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The Bankruptcy of Remington Outdoor Company: All Bang, No Bucks

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The Bankruptcy of Remington Outdoor Company:

All Bang, No Bucks

By

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Introduction

Remington was the oldest firearm and ammunition manufacturer in the United States. Unfortunately, massive debt, civil liability, bad publicity, and decreased sales forced the gunmaker into bankruptcy.

On March 25, 2018, Remington Outdoor Company, Inc. and twelve affiliated debtors (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.¹ Simultaneously, the Debtors filed a chapter 11 plan of reorganization (the "Plan") and a disclosure statement ("Disclosure Statement") related thereto.²

The joint and prepackaged Plan proposed to eliminate approximately \$620 million of debt.³ An overwhelming majority of the impaired claim holders voted in favor of the Plan prior to filing.⁴ Upon filing, the only objection to the Plan arose from the SEC, which argued on theoretical grounds against the release of liability provisions provided against certain non-debtor third parties.⁵ Upon hearing the objection and the Debtors' subsequent memorandum in defense of the provision, on May 4, 2018, the Bankruptcy Court entered an order approving the Disclosure Statement and confirming the Plan. On May 15, 2018, less than 2 months after the petition date, the Plan was consummated.⁶

Approximately one and a half years after the consummation of the Plan, Remington and its subsidiaries once again filed for chapter 11 bankruptcy to conduct an outright sale of substantially all of Remington's and its subsidiaries' assets.⁷

¹ KROLL RESTRUCTURING ADMINISTRATION, <https://cases.ra.kroll.com/remington/> (last visited Mar. 25, 2022).

² *Id.*

³ [Objection](#) of the Securities and Exchange Commission to Approval of the Disclosure Statement and Confirmation of the Debtors' Joint Prepackaged Chapter 11 Plan, 3, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed April 26, 2018).

⁴ *Id.*

⁵ *Id.*

⁶ [Notice of Entry](#) Order Confirming Joint Prepackaged Chapter 11 Plan of Remington Outdoor Company, Inc. and its Affiliated Debtors and Debtors in Possession to All Parties in Interest in the Above-Captioned Chapter 11 Cases, 1, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed May 7, 2018).

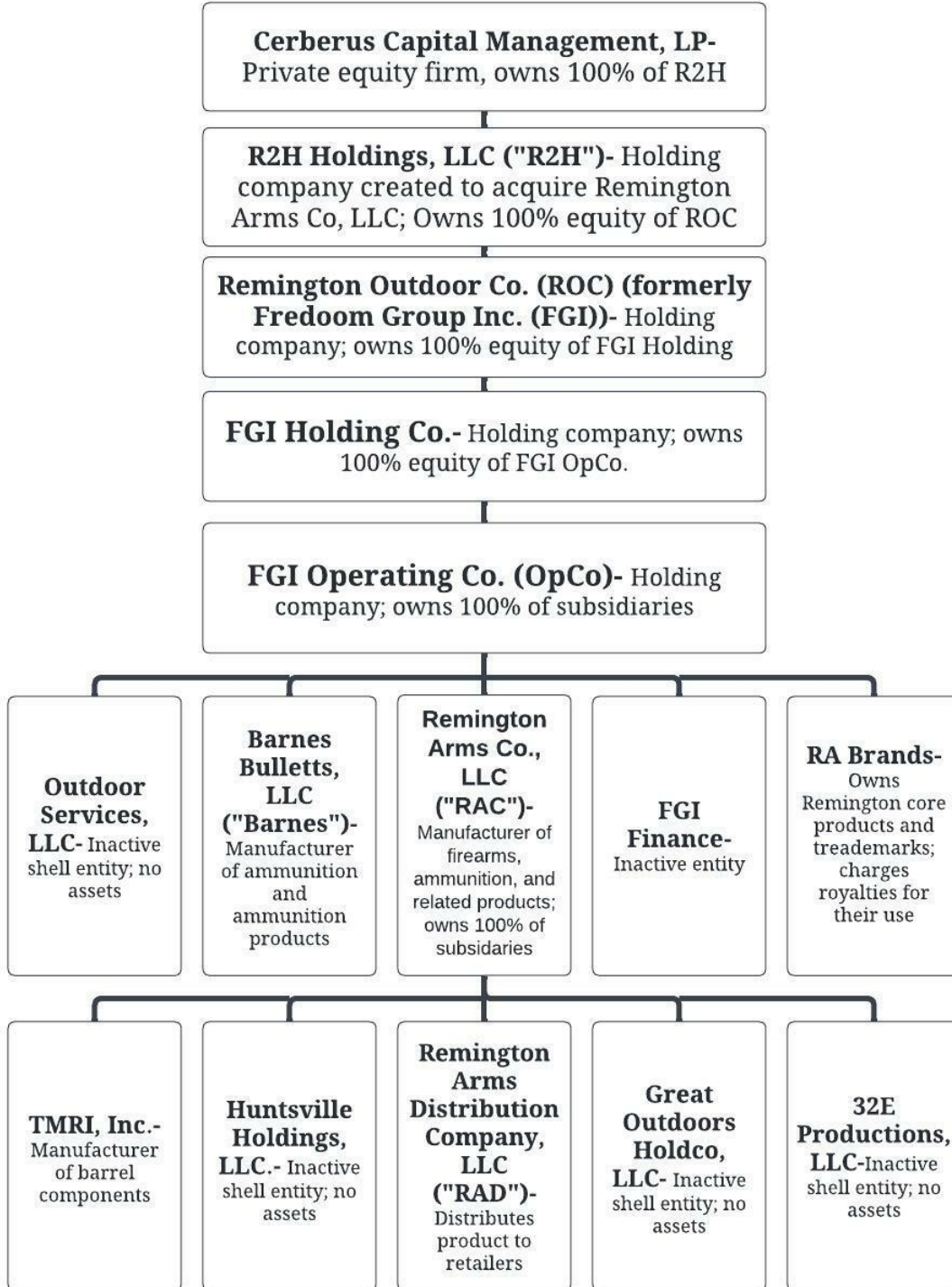
⁷ [Disclosure Statement for Joint Chapter 11 Plan of the Debtors](#), Docket no. 1369, Case no. 20-81688-CRJ11, filed January 25, 2021.

Cast of Characters

Entity	Description
ABL Facility Lenders	Bank of America, N.A.; Wells Fargo National Bank; Regions Bank; Branch Banking and Trust Company; Synvovs Bank; Fifth Third Bank; Deutsche Bank AG New York Branch
Alvarez & Marsal North America, LLC.	ROC's Restructuring Consulting Firm
Ankura Trust Company, LLC	New FILO Term Loan Agent; Term/ROC DIP Agent
Bank of America, N.A.	ABL DIP Agent
Barnes Bullets, LLC	Debtor; manufacturer of ammunition and ammunition components.
Bushmaster Firearms International, LLC	A subsidiary of FGI as of December 12, 2007.
Cerberus Capital Management, LP	Private Equity firm owned by Stephen Feinberg; owns R2H, which bought RAC and Bushmaster International Firearms, LLC (which were subsequently combined), in 2007
City of Huntsville	Creditor; holders of the Huntsville Note
Debtors	Remington Outdoor Company, Inc. (ROC) and it's subsidiaries: FGI Holding Co.; FGI Operating Company (OpCo); Outdoor Services, LLC; Remington Arms Co., LLC (RAC); FGI Finance; RA Brands; TMRI, Inc.; Huntsville Holdings, LLC; Remington Arms Distribution Company, LLC (RAD); Great Outdoors Holdco, LLC; 32E Productions, LLC
Debtors' Counsel	Milbank, Tweed, Hadley & McCloy LLP; Pachulski Stang Ziehl & Jones LLP
FGI Finance, Inc.	Debtor; inactive entity that is the co-issuer of the Third Lien Note
FGI Holding Co., LLC	Debtor; holding company that owns 100% of OpCo
FGI Operating Company (OpCo)	Debtor; holding company owned by FGI Holding Company, LLC, which in turn is owned by ROC. Opco owns 100% of RAC; Barnes Bullets LLC; RA Brands, LLC; FGI Finance, Inc.; and Outdoor Services, LLC.
Freedom Group Inc. (FGI)	Previous name of ROC, which was formed for the purpose of acquiring Remington Arms Company, LLC. On December 12, 2007, FGI purchased Bushmaster Firearms International, LLC and Remington Arms Company as subsidiaries.
Jackson Jr., Stephen P.	CFO (Chief Financial Officer) of Remington Outdoor Company Inc. since August 15, 2015 and CFO of Remington Outdoor Company Inc.'s affiliated Debtors and Debtors in Possession
Lazard Freres & Co., LLC	ROC's Financial Advisory Firm

