreement Liens</li> </ol>	Same
2.	<b>DIP Term Loan Priority Collateral</b>	<ol style="list-style-type: none"> <li>1. Carve Out</li> <li>2. Permitted Prior Liens</li> <li>3. DIP Term Loan Liens</li> <li>4. Term Loan Adequate Protection Liens</li> <li>5. Prepetition Term Loan Credit Agreement Liens</li> <li>6. DIP ABL Liens</li> <li>7. ABL Adequate Protection Liens</li> <li>8. Prepetition ABL Credit Agreement Liens</li> </ol>	Same
3.	<b>Proceeds of Avoidance Actions</b>	N/A	<ol style="list-style-type: none"> <li>1. Carve Out</li> <li>2. DIP ABL Liens / Term Loan DIP Liens (<i>pari passu</i>)</li> <li>3. Term Loan Adequate Protection Liens / ABL Adequate Protection Liens (<i>pari passu</i>)</li> <li>4. Prepetition Term Loan Credit Agreement Liens / Prepetition ABL Credit Agreement Liens (<i>pari passu</i>)</li> </ol>

Table 8: Priority Waterfall<sup>298</sup>

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> *Id.* at 481.

## Adequate Protection

Next Bumble Bee proposed adequate protection measures for the Prepetition Secured Parties.<sup>299</sup> The Prepetition Secured Parties were entitled to adequate protection of their security interests in their prepetition collateral for any diminution in value of their respective interests, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, until the full repayment in cash of the entirety of their secured claims.<sup>300</sup>

Bumble Bee proposed the following as adequate protection to secure payment of an amount equal to any diminution in value of the Prepetition Secured Parties secured claims (the “diminution claims”).<sup>301</sup> First, Bumble Bee requested that to the extent the court did not approve the roll-up of the prepetition ABL facility, the court grant the prepetition ABL lenders valid perfected adequate protection liens in all DIP collateral in the amount of their diminution claims.<sup>302</sup> Bumble Bee also requested that the court grant the prepetition term loan lenders valid perfected adequate protection liens in all DIP collateral in the amount of their diminution claims.<sup>303</sup> Bumble Bee requested that the adequate protection liens be subject only to the carve outs and otherwise have the priority specified in the priority waterfall.<sup>304</sup>

Bumble Bee next argued that the prepetition secured lenders diminution claims should also be granted super priority administrative expense status under section 507(b) of the Bankruptcy Code.<sup>305</sup> Bumble Bee requested that the adequate protection 507(b) claims be granted priority over “administrative expense claims, secured claims (except secured claims secured by Permitted Prior Liens), and unsecured

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<sup>299</sup> *Id.* at 90

<sup>300</sup> *Id.*

<sup>301</sup> *Id.*

<sup>302</sup> *Id.* at 90-91.

<sup>303</sup> *Id.* at 91.

<sup>304</sup> *Id.*; *See supra* Table 8: Priority Waterfall.

<sup>305</sup> DIP Financing Motion, *supra* note 108, [12.pdf](#) at 91-92.

claims against the Debtors or their estates.”<sup>306</sup> Provided, however, that all of the adequate protection 507(b) claims were on equal footing with one another, did not otherwise impair any of the lien priorities, were subject to the professionals carve out, and junior to any DIP super priority claims.<sup>307</sup>

As another component of the adequate protection Bumble Bee requested authorization to immediately, upon entry of an order, pay all accrued and unpaid interest owed through the petition date to the prepetition secured lenders.<sup>308</sup> Additionally, Bumble Bee requested the authority to pay all reasonable and necessary expenses, accrued interest, and fees to its prepetition secured lenders upon application on the last day of each month.<sup>309</sup> As part of the adequate protection plan, Bumble Bee requested authorization to pay the prepetition secured parties’ prepetition and postpetition professionals fees within ten days of the receipt of a professionals invoice, provided that there were no objections.<sup>310</sup> Bumble Bee argued that the payment of such professionals fees should not be subject to court authorization as they were a necessary part of the adequate protection.<sup>311</sup>

As a condition of receiving the adequate protection Bumble Bee requested that the court require the prepetition term loan lenders to agree to release each of the Canadian subsidiaries from their obligations in the event of a 363 sale or any other qualifying disposition/sale of Bumble Bee or substantially all of Bumble Bee’s assets.<sup>312</sup>

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<sup>306</sup> *Id.* at 92.

<sup>307</sup> *Id.*

<sup>308</sup> *Id.* at 93.

<sup>309</sup> *Id.* at 93-94.

<sup>310</sup> *Id.* at 94

<sup>311</sup> *Id.*

<sup>312</sup> *Id.* at 95-96.

## Carve Out

Bumble Bee next requested that the court carve out certain fees.<sup>313</sup> Bumble Bee proposed that the carve out consist of: (i) all fees due to the bankruptcy clerk of court; (ii) all reasonable fees and expenses incurred by the U.S. Trustee under section 726(b) of the Bankruptcy Code up to \$50,000; (iii) to the extent allowed by the court, all professional fees and expenses (the “Allowed Professional Fees”) incurred by persons or firms employed by Bumble Bee and persons or firms employed by the Committee of Unsecured Creditors; and (iv) Allowed Professional Fees in an aggregate amount not to exceed \$3 million incurred after the first business day following the delivery of a carve out trigger notice by a creditor representative, to the extent allowed by order of the court.<sup>314</sup> A carve out trigger notice was defined as written notice provided by either the ABL DIP Facility Agent or the Term Loan DIP Facility Agent (each, a “Creditor Representative”) to Bumble Bee, their lead restructuring counsel, the U.S. Trustee, and counsel to the Committee, alleging the occurrence and continuation of an event of default, stating that the carve out trigger has been invoked, and describing the alleged default.<sup>315</sup> Additionally, Bumble Bee requested that, without duplication of any Allowed Professional Fees, and only after fully funding the carve out reserves, that an additional amount be funded to the post-carve out trigger reserve fund in an amount equal to the lesser of (x) the remaining amount in the DIP term funding account or (y) \$8.6 million if a sale order approving the Stalking Horse APA has been entered or \$10 million if no sale order has been entered.<sup>316</sup> The additional funding was only to be used to pay Houlihan Lokey’s approved professional fees.<sup>317</sup>

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<sup>313</sup> *Id.* at 73.

<sup>314</sup> *Id.* at 73-74.

<sup>315</sup> *Id.* at 74.

<sup>316</sup> *Id.*

<sup>317</sup> *Id.*

## Prepetition ABL Facility Roll-Up

Bumble Bee argued that the court should permit it to replace and refinance (or “roll up”) the prepetition ABL Obligations into the DIP obligations upon entry of the court’s interim order as such a feature was a necessary and appropriate component of the DIP Financing Facility.<sup>318</sup> Bumble Bee asserted that such roll ups are a common feature in DIP financing arrangements, and courts in the District of Delaware had frequently approved the use of roll ups in similar situations.<sup>319</sup> Bumble Bee argued that the roll up provisions were appropriate because the prepetition ABL lenders were oversecured, so repaying them with postpetition loans would not harm the estate and other creditors.<sup>320</sup> Bumble Bee asserted that only the timing, not the amount of payment would be affected by the roll up because the prepetition ABL lenders were oversecured.<sup>321</sup> Bumble Bee further asserted that the junior creditors’ recoveries would not be impacted by the roll up because the prepetition ABL lenders senior claims in the collateral had to be satisfied in full before the junior creditors could recover anything.<sup>322</sup>

Lastly, Bumble Bee stated that the roll up provisions were required by the ABL DIP Lenders as a condition to them agreeing to provide postpetition financing and without additional liquidity Bumble Bee would be unable to continue to operate.<sup>323</sup> Bumble Bee further argued that the court should approve the roll up provisions because it was unable to obtain DIP financing on similar terms that did not provide for similar repayments of prepetition amounts and obtaining fully-consensual DIP financing conferred substantial benefits to the estate that justified the roll up of the prepetition ABL facility.<sup>324</sup>

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<sup>318</sup> *Id.* at 35.

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

<sup>321</sup> *Id.*

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

## Use of Cash Collateral

Bumble Bee next argued that the court should approve its use of the cash collateral because all secured creditors with an interest in the cash collateral had consented to its use and agreed to the adequate protection outlined in the adequate protection section.<sup>325</sup> Bumble Bee asserted that because each entity that has an interest in the cash collateral has consented to its use on the terms and conditions outlined in the proposed interim and final orders it is authorized to use the cash collateral pursuant to section 363(c)(2)(A) of the Bankruptcy Code. Nonetheless, Bumble Bee requested that the court explicitly approve its use of the cash collateral pursuant to section 363(c)(2)(B) so as to remove all doubt regarding its ability to use the cash collateral. Bumble Bee argued that use of the cash collateral was necessary to prevent the estate suffering immediate and irreparable harm as they required access to the cash collateral to continue operating as a going concern and maximize the value of the estate.<sup>326</sup>

Bumble Bee proposed that the cash collateral from the Term Loan DIP Facility be used first to pay costs, fees, interest associated with the Term Loan DIP Facility, and professional's fees; second to fund working capital needs of Bumble Bee; and third to fund general corporate needs including certain other interest payments and adequate protection payments.<sup>327</sup> Bumble Bee also proposed that the cash collateral from the ABL DIP Facility be used first to pay transactions fees and expenses and the prepetition ABL facility, and second, to fund general corporate needs, including interest payments on the Term Loan DIP Facility and adequate protection interest payments on the Prepetition Term Facility.<sup>328</sup> Further, under the proposed ABL DIP Facility, the outstanding Prepetition ABL Credit Agreement Indebtedness was to be rolled up into the ABL DIP Facility.<sup>329</sup> Bumble Bee asserted that the prepetition

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<sup>325</sup> *Id.* at 38. See *supra* [Adequate Protection](#).

<sup>326</sup> DIP Financing Motion, *supra* note 108, [12.pdf](#) at 5-6.

<sup>327</sup> *Id.* at 19.

<sup>328</sup> *Id.*

<sup>329</sup> *Id.*

ABL facility lenders and the prepetition term loan lenders were the only entities with an interest in the cash collateral and that they had both consented to its use pursuant to the requirements of section 363(c)(2)(A) of the Bankruptcy Code and therefore the court should approve both the interim and final orders allowing use of cash collateral.<sup>330</sup>

## Modification of the Automatic Stay

Bumble Bee requested that the court approve the modification of the automatic stay in the interim order to allow Bumble Bee to grant the liens and security interests contemplated by DIP financing arrangements.<sup>331</sup> Bumble Bee further requested that the court enter the interim order allowing for the automatic stay to vacated and modified to permit the DIP Lenders to exercise all rights and remedies afforded them in the event of a default.<sup>332</sup> Bumble Bee argued that the proposed modifications to the automatic stay ordinary and standard features of DIP financing arrangements and that in Bumble Bee's business judgment were fair and reasonable under the circumstances.<sup>333</sup>

## The Revised Proposed DIP Financing Order

At a hearing to consider the motion Bumble Bee agreed to revise the proposed interim order to reflect the Court's ruling on the record.<sup>334</sup> This section will address the changes made to the proposed interim order in the revised proposed interim order.

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<sup>330</sup> *Id.* at 27.

<sup>331</sup> *Id.* at 41.

<sup>332</sup> *Id.*

<sup>333</sup> *Id.* at 42

<sup>334</sup> Certification of Counsel Submitting Revised Proposed order (I) Authorizing Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral; (II) Granting Liens and Superpriority Administrative Expense Claims; (III) Granting Adequate Protection; (IV) Modifying Automatic Stay; (V) Scheduling Final Hearing; and (VI) Granting Related Relief [67.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 25, 2019) [hereinafter Revised Proposed DIP Financing Interim Order].

The revised proposed interim order made final approval of the DIP Intercreditor Agreement subject to the entry of the final order on the motion.<sup>335</sup> This change allowed the court time to review the DIP Intercreditor agreement before approving it rather than rubber stamping it.<sup>336</sup>

Next, at the court's request Bumble Bee removed language which would have treated the ABL roll up as a refinancing until the roll up was completed, and upon completion of the ABL roll up as a total discharge of the ABL obligation.<sup>337</sup>

Additionally, Bumble Bee removed a provision disallowing the use of unencumbered assets (or their proceeds) that were subject to the DIP superpriority claims to pay professional fees and disbursements.<sup>338</sup> Removal of this provision meant that the unencumbered assets or the proceeds from the sale of the unencumbered assets could be used to satisfy professional claims even though they were subject to DIP superpriority claims.

In defining what constitutes the DIP Collateral Bumble Bee removed language identifying "leased real property" as collateral and replaced it with "leased property."<sup>339</sup> This language appears to be broader as it encompasses not only all leased real property but also all other forms of leased property, including leased personal property which the original language did not specifically include.

The revised proposed interim order completely removed Bumble Bee's definition of what constitutes cash collateral.<sup>340</sup> By removing any definition of what constitutes cash collateral the revised proposed order narrowed the scope of what constituted cash collateral back to the definition of cash collateral in section 361 of the Bankruptcy Code.

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<sup>335</sup> *Id.* at 530.

<sup>336</sup> *Id.*

<sup>337</sup> *Id.* at 542.

<sup>338</sup> *Id.* at 559.

<sup>339</sup> *Id.* at 561.

<sup>340</sup> *Id.* at 568.



The interim revised proposed order removed the proposed definition of a diminution claim.<sup>341</sup> The original definition of a diminution claim gave the secured parties a claim “for any diminution in value of the respective interests in the Prepetition Collateral.”<sup>342</sup> This definition likely drove too hard a bargain as it made no reference to whether the secured parties overall secured claim was actually impaired by the diminution in value of the prepetition collateral. Changing the definition made it clear that the diminution claims were capped by the overall value of the prepetition collateral.

The interim revised proposed order removed language requiring that any order dismissing any of the Bumble Bee’s cases be reasonably acceptable to the DIP Agents and instead required only that if Bumble Bee sought dismissal the form and substance of the order be reasonably acceptable to the DIP Agents.<sup>343</sup> Without this change the court would be unable to dismiss the case without prior approval from the DIP Agents.

The court also required Bumble Bee to remove language which provided that in the event an adversary proceeding or contested matter ruling is appealed, the appeal would not stay or delay the case.<sup>344</sup> This provision was likely thought to be guaranteeing too much for Bumble Bee. At such an early stage in a Chapter 11 case it is difficult if not impossible to know what sort of issues and appeals may arise that require the delay of the case. Thus, language guaranteeing that no such delay would take place is unwise.

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<sup>341</sup> *Id.* at 569.

<sup>342</sup> *Id.*

<sup>343</sup> *Id.* at 580.

<sup>344</sup> *Id.* at 583.

## Interim DIP Financing Order

The court granted the revised proposed interim order without further objection.<sup>345</sup> The interim DIP financing order approved the proposed rolled up all outstanding prepetition ABL indebtedness, totaling \$192,420,215, into obligations under the ABL DIP Facility consisting of up to \$200 million in revolving credit commitments<sup>346</sup> and authorized Bumble Bee to obtain a senior secured term loan DIP credit facility of up to \$80 million in term loan credit commitments with \$40 million available upon entry of the interim order.<sup>347</sup> The interim order also granted a variety of adequate protection measures to the prepetition term loan lenders to ensure there would not be a diminution in the value of their secured claims.<sup>348</sup> The proposed adequate protection for the prepetition ABL lenders proved unnecessary as the court approved the roll up of the prepetition ABL indebtedness into the ABL DIP Facility.<sup>349</sup> The interim order granted the priorities set forth in the Bumble Bee's proposed priority waterfall.<sup>350</sup>

## Final DIP Financing Order

The court received no objections to the motion for entry of a final order authorizing Bumble Bee to obtain debtor in possession financing. The court entered its final order on December 12, 2019

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<sup>345</sup> Interim Order: (I) Authorizing Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral; (II) Granting Liens and Superpriority Administrative Expense Claims; (III) Granting Adequate Protection; (IV) Modifying Automatic Stay; (V) Scheduling Final Hearing; and (VI) Granting Related Relief [68.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 25, 2019) [hereinafter Interim DIP Financing Order].

<sup>346</sup> *Id.* at 2.

<sup>347</sup> *Id.* at 3-4.

<sup>348</sup> See *supra* [Adequate Protection](#).

<sup>349</sup> Interim DIP Financing Order, *supra* note 342, [68.pdf](#) at 2; See *supra* [Prepetition ABL Facility Roll-Up](#).

<sup>350</sup> Interim DIP Financing Order, *supra* note 342, [68.pdf](#) at 2; See *supra* Table 8: Priority Waterfall.

authorizing all requested relief on the same terms as were in the interim order.<sup>351</sup> The final order gave Bumble Bee access to the full \$80 million available under the Term Loan DIP Facility.<sup>352</sup>

## The 363 Sale

### Background

In the years immediately preceding the bankruptcy, Bumble Bee was subject to declining sales and a significant increase in liabilities. This combination of factors made it necessary for Bumble Bee to employ some means of removing liabilities to remain solvent. Although Bumble Bee considered less drastic methods, it eventually became clear that a 363 sale was their best option. Prior to entering into Chapter 11 Bumble Bee managed to secure FCF as a stalking horse bidder for substantially all of their assets.

Throughout the bidding and sale process, the Bumble Bee continued to argue that the sale was necessary due to their antitrust civil litigation issues and related antitrust fines, and that the restructuring and sale were part of a strategy to restore the company to profitability. They also noted that this only occurred after exhausting a series of other methods to remove the debt, including a settlement of substantial civil litigation claims and an infusion of capital to finance the settlements, which would significantly reduce their liabilities. However, once it became clear that these method was not viable, they were forced to consider selling the company via a 363 auction as the only viable method for shedding liability without undermining their ability to conduct normal operations.

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<sup>351</sup> Final Order: (I) Authorizing Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral; (II) Granting Liens and Superpriority Administrative Expense Claims; (III) Granting Adequate Protection; (IV) Modifying Automatic Stay; and (V) Granting Related Relief [173.pdf](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 19, 2019).

<sup>352</sup> *Id.* at 4.

## The Bidding and Sale Motion

On November 19, 2019, the Debtors filed a motion to establish the bidding procedures for the sale of substantially all of their assets in both Canada and the United States.<sup>353</sup> The stalking horse agreement with FCF allowed for a bid of up to \$930.6 million.<sup>354</sup> To ensure the highest price, they requested that the court allow them to establish bidding procedures culminating in an auction and potential sale.<sup>355</sup> Although research led the debtors to believe that selling their U.S. and Canadian assets as an aggregate was likely to net the most gain from their shareholders, they chose to accept bids in three different categories.<sup>356</sup> The categories are as follows, (1) solely for U.S. assets, (2) solely for Canadian assets, and (3) for the entirety of the company.<sup>357</sup> However, they expressed their preference for bids in the last category.<sup>358</sup> They also established a rule that permits them to cancel the auction if no qualifying bids

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<sup>353</sup> Motion For Sale of Property Free and Clear of Liens under Section 363(f)(FEE) // Debtors' Motion for Entry of Orders (I) (A) Approving Bidding Procedures for the Sale of All or Substantially All of the Debtors' Assets, (B) Authorizing and Approving Entry Into the Stalking Horse APA, (C) Approving the Designation of the Stalking Horse Bidder, (D) Approving Bid Protections, (E) Scheduling a Sale Hearing and Objection Deadlines With Respect to the Sale, (F) Scheduling an Auction, (G) Approving the Form and Manner of Notice of the Sale Hearing and Auction, (H) Approving Contract Assumption and Assignment Procedures, and (I) Granting Related Relief; and (II) (A) Approving the Stalking Horse Agreement; (B) Approving the Sale to the Stalking Horse Bidder (or Backup Bidder) of Substantially All of the Purchased Assets of the Debtors, Pursuant to Section 363 of the Bankruptcy Code Free and Clear of All Liens, Claims, Interests, and Encumbrances; (C) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Pursuant to Section 365 of the Bankruptcy Code, (D) Authorizing the Debtors to Consummate Transactions Related Thereto, and (E) Granting Related Relief Fee Amount \$181 Filed by Bumble Bee Parent, Inc [pdf.31](#) In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 21, 2019)[Hereinafter Motion for Sale of Property Free of Liens].

<sup>354</sup> *Id.* at 3.

<sup>355</sup> *Id.*

<sup>356</sup> *Id.* at 24.