Prime Clerk, LLC	Claims and noticing agent for ROC during the bankruptcy
R2H Holdings, LLC (R2H)	Majority owner of the holdings of Remington Outdoor Company, Inc.
RA Brands, LLC	Debtor; owns the Debtor's core brand trademarks and charges a royalty to other Debtors for use of those brands.
Remington Arms Company, LLC (RAC)	Debtor; founded in 1816, Remington is one of the oldest and most successful firearms and ammunition manufacturers in the United States. RAC owns various household brands including Marlin, Bushmaster, Advanced Armament Corp, and DPMS. Owned by Opco, RAC owns 100% of Remington Arms Distribution Company, LLC (RAD), TMRI, Inc. (TMRI), Huntsville Holdings LLC, 32E Productions, LLC, and Great Outdoors Holdco, LLC.
Remington Arms Distribution Company, LLC (RAD)	Debtor; distributed Remington products to retail chains/dealers.
Remington II, Eliphalet	Founder of Remington Arms Company (RAC)
Remington Outdoor Company, Inc. (ROC)	Debtor; formerly known as Freedom Group, primary holding company founded primarily to acquire RAC in 2007. Owns 100% of FGI Holding Company, LLC.
Shannon, Brendan L.	U.S. Bankruptcy Judge presiding over the Debtors' case
TRMI, Inc.	Debtor; manufacturer of barrel components with certain Debtors as primary customers

Organizational Structure



The Debtors' Business

At the time of the 2018 filing, Remington had firmly established itself as an iconic American brand. It was the oldest and one of the largest firearm and ammunition manufacturers in the United States. Founded in 1816, Remington was a supplier to commercial, military and law enforcement customers and held a diverse portfolio of brands, including Remington, Marlin, Bushmaster, Barnes Bullets, Advanced Armament Corp., and DPMS.⁸ It also manufactured a wide variety of outdoor products, with price points ranging from value to premium. Since 2008, it held the number one or number two market positions in the United States for all long gun categories and modern sporting rifles ("MSRs") and number 3 for ammunition.⁹ It was one of only two major manufacturers that produced both firearms and ammunition.¹⁰

It historically placed great emphasis on improving machinery and equipment in the manufacturing process, and as such invested heavily in capital improvements and research. Headquartered in Madison, North Carolina, it manufactured products in seven primary facilities with an aggregate 2.5 million square feet of manufacturing space, enabling delivery in the U.S. and 52 other countries.¹¹ Most of its revenue was derived from two key firearms facilities in Ilion, New York and Huntsville, Alabama and its primary ammunition plant in Lonoke, Arkansas.¹² In addition to its Madison office facility and main three plants, Remington owned factories in Lexington, Missouri; Sturgis, South Dakota; Mona, Utah; and Lenoir City, Tennessee.¹³ Additionally, they leased facilities in Kennesaw, Georgia and Southaven, Mississippi.¹⁴

It was a leading competitor in long guns, handguns, modern sporting rifles, ammunition, and other products:

- Long guns: Since 2008, it had been the number one or number two provider of firearms in the long gun category, which was estimated to be \$2 billion in 2015.

⁸ [Disclosure Statement for Joint Prepackaged Chapter 11 Plan of Remington Outdoor Company, In. and its Affiliated Debtors and Debtors in Possession](#), 423, In re: Remington Outdoor Company, Inc., et al, 18-10684 (BLS) (Bankr. D. Del. Filed April 30, 2018).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 424.

¹³ *Id.*

¹⁴ *Id.*

Remington represented 13.4% of domestic rifle sales and 11.8% of domestic shotgun sales in 2015.¹⁵

- Handguns: Remington had four product offerings in the handgun category. Since re-entering the handgun category in 2010, it became one of the leaders in the 1911 product segment.¹⁶
- Modern Sporting Rifles: Through the Remington, Bushmaster and DPMS brands, it was the number one provider of modern sporting rifles in the U.S. in 2015.¹⁷
- Ammunition: Remington produced over 1,000 different variations of ammunition.¹⁸ Total domestic commercial ammunition sales were \$2.5 billion in 2015, and the company held the number three position in the market as recently as 2015.¹⁹
- Consumer Products: Through its various brands, it offered firearm cleaning supplies, parts, tactical accessories, silencers, and muzzle devices. Remington also licensed its trademarks to a select number of third parties that manufactured sporting and outdoor products, such as clothing and fishing gear.²⁰

Unlike many of its competitors that sold products exclusively to distributors, a significant portion of its commercial sales were sold directly to major retail and sporting goods chains, including Walmart, Dick's Sporting Goods, Bass Pro Shops, and Cabela's.²¹ They also held strong relationships with dealers and shooting ranges.²²

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 425.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Remington's History

Founding

Founder Eliphalet Remington II was born in Connecticut on October 28, 1793.²³ In 1799, his father purchased 300 acres of land and set up a forge.²⁴ Eliphalet, believing that he could make his own rifles better than anyone else, crafted his very own rifle in 1816 to compete in shooting competitions.²⁵ The popular theory of Remington's origin claims that after an outstanding performance at a shooting competition with his homemade flintlock, Eliphalet began building guns for local shooters,²⁶ and thus, the Remington company was born.

In 1828, to keep up with demand, he and his father purchased 100 acres along the Erie Canal in Ilion, New York and built a new factory.²⁷ When the factory opened, it was the only one manufacturing guns at that time.²⁸ Previously, firearms were manufactured through primitive methods used by individual gunsmiths.²⁹ Within this new facility, it wasn't long before Remington revolutionized the manufacturing process. Long before the industrial processes in use today, and before the concept of a factory was fully developed, Remington utilized a system to organize groups of journeymen in what would become known as the "inside contracting system."³⁰ While Remington provided the workers financial and mechanical support, with an entrepreneurial spirit, Remington encouraged the workers to succeed by producing their own inventions.³¹ Word of Remington's success spread, and the town of Ilion became a magnet for some of the most skilled craftsmen, inventors, and entrepreneurs.³² At a time when markets in the western frontier began to open, and the demand for firearms increased, the workers who joined Remington for its

²³ Albert. N Russell, [*Ilion and the Remingtons*](#), Address Before the Herkimer Historical Society (Sept. 14, 1897) in PAPERS READ BEFORE THE HERKIMER COUNTY HISTORICAL SOCIETY DURING THE YEARS 1896, 1897, AND 1898 (1899), 187.

²⁴ *Id.* at 189.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ ROY MARCOT, HISTORY OF REMINGTON FIREARMS: THE HISTORY OF ONE OF THE WORLD'S MOST FAMOUS GUN MAKERS (Lyons Press; 1st ed. 2005).

³¹ *Id.*

³² *Id.*

reputation within the arms community, with new product ideas, knew that they could take advantage of the then state-of-the-art manufacturing equipment.³³

In 1845, with a war with Mexico looming, Remington contracted to manufacture rifles for the U.S. Army Ordinance Department.³⁴ After Ames & Co. entered into a contract to produce several thousand carbines but subsequently backed out, Remington purchased the contract and the equipment necessary to produce the firearms.³⁵

With this new equipment, Remington was ready to accept other contracts, leading to the erection of Remington's first armory in 1848.³⁶ Remington subsequently accepted several new contracts, for both rifles and the company's first revolver.³⁷ By this time, not only had new machines, buildings and steam engines been built to increase productivity,³⁸ but emerging metallurgy principles allowed Remington to produce new alloys that resulted in improved machining characteristics, strength, and durability. This allowed the company to produce firearms so precise that every part of the firearm would be interchangeable, so that each part of a specific firearm could be replaced with that of another.³⁹ Before long, they were "prepared to offer the governments of the world the simplest, most effective, and durable firearm the inventive genius of the age had produced."⁴⁰ While it's debatable whether Remington invented this system of interchangeable parts, it certainly made it the standard throughout the world.⁴¹

In 1861, the demand for Remington rifles and pistols boomed as the Civil War broke out. The company's innovative efforts, coupled with unprecedented expansion, allowed it to meet the demand of the U.S. Army and Navy. During the war, every man and boy in the town of Ilion worked day and night for weeks to meet contract deadlines.⁴² Remington's peak production reached over 1,400 rifles and 200 pistols per day- more than the entire nation of England.⁴³ It is

³³ *Id.*

³⁴ Russell, [ILION AND THE REMINGTONS](#), at 191 (1899).