<sup>357</sup> *Id.*

<sup>358</sup> *Id.*

are received other than that of the stalking horse bidder.<sup>359</sup> The court approved the motion and set the objection deadline for potential claimants on December 9, 2019.<sup>360</sup>

## Timeline of the Bidding Process

The bidding deadline was January 2, 2020, which was the deadline for potential bidders to complete their due diligence and to pay deposits.<sup>361</sup> By January 6, Bumble Bee had determined (1) which bids are qualified and (2) whether or not the bidders themselves are qualified.<sup>362</sup> They would then notify the potential bidders of their status on that same date.<sup>363</sup> On January 9, 2020, the debtors would supply all qualified bidders with schedules noting the current best offer for either their entire company, or broken down into its U.S. and foreign assets as the case may be.<sup>364</sup> They also allotted for a final auction on January 10, 2020 and final sales hearing on January 17, 2020.<sup>365</sup>

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<sup>359</sup> *Id.*

<sup>360</sup> Notice of Hearing Regarding Debtors' Motion for Entry of Orders (I) (A) Approving Bidding Procedures for the Sale of All or Substantially All of the Debtors' Assets, (B) Authorizing and Approving Entry Into the Stalking Horse APA, (C) Approving the Designation of the Stalking Horse Bidder, (D) Approving Bid Protections, (E) Scheduling a Sale Hearing and Objection Deadlines With Respect to the Sale, (F) Scheduling an Auction, (G) Approving the Form and Manner of Notice of the Sale Hearing and Auction, (H) Approving Contract Assumption and Assignment Procedures, and (I) Granting Related Relief; and (II) (A) Approving the Stalking Horse Agreement; (B) Approving the Sale to the Stalking Horse Bidder (or Backup Bidder) of Substantially All of the Purchased Assets of the Debtors, Pursuant to Section 363 of the Bankruptcy Code Free and Clear of All Liens, Claims, Interests, and Encumbrances; (C) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Pursuant to Section 365 of the Bankruptcy Code, (D) Authorizing the Debtors to Consummate Transactions Related Thereto, and (E) Granting Related Relief (related document(s)31) Filed by Bumble Bee Parent, Inc [pdf.76](#), In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 25, 2019).

<sup>361</sup> Motion for Sale of Property Free of Liens [pdf.31](#) In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Nov. 21, 2019).

<sup>362</sup> *Id.* at 22.

<sup>363</sup> *Id.*

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

## Authority to Consummate the Sale

Under the Bankruptcy Code sections 105, 363, and 365, the debtors had authorization to “execute, deliver, and perform their obligations under and comply with the terms of the Stalking Horse Agreement and to consummate the Transactions, including by taking any and all actions as may be reasonably necessary or desirable to implement the Transactions and each of the transactions contemplated thereby or to otherwise effectuate the relief granted pursuant to this Order”.<sup>366</sup> Bumble Bee also relied on section 363(f) of the Bankruptcy Code which allows debtors in possession to sell their interest in the company “free and clear of any and all claims, liens, and encumbrances (other than “Assumed Liabilities” and “Permitted Liens”)”.<sup>367</sup>

Although authorization seemed likely, there were objections to key parts of the auction procedures. One of the most prominent objections was from the Department of Justice themselves, which had issues with the timeline of the auction.<sup>368</sup> Specifically, they opposed the bidding procedure (¶15) which set the deadline for bids as Jan. 2, 2020 on the grounds that it did not provide enough time for interested bidders to fully conduct their due diligence.<sup>369</sup> They argued that the two weeks should be added to the proposed deadline. They also opposed the deadline for bidding procedures (¶ 24 and ¶16) because it did not allow enough time to determine whether the winning bidder would be capable of performing and that 6 hours after the auction concluded was an insufficient amount of time for interested parties to file objections to the sale.<sup>370</sup> Instead, the government requested the deadline be pushed back to a week after auction, so any potential objections could be properly formulated.<sup>371</sup> In their order, the court

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<sup>366</sup> *Id.* at 14.

<sup>367</sup> *Id.* at 45.

<sup>368</sup> Limited Objection to Proposed Bidding Procedures Order [pdf.112](#) In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 9, 2019).

<sup>369</sup> *Id.* at 1.

<sup>370</sup> *Id.* at 2.

<sup>371</sup> *Id.*

largely agreed with the government, and pushed the deadline for bids to Jan. 20, 2020.<sup>372</sup> Additionally, it set the post-auction deadline to Jan. 27, 2020, a full week after the proposed deadline of six hours.<sup>373</sup>

Overall, it seems the debtors drafted these provisions in order to give the stalking horse bidder an edge at the auction, a goal which was stymied by government objections meant to ensure fairer proceedings and safeguard the bankruptcy process.

## Stalking Horse Bid Successful

Despite the debtor's best efforts, no other qualified bids were received for substantially all of their assets. This led to the cancellation of the auction and the sale to the stalking horse bidder moved forward.<sup>374</sup> The court acknowledged in their order that the debtors had adequately complied with the procedures set out in the sale motion, and that FCF was a successful bidder under those procedures.<sup>375</sup> In their order, the court noted that no offers were received which surpassed that of the stalking horse buyer, and that they complied with §363(n) of the Bankruptcy Code, which basically requires affirmation on the part of the buyer and seller that "the Stalking Horse agreement was not entered into for the purpose of hindering, delaying, or defrauding present or future creditors".<sup>376</sup> They also complied with the standards

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<sup>372</sup> Order (A) Approving Bidding Procedures for the Sale of All or Substantially All of the Debtors' Assets, (B) Authorizing and Approving Entry Into the Stalking Horse APA, (C) Approving the Designation of the Stalking Horse Bidder, (D) Approving Bid Protections, (E) Scheduling a Sale Hearing and Objection Deadlines With Respect to the Sale, (F) Scheduling an Auction, (G) Approving the Form and Manner of Notice of the Sale Hearing and Auction, (H) Approving Contract Assumption and Assignment Procedures, and (I) Granting Related Relief [pdf.171](#) In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 19, 2020).

<sup>373</sup> *Id.* at 14-15.

<sup>374</sup> Exhibit(s) // Notice of Cancellation of Auction and Designation of Stalking Horse Bid as the Successful Bid [pdf.297](#) In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 20, 2020).

<sup>375</sup> Order (A) Approving the Stalking Horse Agreement; (B) Approving the Sale to the Stalking Horse Bidder of Substantially All of the Purchased Assets of the Debtors, Pursuant to Section 363 of the Bankruptcy Code Free and Clear of All Liens, Claims, Interests, and Encumbrances; (C) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Pursuant to Section 365 of the Bankruptcy Code, (D) Authorizing the Debtors to Consummate Transactions Related to the Above, and (E) Granting Other Relief [pdf.326](#) In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 24, 2020).[Hereinafter Sale Order].

<sup>376</sup> *Id.* at 7.

of §363(f), resulting in the approval of the court to continue with the sale to the stalking horse bidder.<sup>377</sup>

In addition to approving the sale to FCF, the court permitted Brookfield Principal Credit LLC to serve as the backup bidder if FCF is unable or unwilling to follow through on the sale.<sup>378</sup> However, there were a series of objections to this sale from various creditors, which inhibited an easy resolution to the sale.

## Objections

With the filing of the bidding procedures and the Proposed Cure Amounts (doc 206) the debtors were faced with many objections to the sale, some of which had the potential to derail the entire process if not resolved favorably. Although the objections were raised on a variety of grounds, they all shared the underlying goal of ensuring that their debts would not be among those discharged. Many of the objecting companies utilized contract provisions requiring cure of any default before assignment was permitted as the basis for their objections. This proved largely effective in forcing Bumble Bee to pay many of its outstanding obligations before assignment of their contractual agreements to the buyer.

In 2013, Anova LLC (Anova) made an agreement with the debtors to purchase a subsidiary company (Anova foods), which was successful.<sup>379</sup> Just prior to closing, there was a suit by Hanover Insurance against Anova foods, which was settled.<sup>380</sup> However, Anova objected to the potential sale on the grounds that Bumble Bee received a \$600,000 payment from Hanover Insurance which rightfully belonged to Anova.<sup>381</sup> They requested that any sale should exclude this property because it is not owned by the debtor.<sup>382</sup> Anova asserted that after a 2015 settlement with Hanover, they wished to continue

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<sup>377</sup> *Id.* at 8-9.

<sup>378</sup> *Id.* at 14.

<sup>379</sup> Objection to Sale by Anova Holdings [pdf.257](#) at 3. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 10, 2020).

<sup>380</sup> *Id.*

<sup>381</sup> *Id.* at 4.

<sup>382</sup> *Id.* at 2.



litigation for attorney's fees and did so.<sup>383</sup> Bumble Bee agreed that Anova would be entitled to any recovered attorney's fees.<sup>384</sup> Furthermore, they argued that the \$600,000 was earmarked for and is property of Anova foods that should be paid in advance of any sale.<sup>385</sup> However, this objection was withdrawn prior to the order approving the sale, likely being resolved through settlement.<sup>386</sup>

Dolgencorp was the corporate entity which operated as Dollar General, and were one of many companies who purchased tuna from Bumble Bee.<sup>387</sup> However, a dispute over their rebate policy resulted in an objection to the proposed cure amounts. Here, the debtors sought to assign and assume their ongoing contract with Dolgencorp, which would maintain their ongoing work relationship through the sale, and result in a null cure amount paid to Dolgencorp.<sup>388</sup> In their contract, Dolgencorp was given certain rebate rights, which resulted in a price reduction for Dolgencorp, but the assignment or assumption of their contract did not result in any cure amount on this basis because the court determined that the rebates were merely a price reduction.<sup>389</sup> However, Dolgencorp argued that because the debtors were treating their contract as a cure claim, they were entitled to a cure amount of \$12,433.33.<sup>390</sup> The

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<sup>383</sup> *Id.* at 3.

<sup>384</sup> *Id.*

<sup>385</sup> *Id.* at 6.

<sup>386</sup> Sale Order [pdf.326](#) at 32. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 24, 2020).

<sup>387</sup> *Dolgencorp LLC*, bloomberg, <https://www.bloomberg.com/profile/company/0120349D:US>

<sup>388</sup> Objection to Proposed Cure Amount and Assumption of Executory Contracts [pdf.291](#) at 2. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 16, 2020)[Dolgencorp Objection].

<sup>389</sup> *Id.*

<sup>390</sup> *Id.*

court resolved this by affirming that the contract was valid and because there was no practical change in status, Dolgencorp was not entitled to any cure amount.<sup>391</sup>

SuperValu is another company who was under contract as a purchaser of Bumble Bee's products. However, they sought an objection to the proposed cure amounts and an assumption of their contract.<sup>392</sup> SuperValu objected to their proposed cure amount of \$0 on the grounds that they were entitled to payment of \$28,500 for purchases they made from the debtors under their corporate agreement, in addition to other fees which would be due throughout the course of their contract.<sup>393</sup> The court agreed and established that SuperValu was entitled to payment on the contract in accordance with the corporate agreement and that any emerging fees under their contract would be upheld by Bumble Bee or their subsequent buyer.<sup>394</sup> The court further clarified that Bumble Bee would remain liable for fees accrued prior to closing.<sup>395</sup>

SAP America Inc. ("SAP") had an executory licensing agreement with the debtors, through which they licensed software for Bumble Bee's use.<sup>396</sup> This dispute was the basis for the coalition of SAP, its affiliate ("SAP SE") and Concur Technologies Inc. ("Concur") joint objection.<sup>397</sup> As a part of their bankruptcy proceedings, Bumble Bee intended to assign many of their contracts and liabilities to the

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<sup>391</sup> Sale Order [pdf.326](#) at 32-33. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 24, 2020).

<sup>392</sup> Objection to Proposed Cure Amount and Assumption of Executory Contracts [pdf.290](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 16, 2020)[SuperValu Objection].

<sup>393</sup> *Id.* at 2.

<sup>394</sup> Sale Order [pdf.326](#) at 33. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 24, 2020).

<sup>395</sup> *Id.*

<sup>396</sup> Objection and Reservation of Rights of SAP America, Inc. and its affiliates SAP SE and Concur Technologies, Inc. to the Assumption and Assignment of Certain Executory Contracts Pursuant to the Debtors Sale Motion and Cure Notice, and the Use of Certain Intellectual Property for the Benefit of Any Non-Licensee [pdf.296](#) at 3. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 20, 2020).

<sup>397</sup> *Id.* at 1.

buyer, including their executory contracts with SAP.<sup>398</sup> However, under the terms of their contract assigning the License agreement can only be done with SAP's approval.<sup>399</sup> A similar provision exists in the Blockchain agreement between Bumble Bee and SAP SE.<sup>400</sup> Specifically, the respective provisions prohibited Bumble Bee from using their license "for the benefit of third parties" effectively making the sale a violation of their executory contracts.<sup>401</sup> Another issue noted by the three entities is that the cure notice presented by Bumble Bee failed to specify the contracts which they wanted to be assumed, the cure amounts were also incorrect, and they failed to include their contracts with Concur, which held similar contractual protections for their intellectual properties.<sup>402</sup> This included several active invoices which were not included in the cure amounts.<sup>403</sup> Among these are a \$14,453.16 liability due to SAP and \$5,494.97 due to Concur, this, together with their other executory debts total \$576,348.64 due to SAP and Concur.<sup>404</sup>

Overall, the relief sought in their joint objection was the prevention of the sale to the extent that it would violate their executory contracts. However, in reality they likely intended this as a temporary measure to force the debtors into settling their debt owed, and to ensure that their liabilities would not be among those discharged through bankruptcy. Ultimately, the court agreed that SAP and Concur's

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<sup>398</sup> *Id.*

<sup>399</sup> *Id.* at 2

<sup>400</sup> *Id.*

<sup>401</sup> *Id.* at 3.

<sup>402</sup> *Id.*

<sup>403</sup> *Id.* at 4.

<sup>404</sup> *Id.* at 4-5.

contracts could only be assigned with their consent, meaning that Bumble Bee was required to pay the full \$576,348.64 as a condition of SAP and Concur allowing the assignment of their contracts.<sup>405</sup>

Similarly, Syntax had a working relationship with Bumble Bee, and were responsible for managing and maintaining their SAP cloud systems.<sup>406</sup> However, the proposed cure amount by Bumble Bee had them listed as receiving \$0.<sup>407</sup> Due to this, Syntax filed an objection to the cure amounts listed. They opposed this using the argument that they were owed \$33,379.01 and also sought the repayment of these debts as a condition of allowing assignment of their contracts to another party.<sup>408</sup> The court agreed, and also established that further accrued debts prior to the sale must be paid in the ordinary course of business and that anything due at closing will be the responsibility of the debtor.<sup>409</sup>

Oracle is a licensor of software who had a contract with Bumble Bee, and one of their creditors.<sup>410</sup> Oracle filed a motion to assert their right to prevent Bumble Bee from assigning their contract without approval.<sup>411</sup> However, Oracle was not listed on the assignment motion, leading to the presumption that the debtors did not intend to assign their contract to another entity.<sup>412</sup> This motion was later withdrawn.<sup>413</sup> Although the reason for this is speculative, it likely means that Bumble Bee had no

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<sup>405</sup> Sale Order [pdf.326](#) at 35. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 24, 2020).

<sup>406</sup> *Id.* at 1.

<sup>407</sup> *Id.* at 2.

<sup>408</sup> *Id.* at 2-3.

<sup>409</sup> Sale Order [pdf.326](#) at 36. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 24, 2020).

<sup>410</sup> Objection and Reservation of Rights of Freudenberg IT LP (n/k/a Syntax Systems USA LP) to Debtors Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Proposed Cure Amounts [pdf.274](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 14, 2020).

<sup>411</sup> Objection to Debtor's Motion at docket no. 31 and pleading at docket no. 171 [pdf.261](#) at 2. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 10, 2020). [hereinafter Oracle Objection].

<sup>412</sup> *Id.*

<sup>413</sup> Notice of Withdrawal of Oracles Rights Reservation Regarding Debtors Motion For Entry Of Orders [pdf.309](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 22, 2020).

intention of altering their current status by assigning their contract to another entity, or that they otherwise reached a settlement.

In the case of Microsoft's objection to the sale, they were actually not owed anything at the time the motion was filed.<sup>414</sup> However, they sought to ensure that future debts incurred before closing would be paid as a condition of the assignment.<sup>415</sup> The objection was later resolved, without a formal withdrawal of the objection.<sup>416</sup> This most likely means that the Microsoft was satisfied future debts would be paid by either the debtors or the buyer.

Chubb companies is an entity made up of several different insurance companies which all worked with the debtors through a series of ongoing insurance programs and filed their objections jointly.<sup>417</sup> They eventually filed an objection to the debtor's cure amounts based on inadequate payment. Although they did not dispute that Bumble Bee did not owe Chubb companies any outstanding balance, they noted that the amount due would need to be reevaluated at closing because Bumble Bee would continue to accrue costs for insurance claims in the intervening months.<sup>418</sup> Due to this, Chubb companies sought to add a condition to the assignment that would force the assignee to remain liable for the debtor's liabilities which have or may arise under the insurance programs.<sup>419</sup> Ultimately, the court agreed and ordered that Bumble Bee could assign the remainder of their contracts on the condition that the buyer accept liability

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<sup>414</sup> Objection by Microsoft to Cure/Assignment [pdf.280](#) at 2. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 16, 2020).

<sup>415</sup> *Id.*

<sup>416</sup> Notice of Agenda of Matters Scheduled for Hearing Filed by Bumble Bee Parent, Inc [pdf.304](#) at 8. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 21, 2020).

<sup>417</sup> Objection of the Chubb Companies to the Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Proposed Cure Amounts [pdf.281](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 16, 2020).

<sup>418</sup> *Id.*

<sup>419</sup> *Id.*

for their predecessor.<sup>420</sup> This decision would ensure that any debts accrued by the debtors in the subsequent months would still be guaranteed, either by Bumble Bee or the buyer.

Walmart Inc was one of the more significant buys of Bumble Bee held, they had a series of supplier agreements with Walmart and its subsidiaries through which Bumble Bee supplied their tuna.<sup>421</sup> Generally, Walmart owed money to Bumble Bee, but there were some instances involving defective goods which were offset as a credit to Walmart which caused Bumble Bee to owe Walmart.<sup>422</sup> In their cure motion, Bumble Bee listed the amount due to Walmart at \$0.<sup>423</sup> Walmart objected and requested the payment of the \$2,372,000 outstanding balance at the time of filing.<sup>424</sup> As a condition of approving the assumption, they requested the repayment of the outstanding balance.<sup>425</sup> However, Walmart's objection was settled out of court and without an order of the court.<sup>426</sup>

NTT data provided technical services through their contract with Bumble Bee, for which the debtors owed them a substantial amount of payment at the time of filing. NTT data filed their objection due to a proposed cure amount of \$0.<sup>427</sup> In addition to requesting that the court require the payment of the \$70,772.00 balance due, they also requested adequate assurance from the proposed buyer as a condition

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<sup>420</sup> Sale Order [pdf.326](#) at 27. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 24, 2020).

<sup>421</sup> Objection of Walmart Inc. and Its Subsidiaries to Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Proposed Cure Amounts [pdf.282](#) at 2. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 16, 2020).

<sup>422</sup> *Id.*

<sup>423</sup> *Id.* at 3.

<sup>424</sup> *Id.*

<sup>425</sup> *Id.*

<sup>426</sup> Sale Order [pdf.326](#) at 32. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 24, 2020).

<sup>427</sup> Limited Objection of NTT Data, Inc. to Debtors' Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Proposed Cure Amounts [pdf.283](#) at 2. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 16, 2020).

of approving the assumption.<sup>428</sup> In their order, the court established the cure amount as \$57,172.66 currently due and owing under the contract and treated the remaining \$13,599.34 to be treated as an assumed liability by the buyer.<sup>429</sup> Additionally, the court required that any amount due and owing as of the closing would be paid by the debtor.<sup>430</sup>

Matson Logistics worked with Bumble Bee on transport under a broker transportation agreement, due to the scale of their joint operations, they engaged in numerous transactions on a daily basis.<sup>431</sup> However, they objected because they opposed their null cure amount proposed in the cure notice.<sup>432</sup> They did so on the grounds that the number was inaccurate because they engaged in a high volume of transactions on a daily basis, resulting in Bumble Bee accruing liabilities quickly.<sup>433</sup> Furthermore, they noted that the debtors would owe them an estimated \$1,399,083.13 at the end of the contract.<sup>434</sup> This amount included fees accrued at the time of filing. Although the court scheduled a hearing date to respond to the issue, both sides were able to resolve this issue out of court, and the reorganization proceeded with Bumble Bee holding the right to assign.<sup>435</sup>

Finally, one of the most significant objections was from FCF itself. Although this process would end up being moot, they filed this motion to ensure that they would receive payment for the \$53,137,758

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<sup>428</sup> *Id.*

<sup>429</sup> Sale Order [pdf.326](#) at 33-34. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 24, 2020).

<sup>430</sup> *Id.* at 34.

<sup>431</sup> Objection of Matson Logistics, Inc. to Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Proposed Cure Amounts [pdf.287](#) at 2. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 16, 2020).

<sup>432</sup> *Id.* at 1.

<sup>433</sup> *Id.* at 2.

<sup>434</sup> *Id.*

<sup>435</sup> Sale Order [pdf.326](#) at 32. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 24, 2020).

owed to them in the event that their bid was unsuccessful.<sup>436</sup> This objection was worded only to take place if their bid fails, in which case the debtors would be responsible for the full amount of the debt in order to receive FCF's permission to assign their contracts to another party.<sup>437</sup> However, this was rendered moot when FCF emerged as the successful bidder.

These objections largely stemmed from contractors who had the leverage to ensure that they either received payment for debts owed, or that they would continue to receive payments regardless of the sale results. These attempts were largely successful; however, it is notable that a plurality of the objections required court orders to resolve, with only a minority being effectively resolved via out of court negotiation and settlement. However, the remainder of unresolved motions were largely dictated by the global settlement and the committee of unsecured creditors.