³⁵ *Id.*

³⁶ Remington.com, *A New Era*, <https://www.remington.com/about-us.html#event-first-armory> (last visited Feb. 20, 2022).

³⁷ Russell, [ILION AND THE REMINGTONS](#), at (1899).

³⁸ MARCOT, *HISTORY OF REMINGTON FIREARMS*, (2005)

³⁹ Russell, [ILION AND THE REMINGTONS](#), at 191 (1899).

⁴⁰ *Id.*

⁴¹ MARCOT, *HISTORY OF REMINGTON FIREARMS*, (2005)

⁴² Encyclopedia.com, *Remington Arms Company, Inc.*, (May 29, 2018), <https://www.encyclopedia.com/social-sciences-and-law/economics-business-and-labor/businesses-and-occupations/remington-arms-company-inc>.

⁴³ *Id.*

estimated that the company supported the effort by providing more than 133,000 revolvers⁴⁴ and 187,500 rifles⁴⁵.

Post-Civil War Hardship

The culmination of the Civil War and the decrease in domestic demand proved difficult for the company. Immediately following the surrender of General Lee, the war department ordered the cessation of all further firearms and munitions purchases.⁴⁶ While this caused great financial hardship to Remington, its creditors were so confident in the corporation that they willingly granted extensions to Remington to forego or delay payments that were due.⁴⁷

In response to the domestic downturn, the company ramped up efforts aimed at overseas business, creating another boon for the company.⁴⁸ Initial orders came in from Denmark, Spain, Egypt, and France.⁴⁹ Later, contracts with Puerto Rico, Cuba, Mexico, and Chili were executed.⁵⁰

However, Remington's international business soon waned.⁵¹ Remington began to encounter systemic corruption and favoritism when dealing with certain countries overseas.⁵² Of the most pervasive practices was the demand of individual politicians to be paid a surcharge for governmental contracts.⁵³ Remington's refusal to contract under those practices put serious limitations on international sales, and the company scaled back their overseas efforts in 1877.⁵⁴

Anticipating a decline in demand for firearms, the company made a strategic change to shift "from the manufacture of implements of war to those of peace,"⁵⁵ and Remington Agricultural Works carried the company. While the company continued to manufacture guns and ammunition, production focused on firearms was scaled back considerably. Some of the products Remington

⁴⁴ National Rifle Association, *Remington Revolvers in the Civil War*, (Sept. 17, 2020), <https://www.americanrifleman.org/content/remington-revolvers-in-the-civil-war/>.

⁴⁵ Encyclopedia.com, *Remington Arms Company, Inc.*, (May 29, 2018), <https://www.encyclopedia.com/social-sciences-and-law/economics-business-and-labor/businesses-and-occupations/remington-arms-company-inc.>

⁴⁶ Russell, *ILION AND THE REMINGTONS*, at 193 (1899).

⁴⁷ *Id.*

⁴⁸ *Id.* at 194.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 98

produced during this time were burglar alarms, iron bridges, and fire engines.⁵⁶ Among other items were agricultural equipment, electrical lighting equipment, bicycles, cutlery, cash registers, the typewriter (which employed the first version of the QWERTY layout still employed today),⁵⁷ and Singer Sewing Machines.⁵⁸

However, the strategy of diversification in products proved to be unsustainable and resulted in crippling losses to the corporation overall.⁵⁹ With the west's advantages related to freight and supplies of raw materials, manufacturers in the east were shut "almost out of the range of successful competition."⁶⁰ While some products were profitable, the costs to bring on new lines of products to the market more than offset the benefits.

Emergence of Remington Arms Co.

Averting further losses, stockholders began lobbying their interests to the Remington brothers, who personally assumed the debt of the company.⁶¹ After several more failed ventures, and the selloff of profitable product lines, such as the typewriter, a court ordered the corporation into a receivership.⁶²

Unfortunately, there was little left for the receivers to govern over and execute. While Remington's balance sheet indicated solvency on paper, there existed no market or demand for arms such that the small number of firearms purchasers could name their price.⁶³ The manufacturing plant and product lines were sold to Hartley & Graham in 1888 for \$200,000.⁶⁴ Hartley was a small arms dealer who also owned Union Metallic Cartridge (UMC), another ammunition producer.⁶⁵ Hartley combined business entities of UMC and Remington, resulting in the consolidation of the two businesses and brands. Hartley named the new corporation Remington

⁵⁶ Funding Universe, *Remington Arms Company, Inc. History*, <http://www.fundinguniverse.com/company-histories/remington-arms-company-inc-history/> (last visited Feb. 28, 2022).

⁵⁷ Michelle Starr, *A Brief History of the QWERTY Keyboard*, CNET (July 1, 2016 12:00 AM), <https://www.cnet.com/culture/a-brief-history-of-the-qwerty-keyboard/>.

⁵⁸ Russell, *ILION AND THE REMINGTONS*, at 199 (1899).

⁵⁹ *Id.*

⁶⁰ *Id.* at 202.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 203

⁶⁴ *Id.* at 202.

⁶⁵ Remington.com, *UMC is Established*, <https://www.remington.com/about-us.html#event-umc-is-established> (last visited Feb. 20, 2022).

Arms Company (RAC),⁶⁶ where the primary focus was on the manufacture of bicycles and ammunition.⁶⁷ RAC did, however, still continue to manufacture a small number of firearms.⁶⁸

The proceeds of the sale of the business to Hartley & Graham were paid out to labor accounts and secured and unsecured creditors. Labor accounts and secured creditors were paid in full in the receivership; unsecured creditors received thirty-six cents on the dollar.⁶⁹

From Receivership to Bankruptcy

Remington Arms began to bounce back around the turn of the century. As firearm sales increased during the Spanish American War, the company began shedding less profitable business ventures, including the bicycle business. By 1914, the company had practically ceased making military firearms and munitions.⁷⁰ Rather, it was almost exclusively dedicated to producing sporting rifles for civilians.⁷¹ However, World War I brought the company back into the military armament business. In response to governmental orders, RAC spent \$1 million to expand their business, purchasing and constructing new buildings and land.⁷² After the United States entered the war, the company's workforce reached as high as 15,000 workers, producing around 3,000 rifles a day.⁷³ In addition to guns, Remington provided the military with 2.6 billion rounds of ammunition, which was more than fifty-two percent of the country's supply.⁷⁴

While Remington retained some profitable assets that placed them in a better post-war position than in previous conflicts, it was still not immune to the Great Depression. By the early 1930's, it employed only 300 workers at the Ilion plant,⁷⁵ even though Remington was the nation's

⁶⁶ Russell, [ILION AND THE REMINGTONS](#), at 203 (1899).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Guns & Ammo, *Remington Timeline: 1914- World War I Begins*, (Sept. 9, 2016), <https://www.gunsandammo.com/editorial/remington-timeline-1914-world-war-i-begins/248394>.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Encyclopedia.com, *Remington Arms Company, Inc.*, (May 29, 2018), <https://www.encyclopedia.com/social-sciences-and-law/economics-business-and-labor/businesses-and-occupations/remington-arms-company-inc>.

⁷⁴ N.Y. TIMES, *Du Pont & Co. Buy Remington Arms*, (May 24, 1933), [timesmachine.nytimes.com/timesmachine/1933/05/24/105136960.pdf?pdf_redirect=true&ip=0](https://www.nytimes.com/timesmachine/1933/05/24/105136960.pdf?pdf_redirect=true&ip=0).

⁷⁵ Encyclopedia.com, *Remington Arms Company, Inc.*, (May 29, 2018), <https://www.encyclopedia.com/social-sciences-and-law/economics-business-and-labor/businesses-and-occupations/remington-arms-company-inc>.

leading supplier of non-military ammunition.⁷⁶ In 1933, Du Pont Co. purchased a 60% interest in Remington.⁷⁷ While perhaps best known for making chemicals and other products, Du Pont was founded in 1802 as a manufacturer of gunpowder and explosive and controlled a large portion of the U.S. gunpowder market at the time⁷⁸.

World War II and Onward

In a predictable pattern, World War II provided another boon for the company, especially given the partnership with Du Pont. Although RAC had returned their focus on sporting firearms, the company once again transitioned to support the United States when called to do so. In 1941, Remington's production of sporting rifles declined and by 1942 Remington was fully committed to the war effort.⁷⁹ Factories ran twenty-four hours a day, seven days a week.⁸⁰ Over the course of the second World War, its workforce increased twenty-fold and the company produced products with an aggregate value of over \$1 billion.⁸¹ After the conclusion of World War II, Remington shifted back into the sporting and consumer firearm markets, though it kept infrastructure in place to engage in governmental contracts if the need arose. Remington continued to innovate and develop new firearms and ammunitions, attracting many of the most skilled gun innovators and prosecuting thousands of patents. One of the most iconic, and the bestselling sporting rifle of all time, the Remington 700, hit the market in 1962. Finally, in 1980, Remington became a wholly owned subsidiary of the Du Pont corporation.

⁷⁶ *Id.*

⁷⁷ N.Y. TIMES, *Du Pont & Co. Buy Remington Arms*, (May 24, 1933), https://timesmachine.nytimes.com/timesmachine/1933/05/24/105136960.pdf?pdf_redirect=true&ip=0.

⁷⁸ Editors of Encyclopedia Britannica, *DuPont Company*, Britannica, (2017) <https://www.britannica.com/topic/DuPont-Company>.

⁷⁹ Guns & Ammo, *Remington Timeline: 1941- Remington Goes to War*, (Sept. 9, 2016), <https://www.gunsandammo.com/editorial/remington-timeline-1941-remington-goes-to-war/248393>.

⁸⁰ Encyclopedia.com, *Remington Arms Company, Inc.*, (May 29, 2018), <https://www.encyclopedia.com/social-sciences-and-law/economics-business-and-labor/businesses-and-occupations/remington-arms-company-inc>.

⁸¹ Guns & Ammo, *Remington Timeline: 1941- Remington Goes to War*, (Sept. 9, 2016), <https://www.gunsandammo.com/editorial/remington-timeline-1941-remington-goes-to-war/248393>.

Events Leading to Chapter 11

Du Pont Sale

In 1993, Du Pont sold Remington to Clayton, Dubilier & Rice, LLC., a private investment firm in New York. The firm specialized in taking over under-performing divisions of corporations that the parent companies felt were no longer in line with their core business.⁸² In January of 2003, the firm announced a recapitalization. The transaction included a \$30 million equity investment in Remington from a fund managed by Bruckmann, Rosser, Sherrill & Co. L.L.C. (“BRS”), the refinancing of Remington’s approximately \$100 million worth of debt, and the issuance by Remington of \$175 million in unsecured, interest-bearing senior notes.⁸³

Private Equity-Massive Debt

In 2007, Remington was once again sold to a private equity firm, Cerberus Capital Management, LLP.⁸⁴ Private equity firms typically buy struggling companies with high interest debt and either renovate them or reduce costs to make them profitable. When these “leveraged buyouts” work, they result in huge profits for the firm. When they fail, the underlying business crumbles.

Cerberus⁸⁵ is one of the largest private equity firms in the world and purchased Remington at a relative bargain- \$118 million in cash and an assumption of \$255 million of debt.⁸⁶ The transaction was expected to strengthen Remington's ability to grow its leadership position in shotguns, rifles and ammunition in the U.S. and provide additional capital to further develop its

⁸² AP NEWS, *Remington Arms to be Sold by DuPont*, (Oct. 21, 1993), <https://apnews.com/article/5100e10717521feef827bdd542b7750f>

⁸³ CLAYTON, DUBLER, & RICE, *Clayton, Dubler, & Rice Announces Recapitalization of Remington Arms Company*, (Jan. 7, 2003), <https://www.sec.gov/Archives/edgar/data/917676/000095013003000070/dex991.htm>

⁸⁴ Thomas J. Ryan, *Remington Sold to Cerberus for \$370 Million*, SGB Media (Apr. 9, 2007), <https://sgbonline.com/remington-sold-to-cerberus-for-370-million/>

⁸⁵ GREEKMYTHOLOGY.com, *Cerberus*, <https://www.greekmythology.com/Myths/Creatures/Cerberus/cerberus.html> (the name Cerberus, refers to the “hound of Hades,” a three-headed dog who guards the gates of the Underworld, preventing the dead from leaving and making sure that those who enter the Underworld never leave) (last accessed Mar. 21, 2022).

⁸⁶ Thomas J. Ryan, *Remington Sold to Cerberus for \$370 Million*, SGB Media (Apr. 9, 2007), <https://sgbonline.com/remington-sold-to-cerberus-for-370-million/>

market presence internationally.⁸⁷ While Cerberus' scheme appeared to achieve its goals, the company also incurred massive debt under their "watch."

Similar to a typical private equity acquisition, Cerberus did not directly purchase Remington. Instead, Cerberus created a holding company, R2 Holdings (R2H).⁸⁸ R2H then issued shares to investors in exchange for the capital needed to purchase Remington⁸⁹. On the same day R2H purchased Remington Arms, it merged the company with Bushmaster International, LLC., which owned the Bushmaster Brand,⁹⁰ the manufacturer of a variety of AR-15 rifles.⁹¹ In 2010, R2H took out a \$225 million asset-based lending (ABL) facility. From the loan, R2H investors were repaid, in what appears to be in the form of dividends, as the shares remained outstanding. These repayments allowed the Cerberus-linked shareholders to ensure their profit regardless of whatever happened next. In 2012, amid high gun sales, Cerberus had Remington take out hundreds of millions in loans to buy R2H's debt. Remington now owned the debt used to pay back Cerberus shareholders. As a result, Remington was carrying hundreds of millions of dollars in debt that, if it could not be paid, would cause the business to go bankrupt. "The private-equity firm had made back its initial investment and was playing with house money"⁹² while Remington was saddled with hundreds of millions in debt.

From New York to Alabama

After nearly 200 years of manufacturing guns at the Ilion, New York factory, Remington decided to relocate a major portion of its manufacturing in 2014. At the time, the Ilion plant was the oldest that continually manufactured guns.⁹³ Remington CEO George Kollitides cited New

⁸⁷ *Id.*

⁸⁸ [Disclosure Statement for Joint Prepackaged Chapter 11 Plan of Remington Outdoor Company, Inc. and Its Affiliated Debtors and Debtors in Possession](#), at 424 Docket no 14, Case no 18-10684, filed March 25, 2018.

⁸⁹ Jesse Barron, *How America's Oldest Gun Maker Went Bankrupt: A Financial Engineering Mystery*, N.Y. TIMES (May 1, 2019) <https://www.nytimes.com/interactive/2019/05/01/magazine/remington-guns-jobs-huntsville.html>.

⁹⁰ [Disclosure Statement for Joint Prepackaged Chapter 11 Plan of Remington Outdoor Company, Inc. and Its Affiliated Debtors and Debtors in Possession](#), at 424 Docket no 14, Case no 18-10684, filed March 25, 2018.

⁹¹ Rachel Philofsky, *Beltway Sniper Attacks*, BRITANNICA <https://www.britannica.com/topic/Beltway-sniper-attacks> (while not admitting fault, Bushmaster agreed to a \$2.5 million settlement with families when one of its rifles was used in the Beltway Shootings in 2002) (last visited Feb. 20, 2022).