## Global Settlement

After the successful 363 sale, the Debtors, the Committee, and all other parties agreed to settlement terms resolving the Committee's comments on the Sale motion.<sup>438</sup> The settlement was meant to address any challenge or causes of action against the lenders, any affirmative causes of action against FCF or its entities, and any objections against the proposed sale of all the Debtor's assets to FCF.<sup>439</sup> Principal Terms were set out to govern the Global Settlement based on the committee's comments to the Sale Motion.<sup>440</sup>

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<sup>436</sup> Objection of FCF, Co.,Ltd. to Debtors' Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Proposed Cure Amounts [pdf. 278](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 15, 2020).

<sup>437</sup> *Id.* at 2.

<sup>438</sup> Exhibits// Notice of the Filing of Principal Terms of Global Settlement Concerning Debtors' Sale Motion [pdf.314](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 23, 2020).

<sup>439</sup> *Id.*

<sup>440</sup> *Id.* at 2.



## Global Settlement: Initial Principal Terms

In the Principal Terms, the Debtors and Committee attempted to establish definitions and procedures surrounding the Creditor Trust.<sup>441</sup> In the Creditor Trust, created pursuant to the Settlement Order, the Trust Assets would have been held and administered for the benefit of the Trust Beneficiaries (defined as holders of general unsecured claims against the Debtors). Based upon the amounts of their general unsecured claims against the Debtors, the Trust Agreement allowed for Trust Beneficiaries to hold Trust Interests giving them a *pro rata* share of any Trust Distributions.<sup>442</sup> The Principal Terms established that there would be one Trustee and a Trustee Oversight Board, which would oversee both the Trust and the Trustee.<sup>443</sup> The Trustee would be a person or entity that would be agreed upon by the Committee, the Term Lenders and the Debtors.

The Principal Terms also described what was considered Trust Assets and what would not be considered Trust Assets.<sup>444</sup> The Trust Assets included assets as described in Section 2.1(c) of the Stalking Horse APA, and excluded any asset claims against FCF (or its entities) dealing with: claims against Chris Lischewski, claims against Lion Capital, claims arising from Debtors' 2017 re-financing transactions, and all claims arising from the advance payment of legal and criminal defense costs.<sup>445</sup> The Trust Funding would be provided by the Term Loan DIP Lenders for \$1,400,000 plus any amounts remaining from the Committee professional fee line item included in the currently operative DIP Budget. The Trust Distributions would be made to satisfy any Trust Expenses and Trust Funding to Term Lenders.

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<sup>441</sup> *Id.* at 6.

<sup>442</sup> *Id.*

<sup>443</sup> *Id.*

<sup>444</sup> *Id.*

<sup>445</sup> *Id.* at 7.

Following these repayments, the Trust Distributions proceeds would be distributed as 75% to the Trust Beneficiaries and 25% of the Term Secured Parties until the claims are paid in full.<sup>446</sup>

By the Lender Effective Date (established at a later date), all claims and causes of action against the Debtors or could have been asserted against the Lenders were waived and released. Any FCF claims from pre or post-petition claims would have been waived and expunged upon Sale closing.<sup>447</sup> Any Challenge Orders were deemed to have been expired by the Lender Effective Date. The parties were to continue to negotiate in good faith and sought a resolution of the Chapter 11 case, which would have included a dismissal for them. The Committee needed to support the approval of the Sale at the Sale Hearing and had to make statements in support of the record at the hearing.<sup>448</sup> After the Principal Terms were proposed (and awaited approval from the Bankruptcy Court), the Global Settlement Stipulation was proposed to the court.

## Global Settlement: Final Proposed Terms

Filed by the debtors, the Global Settlement Stipulation was proposed to go into effect upon transition of the Settlement Order into a Final Order and upon full execution of the Trust Agreement.<sup>449</sup> As stipulated in the Principal Terms, there would be the establishment of a Creditors' Trust and a mutually agreed upon Trustee.<sup>450</sup> To fund the Creditors' Trust, the Debtors proposed transferring cash equal to the remaining amount in the Approved Budget for the Committee professional fee line item. The

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<sup>446</sup> *Id* at 8.

<sup>447</sup> *Id.*

<sup>448</sup> *Id.* at 9.

<sup>449</sup> Exhibit 1 Global Settlement Stipulation // Joint Motion of the Debtors and the Creditors' Committee for an Order Approving Global Settlement Stipulation Filed by Old BBP, Inc. [pdf.621](#) at 6. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed July 09, 2020).

<sup>450</sup> *Id.*

cash deducted out payments, reservations, and all fees or expenses incurred by the Committee's retained professionals up until the Effective Date.<sup>451</sup>

The proposed Global Settlement Stipulation also allowed for a Post-Sale wind-down.<sup>452</sup> The wind-down allowed for the Debtors to file tax returns, for dissolution under the respective state's law, payment of professional fee claims for any Debtor retained professionals, the filing operating reports, and payment of other fees.<sup>453</sup> The Trust Assets would also (based on §§105(a), 363(b), and 363(f) of the Bankruptcy Code) be the same as the Principal Terms and excluded any asset claims against FCF (or its entities) dealing with: claims against Chris Lischewski, claims against Lion Capital, claims arising from Debtors' 2017 pre-financing transactions, and all claims arising from the advance payment of legal and criminal defense costs.<sup>454</sup>

The Compensation of the Trustee and any other professionals were to be from the Trust Agreement and governed by the Trust Agreement terms.<sup>455</sup> The Trustee proposed to repay the Term Lenders from the Trust Claims, without any interest accrual. The Trust Distributions were the same as the Principal Terms, and followed §507(a) of the Bankruptcy Code. §507(a) of the Bankruptcy Code allows for the priorities of claims against the debtor to be structured for: full payment of allowed administrative claims, full payments of allowed priority claims, and *pro rata* distributions of allowed general unsecured claims.<sup>456</sup> There would also be allowed general unsecured claim against the Debtors for \$18,480,332.

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<sup>451</sup> *Id.* at 7.

<sup>452</sup> *Id.* at 9.

<sup>453</sup> *Id.*

<sup>454</sup> *Id.* at 10.

<sup>455</sup> *Id.* at 11.

<sup>456</sup> *Id.* at 12.

There would also be allowance of certain class claims under the Global Settlement Motion, established by order prior to Bumble Bee's filing Ch. 11 bankruptcy.<sup>457</sup> Distributions would be held in escrow prior to court order requiring disbursal.<sup>458</sup> Unlike the class claims, claims against FCF were stipulated to be expunged by the closing date. Any intercompany claims were disregarded for purposes of the Global Settlement.<sup>459</sup>

Upon approval of the Global Settlement, the Trustee would have access to books and records sold under the APA to the Buyer, and would have claims and reconciliation and administration powers. The Debtors, FCF, and any professionals would cooperate with the new trustee in providing access to any non-privileged information.<sup>460</sup> The Debtors had a proposal for a motion seeking a Bankruptcy Court order ("Bar Date Order") to establish any bar dates for filing claims and requests for Administrative Claim payments. The Debtors also stipulated a motion dealing with rejection of executory contracts and unexpired leases.<sup>461</sup>

The proposed Global Settlement Stipulation also had provisions governing continued "good faith negotiations" with the conclusion of the Ch. 11 cases, and kept the Committee until the dismissal or conversion of Bumble Bee's Ch. 11 cases.<sup>462</sup> The Stipulation also was conditioned on the Debtors continued payment of the administrative expenses for the Ch. 11 cases. The Stipulation had controlling terms for any inconsistencies that could arise and the Stipulation would survive any dismissal of the Ch.

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<sup>457</sup> As established by *Order Granting Motions for Class Certification* [MDL ECF No. 1931], July 30, 2019, ("Class Certification Order") for: (i) Direct Purchaser Plaintiff Class; (ii) Commercial Food Service Product Class (otherwise referred to as the "Commercial Food Preparer Class"); (iii) Cartwright Act Class; and (iv) Individual State Class[es]).

<sup>458</sup> *Id.* at 13.

<sup>459</sup> *Id.* at 14.

<sup>460</sup> *Id.* at 14–16.

<sup>461</sup> *Id.* at 17.

<sup>462</sup> *Id.*

11 cases.<sup>463</sup> The terms were paired with a Creditors' Trust Agreement, which established the trust including all of the Global Settlement Stipulation provisions.

## Global Settlement: Objections

Using sections §105(a) and §363 of the Bankruptcy Code and the Federal Rule of Bankruptcy Procedure 9019, the Debtors and the Committee submitted the motion for entry of an order approving the Global Settlement among the Debtors, the Committee, the Term Loan Lenders and Term Secured Parties, and the ABL Loan Lenders, as well as the Stalking Horse Bidder.<sup>464</sup> Section §105(a) governed the power of the court to issue any order of the court to carry out the title, while §363(b) of the Code provided that the trustee may sell or lease the property, other than in the ordinary course of business for the global settlement. The Federal Rule of Bankruptcy Procedure 9019 provided that on motion by the trustee and after a hearing, the bankruptcy court may approve the global settlement (or an additional compromise), without further hearing or notice.<sup>465</sup> By submitting this motion, the settling parties would be able to take the necessary steps to effectuate the Global Settlement agreement.<sup>466</sup>

The Debtors and Committee argued that the Global Settlement resolution was in the best interests for all parties. Not only would the resolution avert costly and time consuming litigation among key parties in Chapter 11, it would also maximize recoveries to the Debtors' creditors, and preserve jobs for 500 of the Debtors' employees. The argument presented by the Debtors and Committee was that courts have long held that a transaction involving the property of the estate should generally be approved as long as the trustee can demonstrate a business justification for the settlement outside the ordinary course of

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<sup>463</sup> *Id.*

<sup>464</sup> Joint Motion to Approve Compromise under 9019 // Joint Motion of the Debtors and the Creditors' Committee for an Order Approving Global Settlement Stipulation Filed by Old BBP, Inc. [pdf.621](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed July 09, 2020).