⁹² Jesse Barron, *How America's Oldest Gun Maker Went Bankrupt: A Financial Engineering Mystery*, N.Y. TIMES (May 1, 2019) <https://www.nytimes.com/interactive/2019/05/01/magazine/remington-guns-jobs-huntsville.html>.

⁹³ Frank Minter, *America's Oldest Gun Maker Thumbs Its Nose at Two-Faced Senator*, FORBES (May 14, 2014) <https://www.forbes.com/sites/frankminter/2014/05/16/americas-oldest-gun-maker-thumbs-its-nose-at-a-two-faced-senator/?sh=33634cbd0e55>.

York's enactment of stricter gun laws, specifically the SAFE Act,⁹⁴ which banned an expansive list of guns deemed "assault rifles" in the wake of the Newtown, Connecticut shooting in 2012. While initially not seriously in the running, the City of Huntsville, Alabama landed the company. In exchange for a package of incentives that included, among other things a rent free \$12.5 million facility, Remington committed to produce nearly 2,000 jobs at a specified minimum wage.⁹⁵ Remington never came close to meeting their end of the bargain.

"Trump Slump"

While sales soared during the first decade under Cerberus, sales eventually began to decline as a result of the phenomenon dubbed the "Trump Slump."⁹⁶ Gun laws are highly politicized, and consumer purchases of firearms and ammunition are highest when consumers believe increased regulation is on the horizon.⁹⁷ In line with this belief, a popular joke in the gun industry is that President Barrack Obama was the "greatest gun salesman of all time."⁹⁸ Gun sales spiked after President Obama's reelection in 2012 was coupled with desperate calls for gun reform, which he called "the biggest civil rights challenge of his generation."⁹⁹ Sales continued to increase in 2015 and 2016, when then-presidential candidate and gun-control supporter Hillary Clinton was expected to win the 2016 presidential election, which led to a record number of FBI background checks in 2015 and 2016 (an indicator of the general strength of the firearm market).¹⁰⁰ However, Donald Trump, a self-proclaimed "true friend" of the National Rifle Association,¹⁰¹ and the first

⁹⁴ FISHGAME.COM, *Remington CEO Confirms NY SAFE Act Was the Reason the Company Expanded in Alabama*, <https://fishgame.com/2014/11/remington-ceo-confirms-ny-safe-act-reason-company-expanded-alabama/> (last visited May 10, 2022).

⁹⁵ Jesse Barron, *How America's Oldest Gun Maker Went Bankrupt: A Financial Engineering Mystery*, N.Y. TIMES (May 1, 2019) <https://www.nytimes.com/interactive/2019/05/01/magazine/remington-guns-jobs-huntsville.html>.

⁹⁶ THE GUARDIAN, *"The Trump Slump": Files for Bankruptcy as Gun Sales Tumble*, <https://www.theguardian.com/us-news/2018/feb/13/remington-bankruptcy-guns-trump-slump-sales> (last visited Apr. 22, 2022).

⁹⁷ Yoni Blumberg, *Gun Sales Fall by \$100 Million Due to the 'Trump Slump'*, CNBC (Sept. 12, 2017) <https://www.cnbc.com/2017/09/12/gun-sales-fall-by-100-million-due-to-the-trump-slump.html>.

⁹⁸ Kirk Johnson, *On Concerns Over Gun Control, Gun Sales Are Up*, N.Y. TIMES (Nov. 6, 2008) <https://www.nytimes.com/2008/11/07/us/07guns.html>.

⁹⁹ THE GUARDIAN, *"The Trump Slump": Files for Bankruptcy as Gun Sales Tumble*, <https://www.theguardian.com/us-news/2018/feb/13/remington-bankruptcy-guns-trump-slump-sales> (last visited Apr. 22, 2022).

¹⁰⁰ Yoni Blumberg, *Gun Sales Fall by \$100 Million Due to the 'Trump Slump'*, CNBC (Sept. 12, 2017) <https://www.cnbc.com/2017/09/12/gun-sales-fall-by-100-million-due-to-the-trump-slump.html>.

¹⁰¹ Amy B. Wang & Derek Hawkins, *Remington, the Oldest U.S. Gunmaker, Files for Bankruptcy Amid Declining Sales*, WASH. POST (Mar. 26, 2018) <https://www.washingtonpost.com/news/business/wp/2018/03/26/remington-the-oldest-u-s-gun-maker-files-for-bankruptcy-amid-declining-sales/>.

president since Ronald Reagan to speak at its annual convention, promised support for the organization, assuaging fears of increased restrictions.¹⁰² With practically no threat of tighter restrictions, Remington’s sales dropped 27.5 percent during the first nine months of Donald Trump’s presidency.¹⁰³ One commentator remarked, “If Barrack Obama was the world’s best gun salesman, Donald Trump is the worst.”¹⁰⁴ Magnifying this problem, gun makers had already ramped up production ahead of Hillary Clinton’s expected victory, resulting in a market that was suddenly inundated with a surplus.¹⁰⁵

Sandy Hook

Remington also faced significant legal and financial issues in 2012 after twenty-year-old Adam Lanza used a Bushmaster branded AR-15 “assault-style” rifle in his perpetration of, at that time, the second deadliest mass shooting in U.S. History.¹⁰⁶ On December 14, 2012, Lanza stole the Bushmaster from, then used it to kill, his mother before shooting through the entrance at Sandy Hook Elementary School in Newtown, Connecticut and killing twenty-six seven-year-old children, six staff members, and himself. While he carried three other firearms with him that day, manufactured by various other companies, specifically, Izhmash, Glock, and Sig Sauer, none of those weapons were discharged that day.¹⁰⁷

Although a report on Lanza issued by the state of Connecticut’s Office of the Child Advocate detailed significant development and socio-emotional challenges, a preoccupation with violence, and a family and school system that preferred to “accommodate and appease” him,¹⁰⁸ the Connecticut Supreme Court held that Remington could be held liable for the shooting and permitted a lawsuit filed by the families of the children to proceed. Despite broad protections provided to gunmakers under the federal Protection of Lawful Commerce in Arms Act (PLCAA),

¹⁰² Matthew Haag, *Remington, Centuries-Old Gun Maker, Files for Bankruptcy as Sales Slow*, N.Y. TIMES (MAR. 25, 2018) <https://www.nytimes.com/2018/03/25/business/remington-bankruptcy-guns.html>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ HISTORY, *Sandy Hook School Shooting*, (December 11, 2013), <https://www.history.com/this-day-in-history/gunman-kills-students-and-adults-at-newtown-connecticut-elementary-school>.

¹⁰⁷ THE COALITION TO STOP GUN VIOLENCE, *What Adam Lanza Took, and Didn’t Take, to Sandy Hook Elementary*, <https://www.csgv.org/adam-lanza-took-didnt-take-sandy-hook-elementary/> (last visited Mar. 28, 2022).

¹⁰⁸ OFF. OF THE CHILD ADVOCATE, *SHOOTING AT SANDY HOOK ELEMENTARY SCHOOL*, 6 (Nov. 21, 2014).

Remington faced liability for the massacre due to an exception when manufacturers violate a federal or state law.¹⁰⁹ Specifically, the lawsuit alleged that Remington violated the Connecticut Unfair Trade Practices Act (CUPTA) by perpetuating “toxic tropes of masculinity”¹¹⁰ with an intended effect of humiliating men “into arming themselves with combat weapons”¹¹¹ and marketing the firearm to the “modern predator aficionado.”¹¹²

Not only did Sandy Hook expose Remington to liability, the company suffered further financial trouble when investors sought to distance themselves in the wake of the shootings.¹¹³ In 2015, Cerberus offered a mechanism to its fund investors that wanted to drop Remington, such as the California State Teachers’ Retirement System, to sell their stakes back to the company.¹¹⁴ With institutional investors seeking to distance themselves from gun-related investments, Cerberus announced it would exit the gun business; however, it was unable to find a buyer. Cerberus came close to selling its position as lead investor in Remington’s business, with the most notable being a deal with the Navajo Nation, who emerged as the lead bidder and intended on shifting the company away from the AR-15 in favor of hunting rifles failed in 2018.¹¹⁵ The tribe’s lawyer at the time said, “We are indifferent to the AR-15 and happy to leave that business behind.”¹¹⁶

¹⁰⁹ Sophie Sonnenfeld & Yash Roy, *Law School Students and University Play Roles on Both Sides of \$73 Million Settlement Between Sandy Hook Families and Remington Arms*, YALE DAILY NEWS (FEB. 25, 2022 1:36 AM), <https://yaledailynews.com/blog/2022/02/25/law-school-students-and-university-play-roles-on-both-sides-of-73-million-settlement-between-sandy-hook-families-and-remington-arms/>

¹¹⁰ *Id.*

¹¹¹ Liz Plank, *How Gun Makers Bait Insecure Young Men into Buying Weapons*, MSNBC (Feb. 20, 2022 1:35 PM), <https://www.msnbc.com/opinion/msnbc-opinion/gun-maker-sandy-hook-settlement-exposed-predatory-ads-n1289394>.

¹¹² <https://www.wsj.com/articles/BL-DLB-16045>

¹¹³ Jessica DiNapoli & Andrew Berlin, *U.S. Gunmaker Remington Turns to Debt Restructuring Advisors – Sources*, (Jan. 26, 2018 11:28 AM), <https://www.reuters.com/article/us-remingtonoutdoor-debtstructuring-ex/exclusive-u-s-gunmaker-remington-turns-to-debt-restructuring-advisors-sources-idUSKBN1FF2B6>.

¹¹⁴ *Id.*

¹¹⁵ Andrew Ross Sorkin, *A Surprising Bid for Remington, and an Unsurprising Rejection*, (July 16, 2018), <https://www.nytimes.com/2018/07/16/business/dealbook/remington-sale-navajo-nation.html>.

¹¹⁶ *Id.*

Remington 700 Trigger Problems

While the Remington 700 model is the number one selling bolt action rifle of all time,¹¹⁷ it ultimately become more of a liability than an asset. While the gun enjoyed record sales, Remington received thousands of complaints that it would fire without pulling the trigger.¹¹⁸ As early as 1989, Remington started work on a safer rifle.¹¹⁹ Without admitting responsibility, the company discontinued the use of the faulty original Walker trigger system, introduced in 1947,¹²⁰ replacing it with the X Mark Pro trigger in 2006¹²¹ (it is interesting to note, the engineer working on the original trigger, Mike Walker, proposed a safer design in 1948 that would reduce the risk of misfires- an option that was rejected because it would raise the cost to produce each gun by 5.5 cents¹²² - Remington insists that Walker was coerced into making that admission).¹²³ The new trigger, however, suffered from the same malfunction.¹²⁴ After continued complaints, Remington finally settled a class action suit and recalled the rifle at a potential cost of almost a half billion dollars to correct the issue.¹²⁵ At the time of the recall, Remington had already settled with several plaintiffs and agreed to pay the legal costs of the class action in the amount of \$12.5 million.¹²⁶

Liability was not the only issue brought about by the 700's triggers - Remington also faced a crippling public relations crisis. In August of 2017, CBS ran a story that detailed a horrific story of one young boy shooting and killing his younger brother with a Remington 700.¹²⁷ The son, who, under the supervision of his father, had shot his younger brother, insisted that he never touched the

¹¹⁷ REMINGTON.COM, *The Model 700. A Legend Forged in Steel and More Than 50 Years of Unrivaled Performance.*, <https://www.remarms.com/rifles/bolt-action/model-700/> (last visited Apr. 1, 2022).

¹¹⁸ Scott Cohn, *Under Oath: Inventor of Controversial Remington Trigger Speaks*, CNBC (Dec. 20, 2015) <https://www.cnbc.com/2015/12/19/under-oath-inventor-of-controversial-remington-trigger-speaks.html>.

¹¹⁹ *Id.*

¹²⁰ RIFLE BASIX, *Remington Rifle Trigger Timeline / History*, (June 30, 2020), <https://riflebasix.com/blog/remington-rifle-trigger-timeline-history/>.

¹²¹ Scott Cohn, *Under Oath: Inventor of Controversial Remington Trigger Speaks*, CNBC (Dec. 20, 2015) <https://www.cnbc.com/2015/12/19/under-oath-inventor-of-controversial-remington-trigger-speaks.html>.

¹²² Adam Weinstein, *Federal Judge Says Remington Settlement Over Deadly Rifle Defect May Be Too Lenient*, THE TRACE (Feb. 15, 2017), <https://www.thetrace.org/2017/02/remington-settlement-deadly-rifle-defect-too-lenient/>.

¹²³ Scott Cohn, *Misfire: The Saga Behind Remington's Bad Rifle*, YAHOO! NEWS (Dec. 8, 2015), <https://www.yahoo.com/news/tagged/realestate/misfire-troubles-remingtons-bad-rifle-105000047.html>.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Adam Weinstein, *Federal Judge Says Remington Settlement Over Deadly Rifle Defect May Be Too Lenient*, THE TRACE (Feb. 15, 2017), <https://www.thetrace.org/2017/02/remington-settlement-deadly-rifle-defect-too-lenient/>.

¹²⁷ Leslie Stahl, *Popular Remington 700 Rifle Linked to Potentially Deadly Defect*, 60 MINUTES (AUG. 13, 2017 7:07 PM) <https://www.cbsnews.com/news/popular-remington-700-rifle-linked-to-potentially-deadly-defects-2/>.

trigger. Despite extensive coverage, including a 2010 documentary surrounding the defect, until the 2017 story, most of the owners of the 7.5 million rifles sold up to that point were unaware of the issue or the recall.¹²⁸

Finally, the faulty trigger led to a significant downturn in consumer confidence that further contributed to decreased sales. According to the later-filed disclosure statement in the chapter 11 case, “despite the historical strength of Remington’s various brands, Remington has experienced a significant decline in sales and revenues in the approximately one-year period preceding the Petition Date.”¹²⁹

Prepetition Indebtedness

At the time of the 2018 filing, Remington highlighted seven main debt vehicles:¹³⁰

- (i) Asset-Based Lending (“ABL”) Facility
- (ii) Term Loan Facility
- (iii) Senior Third Lien Notes
- (iv) Intercompany Note Purchase Agreement/ROC Financing
- (v) Huntsville Third Lien Note
- (vi) Certain Other Liabilities
- (vii) ROC Common Stock and Ownership

*ABL Facility*¹³¹

As previously noted, in April of 2012 Remington, under the control of Cerberus and R2H Holdings, took out \$255 million in debt to pay back its shareholders.¹³² OpCo, RAC, Barnes, and

¹²⁸ *Id.*

¹²⁹ [Disclosure Statement for Joint Prepackaged Chapter 11 Plan of Remington Outdoor Company, In. and its Affiliated Debtors and Debtors in Possession](#), 24, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed April 30, 2018).

¹³⁰ *Id.* at 21.

¹³¹ *Id.*

¹³² *Id.*

RAD were the borrowers and FGI Holding, RA Brands, TMRI, and FGI Finance were guarantors of the ABL Facility (“ABL Loan Parties”).¹³³ As of the date of filing, the outstanding balance on this loan was \$114.5 million plus accrued and unpaid fees.¹³⁴ As is typical in a ABL and term loan structure, the ABL Loan Parties' obligations under the ABL Facility were secured by (i) first priority liens on the ABL Loan Parties' assets, including accounts receivable, intellectual property, inventory, and proceeds and (ii) a second priority lien on substantially all other assets of the ABL Loan Parties.¹³⁵

*Term Loan Facility*¹³⁶

Also in April of 2012, OpCo entered into a Term Loan Agreement as borrower.¹³⁷ FGI Holding, RA Brands, TMRI, RAD, Barnes, RAC, and FGI Finance were guarantors under the Term Loan Facility (together with OpCo, the "Term Loan Parties").¹³⁸ As of the date of filing, the outstanding principal balance was \$550.5 million.¹³⁹ That loan was secured by (i) second priority liens, junior to the ABL Facility liens, on account receivables, intellectual property, inventory, and proceeds, and (ii) second priority liens on substantially all other assets.¹⁴⁰

Senior Third Lien Notes

Also in April of 2012, OpCo and FGI issued Senior Third Lien Notes. As of the date of filing, the aggregate outstanding principal balance of these notes was approximately \$226 million. ROC, FGI Holding, RAC, RA Brands, Barnes, TMRI, and RAD were guarantors of the Third Lien Notes.¹⁴¹ The Third Lien Notes were secured by third priority liens and security interests (junior to the respective liens and security interests of the ABL Agent and the Term Loan Agent) on substantially all of the assets of RAC, RA Brands, Barnes, TMRI, and RAD. In addition, in connection with the execution of the Restructuring Support Agreement, on February 12, 2018, ROC, FGI Holding, OpCo, FGI Finance, RAC, Barnes, RAD, RA Brands and TMRI entered into

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at 22.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

agreement granting the Third Lien noteholders a security interest in and lien on substantially all of ROC's assets, including ROC's bank accounts and cash.