<sup>465</sup> *Id.*

<sup>466</sup> *Id.* at 14.

business.<sup>467</sup> In federal court, there is a general policy of encouraging settlements and favorable compromises, as long as the bankruptcy court determines that it is in the best interests of the estate, and “within the reasonable range of litigation possibilities somewhere above the lowest point in the range of reasonableness”.<sup>468</sup> The Debtors and Committee also argued that it was in the best interests of the Debtors, because it was the result of substantial good faith and coordinated arm’s length negotiations among the Settling parties. Because the settlement was the product of substantial good faith and coordinated arm’s length negotiations among the Settling parties, therefore it would be above that lowest point in the range of reasonableness.<sup>469</sup>

The United States Trustees then filed an Objection to the Global Settlement alleging that the Global Settlement (presented as the Stipulation and Trust) was a plan of liquidation that attempted to circumvent 1124, 1125, 1126 and 1129 of the Code.<sup>470</sup> The U.S. Trustees argued that because Bankruptcy Code 1124 requires that a claim be designated as impaired or unimpaired, and that the Settlement did not designate the claims as impaired or unimpaired.<sup>471</sup> The Trustees also claimed that acceptance or rejection of the plan could not be solicited until there was a disclosure statement as required by the Bankruptcy Code 1125.<sup>472</sup> The United States Trustees also said that Bankruptcy Code 1129 required a confirmation hearing to prove that the provisions of the plan were made in good faith.<sup>473</sup> Therefore, the U.S. Trustees sought for approval of the Global Settlement to be denied with prejudice.

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<sup>467</sup> *Id.* at 15.

<sup>468</sup> *Id.* at 15–16.

<sup>469</sup> *Id.* at 18.

<sup>470</sup> United States Trustees’ Objection to Joint Motion of the Debtors and the Creditors’ Committee for an Order Approving Global Settlement Stipulation (D.E. 621) [pdf.644](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed July 23, 2020).

<sup>471</sup> *Id.* at 8.

<sup>472</sup> *Id.*

<sup>473</sup> *Id.* at 9.

Lion Capital also filed an objection to the Global Settlement and claimed that the Global Settlement Stipulation amounts to a *sub rosa* plan and is impermissible under the Bankruptcy Code.<sup>474</sup> A *sub rosa* plan in the terms of the Global Settlement is essentially a plan of reorganization that is not subject to the plan confirmation requirements and other creditor protections set forth in the Bankruptcy Code.<sup>475</sup> Because Lion Capital and its affiliates were unsecured creditors in the estate, there were substantial concerns about turning control of the estate assets and claim resolutions to a third-party trustee like FCF.<sup>476</sup> Lion Capital also took issue with the fact that the Global Settlement would entrust the claims reconciliation process to a handpicked Trustee who is not subject to the duties or requirements of the Bankruptcy Code.

Lion Capital previously had clashed with the Antitrust Plaintiffs (defined as direct or indirect purchasers of Bumble Bee’s products) who helped “handpick” the Trustee in the Global Settlement.<sup>477</sup> Lion Capital alleged that they went to great lengths to keep Bumble Bee out of bankruptcy and were unable to reach a settlement agreement with certain Antitrust Plaintiffs in order to prevent this bankruptcy result. Lion Capital alleged that the unwillingness by the Antitrust Plaintiffs was going to cause Lion Capital to see no recovery on its investment in the company as a result of the Chapter 11 cases.

On August 20, 2020, the Debtors then filed a motion to establish dismissal procedures and to dismiss their Chapter 11 case.<sup>478</sup> They stressed that because of the Global Settlement there should be an

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<sup>474</sup> Objection of Lion Capital (Americas), Inc. to Joint Motion of the Debtors and the Creditors’ Committee for an Order Approving Global Settlement Stipulation [pdf.645](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed July 23, 2020).

<sup>475</sup> 19 MICHAEL L. BERNSTEIN & GEORGE W. KUNEY, BANKRUPTCY IN PRACTICE Charles J. Tabb ed., 5th ed. 2015).

<sup>476</sup> *Id.* at 2.

<sup>477</sup> *Id.*

<sup>478</sup> Motion of the Debtors for Entry of Orders (I) Establishing Dismissal Procedures, (II) Authorizing Dismissal of the Debtors Chapter 11 Cases, and (III) Granting Related Relief [pdf.672](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Aug. 20, 2020).

orderly wind down and there should be no Chapter 7 liquidation. Based on section 1112(b) of the Bankruptcy Code, the court “shall” dismiss a Chapter 11 bankruptcy “for cause.”<sup>479</sup> Bankruptcy Code 1112(b)(4) sets out a non-exhaustive list of sixteen grounds for dismissal of a Chapter 11, including when there is a “substantial or continuing loss or diminution and the absence of a reasonable likelihood of rehabilitation” of the estate.<sup>480</sup> Bumble Bee argued that because it has ceased business operations and had insufficient assets to confirm a plan, then it should not have a “for cause” application under 1112(b)(4). The Debtors also, alternatively, argued that dismissal would be warranted under 305(a) of the Bankruptcy Code.<sup>481</sup> The Debtors set out that 305(a) would allow the court to dismiss the Chapter 11 case at any time if the interests of the creditors and the debtor would be best served by a dismissal or suspension.<sup>482</sup>

The United States Trustees made another objection, arguing if the Motion was granted there would be a disposal of the remaining assets of the Debtors’ estate without allowing the estate any possibility of paying off a significant tax liability.<sup>483</sup> The U.S. Trustees instead argued that a conversion to a Chapter 7 would be in the best interests of the creditors.<sup>484</sup> They argued that because the estate was essentially insolvent, there should be a conversion to a Chapter 7 so that a Chapter 7 trustee could independently administer the remaining estate assets.<sup>485</sup> This would allow the remaining estate assets to be administered with oversight and accounting that would not be present in the prior proposal.<sup>486</sup>

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<sup>479</sup> *Id.* at 7.

<sup>480</sup> *Id.* at 9.

<sup>481</sup> *Id.* at 15.

<sup>482</sup> *Id.*

<sup>483</sup> United States Trustees’ Objection to the Motion of the Debtors for Entry of Orders (I) Establishing Dismissal Procedures, (II) Authorizing Dismissal of the Debtors’ Chapter 11 Cases, and (III) Granting Related Relief (D.E. 672) [pdf.682](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Sep. 3, 2020).

<sup>484</sup> *Id.* at 2.

<sup>485</sup> *Id.* at 6.

<sup>486</sup> *Id.*



Lion Capital also made a Limited Motion centered around the combination of the dismissal and the settlement.<sup>487</sup> Although they understood the reasoning behind the Debtors' rationale of dismissal under section 1112 and 305 of the Bankruptcy Code, Lion Capital contended that the Global Settlement and the Motion to Dismiss put together were impermissible, and amounted to a sub rosa plan.<sup>488</sup> Lion Capital pointed out that the Global Settlement proposed to delegate the claims reconciliation process to the Trustee of the Creditors' Trust. The Committee (made up of Antitrust Plaintiffs and Term Lenders) chose that Trustee to oversee the trust, and although the Trustee would have certain duties to the Trust, it would not be subject to the same rules and restrictions as a DIP or Chapter 11 or Chapter 7 trustee. By allowing the Trustee to take control of administration of the claims, it would be in charge of the creditors who selected the Trustee and who also have oversight over the Trustee. Therefore, Lion Capital argued that the combination of the settlement and dismissal should not be allowed.

Both of the objections centered around worry that there would be a substantial tax claim, and that Bumble Bee's best course of action would be a conversion from Chapter 11 to Chapter 7, filing a liquidating plan, or a dismissal of their Chapter 11 cases under the proposed structure. Following the objections to the Global Settlement and the Motion to Dismiss, the Debtors didn't think they had enough time to reply to the objections in advance of the hearing on September 10, 2020. Bumble Bee then requested more time from the Court using Local Rule 9006-1(d).<sup>489</sup> Nothing in the record shows that the Motion for more Time to Reply was ever acknowledged by the Court in the record, and the Debtors didn't reply to the objections before the hearing on September 10, 2020.

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<sup>487</sup> Limited Objection of Lion Capital (Americas), Inc. to Joint Motion of the Debtors for Entry of Orders (I) Establishing Dismissal Procedures, (II) Authorizing Dismissal of the Debtors' Chapter 11 Cases, and (III) Granting Related Relief [pdf.683](#) at 3. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Sep. 3, 2020).

<sup>488</sup> *Id.*

<sup>489</sup> Debtors' Motion for an Order Granting Debtors' Leave and Permission to File a Reply in Support of Motion to Approve Global Settlement and Motion to Dismiss Chapter 11 Cases [pdf.686](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Sep. 8, 2020).

At the hearing on September 10, 2020 the Debtors' Global Settlement Motion and Dismissal Motion were heard by the court. The motion failed to gain court approval when the judge said she was concerned that the proposed deal did not address tax claims that could reach up to tens of millions of dollars.<sup>490</sup> The Internal Revenue Service ("IRS") had no opportunity to come before the court and could not weigh in on any of the potential tax liability. The court then suggested to the Debtors to open up discussions with the IRS when the potential substantial tax claim came to light.<sup>491</sup> Bumble Bee and the Committee followed the Court's advice and subsequently discussed its options with the IRS. The motions were denied without prejudice by the court.<sup>492</sup>

Although the IRS had been provided notice of all the proceedings in the Bumble Bee case, which includes the Sale, the Global Settlement, and the Motion to Dismiss, it had not asserted a tax claim or objected to any of the Chapter 11 relief.<sup>493</sup> Agreeing with the Court, the IRS said that it would not support the proposed Global Settlement and the Motion to Dismiss, but would rather seek a conversion of the Chapter 11 cases.<sup>494</sup> Based on that IRS Consultation, the Debtors and Committee determined that conversion was in the best interests of the Creditors and the estates.<sup>495</sup>

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<sup>490</sup> Vince Sullivan, *Bumble Bee's Ch. 11 Deal Axed Over Undetermined Tax Claims*, Law360 (Sep. 10, 2020), <https://www.google.com/amp/s/www.law360.com/amp/articles/1309078>

<sup>491</sup> Notice of Appearance. Filed by the United States on Behalf of the Internal Revenue Service [pdf.704](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Sep. 16, 2020).

<sup>492</sup> Debtors' Motion for Entry of an Order Approving the Conversion of an Order Approving the Conversion of the Debtors' Chapter 11 Cases to Cases under Chapter 7 of the Bankruptcy Code and Approving Certain Matters Related thereto, Including Establishing Procedures Related to Final Fee Applications for these Chapter 11 Cases [pdf.782](#) at 5. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 29, 2020).

<sup>493</sup> Debtors' Motion for Entry of an Order Approving the Conversion of an Order Approving the Conversion of the Debtors' Chapter 11 Cases to Cases under Chapter 7 of the Bankruptcy Code and Approving Certain Matters Related thereto, Including Establishing Procedures Related to Final Fee Applications for these Chapter 11 Cases [pdf.782](#) at 5. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 29, 2020).