Intercompany Note Purchase Agreement / ROC Financing

In May of 2017, OpCo and ROC entered into a Note Purchase Agreement ("Intercompany NPA").¹⁴² Pursuant to the Intercompany NPA, OpCo issued ROC \$100 million worth of unsecured notes for the purpose of infusing additional cash to fund OpCo and its various subsidiaries' working capital needs.¹⁴³ As of the date of the petition, \$20 million in notes were outstanding under Intercompany NPA.¹⁴⁴

Huntsville Third Lien Note

As previously noted, in February 2014, RAC obtained a \$12.5 million incentive package from the City of Huntsville, Alabama in order to relocate to a manufacturing facility there.¹⁴⁵ The package was extended to RAC by the the City of Huntsville (the "Huntsville Note") and secured by a first priority mortgage on the Huntsville factory.¹⁴⁶ The loan terms provided that after the first year, the principal would be reduced by 10% each year the company met certain employment requirements.¹⁴⁷ As of the date of the petition, the aggregate outstanding balance under the Huntsville Note was still approximately \$12.5 million because Remington made no principal payments, nor did they meet the employment benchmarks in any subsequent year.¹⁴⁸

Certain Other Liabilities

Remington also had approximately \$54 million in outstanding claims from various vendors, suppliers, and service providers.¹⁴⁹ Additionally, it was facing significant litigation, including a number of claims alleging individual bodily injury, defective product design, defective manufacture and/or failure to provide adequate warnings, along with two class action cases relating

¹⁴² *Id.* at 23.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 24.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 119.

to breach of warranty claims.¹⁵⁰ In December 2014, Remington also reached a settlement that required it to offer replacement triggers on the aforementioned 700 model rifles.¹⁵¹ The replacement of the triggers was not an admission of liability, but could have caused the company to incur up to \$500 million in costs.¹⁵² Furthermore, in December 2014, Remington was named as a defendant in a wrongful death case related to the 2012 shootings in Newtown, Connecticut.¹⁵³ Finally, it was defending various other claims including, environmental, trade mark, trade dress and employment matters that “arise in the ordinary course of business.”¹⁵⁴ Although Remington was defending the lawsuits, there was no assurance they would not have to pay significant damages, which at the time of the petition were unliquidated and disputed, so the amount of the potential liability was unknown.

ROC Common Stocks and Ownership

ROC also had approximately 351,000 shares of common stock issued and outstanding.¹⁵⁵ As of December 31, 2017, approximately 93.5% of ROC's outstanding common stock was held by R2H.¹⁵⁶ The balance of ROC's common stock was held primarily by past and present directors, officers, and employees of Remington.¹⁵⁷

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

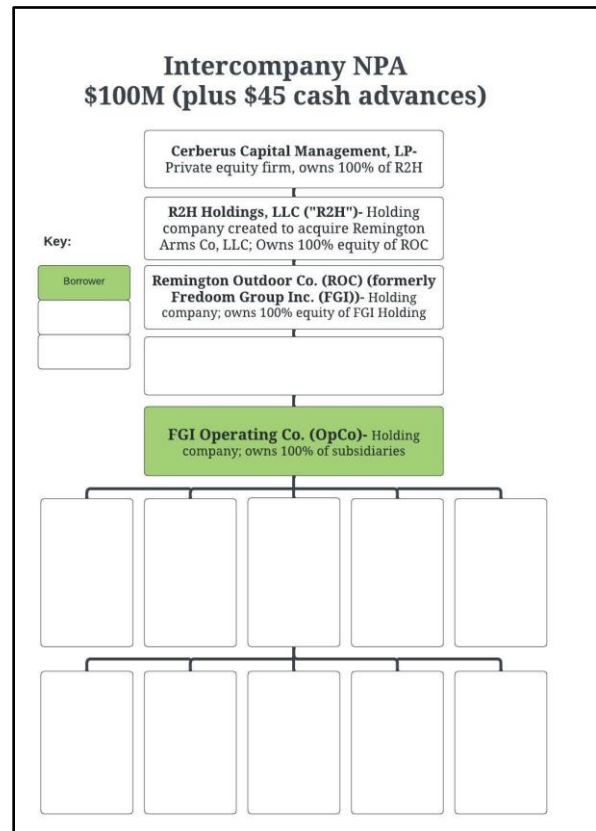
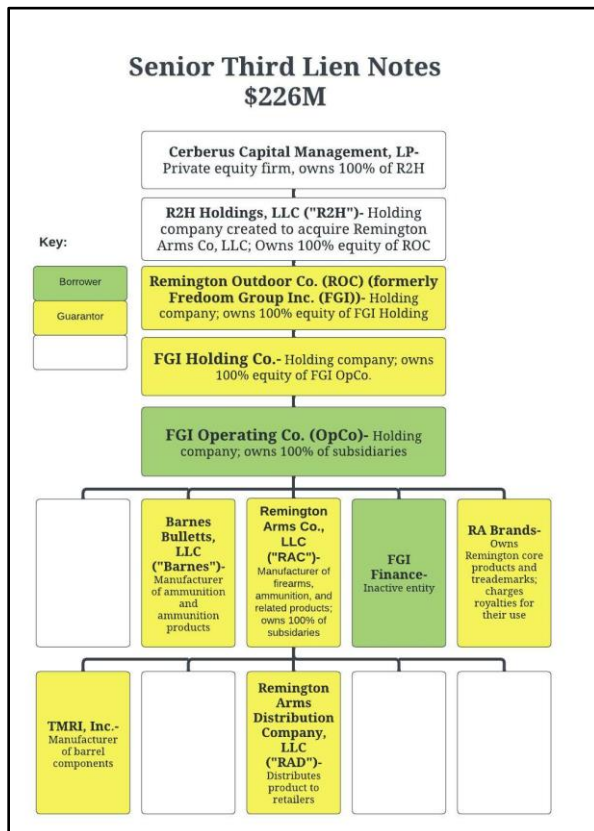
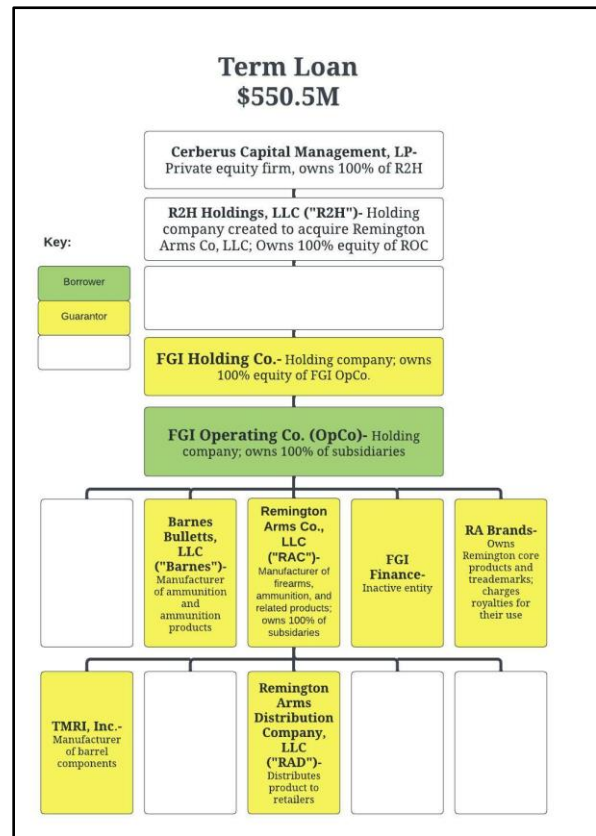
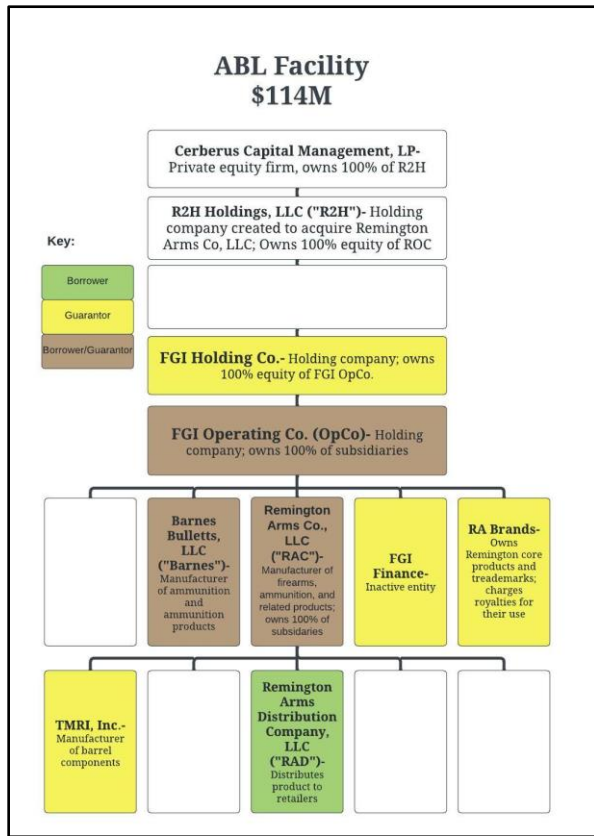
¹⁵⁴ *Id.*