<sup>494</sup> *Id.*

<sup>495</sup> *Id.*

## Chapter 7 Conversion

Based on the IRS recommendations, Bumble Bee then proceeded to file a conversion motion from Chapter 11 to Chapter 7, and establish certain procedures related to the conversion, including Final Fee Applications.<sup>496</sup> The Debtors used 1112(a) of the Bankruptcy Code, which provided that by right the Debtor is allowed to convert unless 1) the debtor is not a debtor-in-possession, 2) the case was originally commenced involuntarily, or 3) the case had previously been converted. Because none of those were applicable, they argued that a debtor's right to convert its case is absolute.<sup>497</sup> The Debtors also requested that there would be a 21 day proposed deadline for professionals to file their final fee applications ("Final Fee Application Deadline"). This allowed for the Debtors' estates to calculate the final payments that were expenses due to professionals from the amounts placed into the Closing Escrow Accounts as determined in the Final DIP Order.<sup>498</sup> The final date to object was established to be 21 days after the Final Fee Application deadline.

On January 25, 2021, the Court approved procedures for the conversion of Bumble Bee's case from a Chapter 11 to a Chapter 7.<sup>499</sup> Professionals subject to procedures of interim compensation and expense reimbursement had to submit Final Fee Applications, and payment procedures were established for the Debtors.<sup>500</sup> Objections and Certificates of No Objections had to be filed within the established 21 day limit by February 8, 2021. Trust Funding was also to be transferred from the Committee's counsel's trust account to the account for the Chapter 7 Trustee and held until final liens were established. The

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<sup>496</sup> *Id.* at 1.

<sup>497</sup> *Id.* at 6.

<sup>498</sup> Final Order: (I) Authorizing Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral; (II) Granting Liens and Superpriority Administrative Expense Claims; (III) Granting Adequate Protection; (IV) Modifying Automatic Stay; and (V) Granting Related Relief [173.pdf](#) at 66., In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Dec. 19, 2019).

<sup>499</sup> Order Approving Procedures for the Conversion of the Debtors' Chapter 11 Cases to Cases under Chapter 7 of the Bankruptcy Code and Establishing Procedures Related to Final Fee Applications for the Chapter 11 Cases [pdf.796](#) at 1., In re Old BBP, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 21, 2021).

<sup>500</sup> *Id.* at 2.

Debtors also had to turn over all records and property of the estate, file a schedule of unpaid debts after the Petition Date, and file and transmit a final report to the Office of the United States Trustee.

## Final Professional Fee Applications

### Final Fee Application: KPMG

KPMG submitted its final fee application as Bumble Bee's tax consultant totaling \$121,878.00 over the course of the Chapter 11 case from November 21, 2019 through August 31, 2020.<sup>501</sup> The fees requested represented total hours billed of 161.8 at an average rate of \$753.26 an hour.<sup>502</sup> KPMG argued that the fees requested were reasonable and in accordance with the going rate for the services provided.<sup>503</sup> They further asserted that the fees requested reflected a roughly 25% discount from their ordinary billable rate and as such should be approved.<sup>504</sup> As of the time of its final fee application, KPMG had been paid in full for all but \$1,913.00 of their requested fees.<sup>505</sup> There were no objections to KPMG's final fee application and the court entered an order approving it on March 30th, 2021.<sup>506</sup>

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<sup>501</sup> Final Fee Application of KPMG LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expense as Tax Consultant and Accounting Advisor to the Debtors for the Final Period From November 21, 2019 Through August 31, 2020 [791.pdf](#) at 4, In re Old BBP, Inc., Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Jan. 20, 2021).

<sup>502</sup> *Id.* at 6.

<sup>503</sup> *Id.* at 7.

<sup>504</sup> *Id.* at 6.

<sup>505</sup> *Id.* at 2.

<sup>506</sup> Omnibus Order Approving Final Fee Requests of Certain of the Chapter 11 Professionals [862.pdf](#), In re Old BBP, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Mar. 30, 2021).

## Final Fee Application: Lowenstein Sandler LLP

Lowenstein Sandler LLP (“Lowenstein”) submitted its final fee application as counsel to the official committee of unsecured creditors for the period of December 03, 2019 through January 25, 2021.<sup>507</sup> Bayard’s requested fees for the period were \$1,802,717.50 and expenses incurred were \$63,164.97.<sup>508</sup> Lowenstein billed a total of 2,767.80 hours over the course of its employment for an average hourly rate of \$651.32.<sup>509</sup> Lowenstein argued that the services rendered were vital to the administration of the case and thus its fees should be approved as they were reasonable given the nature of the services rendered.<sup>510</sup> Upon receipt of informal comments from the U.S. Trustee, Lowenstein voluntarily reduced its final fee application by \$17,181.50 to a total of \$1,785,536.00.<sup>511</sup> The court entered an order approving Lowenstein Sandler LLP final fee application without further objection.<sup>512</sup>

## Final Fee Application: Thornton Grout Finnigan LLP

Thornton Grout Finnigan LLP (“TGF”) submitted its final fee application as Canadian counsel to the official committee of unsecured creditors for fees totaling \$34,450.67 of which they were owed \$7,636.00 and expenses totaling \$143.41.<sup>513</sup> TGF billed 68.6 hours over the course of their employment

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<sup>507</sup> Summary of Fourth Interim and Final Application of Lowenstein Sandler LLP as Counsel to the Official Committee of Unsecured Creditors for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred for the periods of (I) September 1, 2020 Through January 25, 2021, and (II) December 3, 2019 Through January 25, 2021 [808.pdf](#), In re Old BBP, Inc., 19-12502 (LSS) (Bankr. D. Del. Feb. 1, 2021).

<sup>508</sup> *Id.*

<sup>509</sup> *Id.* at 11.

<sup>510</sup> *Id.* at 21.

<sup>511</sup> Certification of Counsel Regarding Proposed Omnibus Order Approving Final Fee Requests of Certain of the Chapter 11 Professionals [845.pdf](#) at 9, In re Old BBP, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Feb. 25, 2021).

<sup>512</sup> Omnibus Order Approving Final Fee Requests of Certain of the Chapter 11 Professionals [862.pdf](#) at 5, In re Old BBP, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Mar. 30, 2021).

<sup>513</sup> Final Fee Application of Thornton Grout Finnigan LLP for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Canadian Counsel to the Official Committee of Unsecured Creditors for the

at an average rate of \$529.42 an hour.<sup>514</sup> TGF argued that the requested compensation and expenses incurred were reasonable given the complexity and novelty of Bumble Bee’s case and the nature of the services it provided to the official committee of unsecured creditors.<sup>515</sup> Additionally, TGF asserted that its requested fees were in line with the going rate for comparable services provided by other firms engaged in complex Chapter 11 cases.<sup>516</sup> There were no objections to TGF’s final fee application and on March 30th, 2021 the court entered an order approving its final fee application.<sup>517</sup>

## Final Fee Application: Bayard, P.A.

Bayard, P.A. (“Bayard”) submitted its final fee application as co-counsel to the official committee of unsecured creditors for the period December 3rd, 2019 through January 25, 2021.<sup>518</sup> Bayard requested approval of fees totaling \$292,895.00 and expenses totaling \$10,892.51.<sup>519</sup> Of the \$292,895.00 in fees requested, \$15,000 was for post chapter 7 conversion work and as of the date of its final fee application Bayard had been paid all but \$60,282.99 of the requested fees and \$1,759.15 of its expenses incurred.<sup>520</sup> Bayard billed a total of 616.9 hours over the course of its employment at an average hourly rate of

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Period From January 13, 2020 Through January 25, 2021 [809.pdf](#) at 5, In re Old BBP, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Feb. 01, 2021).

<sup>514</sup> *Id.* at 4.

<sup>515</sup> *Id.* at 13.

<sup>516</sup> *Id.*

<sup>517</sup> Omnibus Order Approving Final Fee Requests of Certain of the Chapter 11 Professionals [862.pdf](#), In re Old BBP, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Mar. 30, 2021).

<sup>518</sup> Final Fee Application of Bayard, P.A. for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Cocounsel to the Official Committee of Unsecured Creditors for the Period from December 3, 2019 Through January 25, 2021 [810.pdf](#), In re Old BBP, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Feb. 01, 2021).

<sup>519</sup> *Id.* at 1.

<sup>520</sup> *Id.* at 5.

\$450.47 for all timekeepers.<sup>521</sup> Bayard argued that the compensation requested was reasonable under the circumstances and in line with other firms of similar size performing comparable work.<sup>522</sup>

After receiving informal comments from the U.S. Trustee, Bayard reduced the amount of fees requested by \$243.00 and removed its request for the \$15,000 of post conversion compensation.<sup>523</sup> This brought the total amount of fees requested down to \$277,652.00.<sup>524</sup> The court entered an order approving Bayard's final fee application without further objection.<sup>525</sup>

## Final Fee Application: Berkeley Research Group, LLC

Berkeley Research Group, LLC filed their final fee application for the compensation of services incurred as the financial advisor to the committee of unsecured creditors.<sup>526</sup> They split their request into two basis: an interim basis, during the Monthly Fee period, and the final basis, during the Final Fee period. During the Monthly Fee period, Berkeley Research Group had a total amount requested of \$6,348.00 for the professional retention fee application preparation, meetings with creditors, and claim analysis. During the Final Fee period, the expenses totaled \$645,287.00 in fees for services such as asset acquisition and disposition, cash flow liquidity and litigation expenses.<sup>527</sup> There were also

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<sup>521</sup> *Id.* at 2.

<sup>522</sup> *Id.* at 14.

<sup>523</sup> Certification of Counsel Regarding Proposed Omnibus Order Approving Final Fee Requests of Certain of the Chapter 11 Professionals [845.pdf](#) at 9, In re Old BBP, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Feb. 25, 2021).

<sup>524</sup> *Id.*

<sup>525</sup> Omnibus Order Approving Final Fee Requests of Certain of the Chapter 11 Professionals [862.pdf](#), In re Old BBP, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Mar. 30, 2021).

<sup>526</sup> Third Monthly and Final Application of Berkeley Research Group, LLC for Compensation of Services Rendered and Reimbursement of Expenses Incurred as Financial Advisor to the Official Committee of Unsecured Creditors during the Period from December 6, 2019 through January 25, 2019 [811.pdf](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Feb. 1, 2021)

<sup>527</sup> *Id.* at 5–12.

reimbursements requested of \$867.19 for travel and meal expenses.<sup>528</sup> Lastly, the Berkeley Research Group requested \$36,938.42 which was equal to all of the unpaid expenses and fees incurred during the Final Fee Period, and other relief as the court deemed appropriate.<sup>529</sup>

The United States Trustee for the District of Delaware had no informal comments for the final fee requests for the Berkeley Research Group, LLC, therefore there was no reduction in fees when counsel was certified.<sup>530</sup> The Berkeley Research Group successfully acquired the \$645,287.00 in fees for services. They also acquired \$36,938.42 in unpaid expenses and fees, and \$867.19 for travel and meal expenses.<sup>531</sup>

## Final Fee Application: Paul, Weiss, Rifkind, Wharton, & Garrison LLP

Paul, Weiss, Rifkind, Wharton, & Garrison LLP (Paul, Weiss) filed their final fee application for services rendered and as counsel to the debtors and the debtors in possession.<sup>532</sup> During the Monthly Fee period, there was a statement of fees totaling \$78,592.00 due for attorney and paralegal rendered services.<sup>533</sup> There were out-of-pocket disbursements worth \$1.66 for mail, photocopier, telephone and other miscellaneous office supply charges.<sup>534</sup> During the Final Fee period, Paul, Weiss requested allowance for professional services totaling \$146,359.00, which consisted of time spent in case

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<sup>528</sup> *Id.* at 12.

<sup>529</sup> *Id.* at 14.

<sup>530</sup> Certification of Counsel Regarding Proposed Omnibus Order Approving Final Fee Requests of Certain of the Chapter 11 Professionals [845.pdf](#) at 2, In re Old BBP, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Feb. 25, 2021).

<sup>531</sup> Omnibus Order Approving Final Fee Requests of Certain of the Chapter 11 Professionals [862.pdf](#), In re Old BBP, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Mar. 30, 2021).

<sup>532</sup> Summary of Twelfth Monthly and Final Fee Application of Paul, Weiss, Rifkind, Wharton & Garrison LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Counsel to the Debtors and Debtors in Possession for the Monthly Period from November 1, 2020 through January 31, 2021 and the Final Fee Period from September 1, 2020 through January 1, 2021 [813.pdf](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Feb. 1, 2021)

<sup>533</sup> *Id.* at 2.

<sup>534</sup> *Id.* at 3.



administration hours, litigation hours, and fee/employment applications.<sup>535</sup> There were also reimbursements requested totaling \$94.13 in operating costs.<sup>536</sup> They also reserved their rights to reflect updated amounts in any supplemental submissions of the final fee application.

Paul, Weiss filed an amended final fee application within three days to reflect updates.<sup>537</sup> During the Monthly Fee period, the statement of fees totaling \$78,592.00 and \$1.66 in reimbursements did not change. For the Amended Final Fee period, however, Paul Weiss requested \$4,891,552.50 for services rendered and \$38,917.12 in reimbursements for the amended time period.<sup>538</sup>

The United States Trustee for the District of Delaware offered informal comments to Paul, Weiss requesting they reduce their requested fees.<sup>539</sup> Paul, Weiss revised their final fee application to reflect the U.S. Trustees' requested reductions, reducing its requested fees from \$4,891,552.50 to \$4,869,503.50. This reduced the fees requested by \$22,049.00 in the final fee application.<sup>540</sup>

## Final Fee Application: Young Conaway Stargatt & Taylor LLP

Young Conaway Stargatt & Taylor LLP (Young Conaway) filed their final fee application for services rendered as the debtor's co-counsel on February 1, 2021.<sup>541</sup> They were first retained on

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<sup>535</sup> *Id.* at 5–8.

<sup>536</sup> *Id.*

<sup>537</sup> Summary of Combined Twelfth Monthly and Amended Final Fee Application of Paul, Weiss, Rifkind, Wharton & Garrison LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Counsel to the Debtors and Debtors in Possession for the Monthly Period from November 1, 2020 through January 31, 2021 and the Amended Final Fee Period from November 21, 2019 through January 31, 2021 [820.pdf](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Feb. 4, 2021)

<sup>538</sup> *Id.* at 8.

<sup>539</sup> Certification of Counsel Regarding Proposed Omnibus Order Approving Final Fee Requests of Certain of the Chapter 11 Professionals [845.pdf](#) at 2, In re Old BBP, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Feb. 25, 2021).

<sup>540</sup> Omnibus Order Approving Final Fee Requests of Certain of the Chapter 11 Professionals [862.pdf](#), In re Old BBP, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Mar. 30, 2021).

<sup>541</sup> Final Application for Compensation [and Thirteenth Monthly] of Young Conaway Stargatt & Taylor, LLP as Counsel for the Debtors for the period December 1, 2020 to January 31, 2021, and the Final Period from November

December 18, 2019, which would lead to the receipt of payment beginning December 1, 2020 and ending January 31, 2021.<sup>542</sup> They sought monthly compensation in the amount of \$32,803.50, as their actual, reasonable, and necessary fee.<sup>543</sup> In addition, they sought \$526.41 as necessary expenses.<sup>544</sup> The final amount requested in its final fee application was \$1,474,590.00 in fees and \$32,680.82 in expenses.<sup>545</sup> This time was largely billed as being for case administration, court hearings, 363 issues, and other related legal work.<sup>546</sup> In the final fee order, there was no objection to the payment of these fees.<sup>547</sup>

## Final Fee Application: AlixPartners, LLP

AlixPartners submitted their final fee application for services rendered in their capacity as a financial advisor for the debtors throughout the chapter 13 bankruptcy on February 1, 2021.<sup>548</sup> The period of time covered by their final fee application began on November 1, 2020 and continued until January 25, 2021.<sup>549</sup> AlixPartners requested \$1,594,428.89 in fees for the final period. The blended hourly rate for fees incurred was \$631.99.<sup>550</sup> The work conducted more specifically included cash management, U.S.

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21, 2019 through January 31, 2021 [814.pdf](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Feb. 1, 2021).

<sup>542</sup> *Id.*

<sup>543</sup> *Id.*

<sup>544</sup> *Id.*

<sup>545</sup> *Id.* at 2.

<sup>546</sup> *Id.* at 4.

<sup>547</sup> Omnibus Order Approving Final Fee Requests of Certain of the Chapter 11 Professionals [862.pdf](#), In re Old BBP, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Mar. 30, 2021).

<sup>548</sup> Final Application for Compensation Compensation (and Fourth Interim) of AlixPartners, LLP as Financial Advisors to the Debtors for the period September 1, 2020 to January 25, 2021, and the Final Period November 21, 2019 to January 25, 2021 [816.pdf](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Feb. 1, 2021)

<sup>549</sup> *Id.* at 1-2.

<sup>550</sup> *Id.* at 2.

trustee/court reporting requirements, chapter 11 case management, in addition to general financial services.<sup>551</sup> Neither Bumble Bee nor any other party objected to the full payment of these expenses, and the court approved them in their final order.<sup>552</sup>

## Final Fee Application: Prime Clerk LLC

In their final fee application, Prime Clerk LLC sought payment for their services as an administrative advisor for the debtors.<sup>553</sup> They sought payment for the period of May 1, 2020 through June 30, 2020 for the monthly period and November 21, 2019 until January 25, 2021 as compensation for the final fee period.<sup>554</sup> The total amount of compensation sought for services rendered in the final fee period is \$10,518.10.<sup>555</sup> The majority of this amount was accrued through their work on Schedules and SOFAs which included conferring and coordinating the Prime Clerk case team and the debtors team.<sup>556</sup> The full amount of the debt requested was approved without objection in the court's order approving final fee requests.<sup>557</sup>

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<sup>551</sup> *Id.* at 5.

<sup>552</sup> Omnibus Order Approving Final Fee Requests of Certain of the Chapter 11 Professionals [862.pdf](#), In re Old BBP, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Mar. 30, 2021).

<sup>553</sup> Application for Compensation / Combined Monthly and Final Fee Application of Prime Clerk LLC, Administrative Advisor to the Debtors, for Compensation for Services and Reimbursement of Expenses for (I) the Combined Monthly Period of May 1, 2020 through June 30, 2020, and (II) the Final Period from for the period November 21, 2019 to January 25, 2021. [812.pdf](#) at 1. In re Bumble Bee Parent, Inc., 19-12502 (LSS) (Bankr. D. Del. Feb. 1, 2021).

<sup>554</sup> *Id.* at 2.

<sup>555</sup> *Id.*

<sup>556</sup> *Id.* at 6.

<sup>557</sup> Omnibus Order Approving Final Fee Requests of Certain of the Chapter 11 Professionals [862.pdf](#), In re Old BBP, Inc., 19-12502 (LSS) (Bankr. D. Del. Filed Mar. 30, 2021).

# Where is Bumble Bee Now?

Following the commencement of the conversion from Ch. 11 to Ch. 7, Bumble Bee has sought to forge ahead through times of uncertainty in the wake of the global coronavirus. With people staying at home, there were more people cooking at home and buying canned foods, as a result during the pandemic Bumble Bee has experienced renewed popularity.

After the anti-trust lawsuit and associated civil fines, Bumble Bee's CEO, Chris Lischewski, stepped down from his position. Lischewski was then replaced by Jan Tharp, who had a new vision for the company.<sup>558</sup> She wanted to focus on shedding the label of a "grandpappy" company and instead gear it towards new generations of consumers (typically those in the millennial and Gen-Z demographic).<sup>559</sup> In fact, in the middle of the bankruptcy proceedings, the company was rolling out new packaging designs and relying on plant-based fish to bring about a new consumer desire in the company's products.<sup>560</sup> Not only that, but new flavors of tuna seasoning products, microwaveable bowls, and other at-home packaged meals have set Bumble Bee up for continued success and potential new growth opportunities in the market.<sup>561</sup>

With Bumble Bee's sale to FCF, the company was added as a new piece in FCF's vertical integration plan. The conglomerate had added another company who would buy their products, further solidifying their place in the market. Due to their size, financial stability, and ownership of over 30 subsidiaries, there is little doubt that Bumble Bee will have the resources to maintain their current

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<sup>558</sup> Brittany Meiling, *Can San Diego's canned tuna giant Bumble Bee, recover from bankruptcy and scandal*, San Diego tribune, <https://www.sandiegouniontribune.com/business/story/2020-10-16/can-san-diegos-canned-tuna-giant-bumble-bee-recover-from-bankruptcy-and-scandal>

<sup>559</sup> *Id.*

<sup>560</sup> Danielle Wiener-Bronner, *Plant-based fish and new packaging: How Bumble Bee tuna is trying to make a comeback*, CNN, <https://www.cnn.com/2020/03/02/business/bumble-bee-tuna-new-package-good-catch/index.html>

<sup>561</sup> *Id.*

operation. Although it remains to be seen whether their efforts for wider market appeal will be successful, Bumble Bee has positioned itself into a strategic spot in the seafood business. Without the Ch. 11 filing Bumble Bee wouldn't have had a difficult time marketing themselves to potential buyers due to their unresolved civil litigation. However, thanks to FCF's successful vertical integration plan and strong positioning within the global market, Bumble Bee's future as a subsidiary of FCF seems relatively bright.