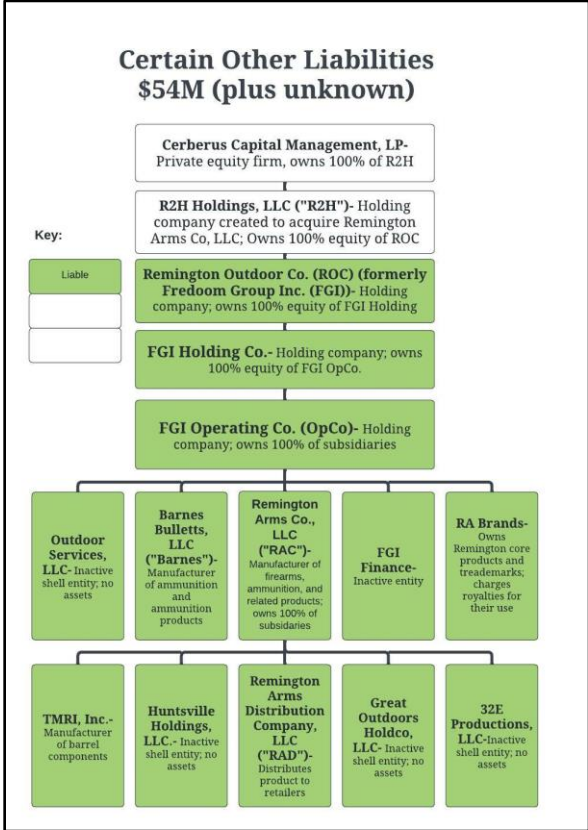
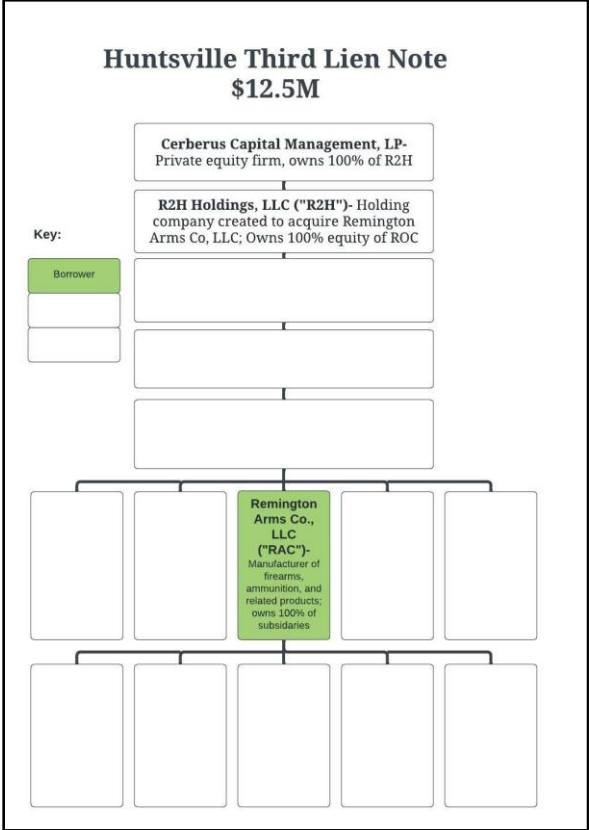
¹⁵⁵ *Id.* at 24.

¹⁵⁶ *Id.*

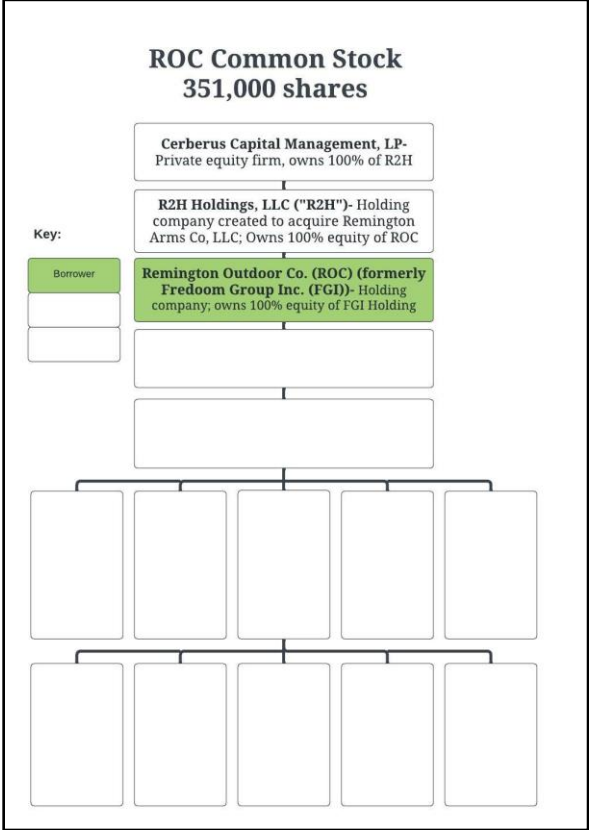
¹⁵⁷ *Id.*

Prepetition Debt Structure





*Due to the nature of the pending litigation, it was unknown which entities would ultimately be liable (if at all).



First Day Motions

During the beginning of the Chapter 11 filing, Remington filed multiple first day motions to place the company in the best position possible to continue operations and handle the reorganization efficiently with minimal expenses. As with every bankruptcy filing, Remington had to promptly file these motions to cover all bases and gain the court authorization required to proceed.¹⁵⁸ As highlighted in *Bankruptcy in Practice*, first-day motions and their subsequent orders, if approved, can be subdivided into three distinct categories.¹⁵⁹

First, orders that *facilitate the administration of the estate*.¹⁶⁰ These “administrative orders” are often used to consolidate multiple debtors into a single case such as with the companies that collectively make up Remington (the “Debtors”) or to extend filing deadlines.¹⁶¹ The second category to be discussed are orders that *smooth day-to-day operations*.¹⁶² These are orders that are crucial to continue ordinary business operations such as continuation of employee payment and service payments like insurance programs.¹⁶³ The third category of orders *substantive orders*, which authorize the use of cash collateral and post-petition financing.¹⁶⁴ As is the usual case for chapter 11 filings, the Debtors were low on working capital. As such, there was a necessity for orders related to post-petition borrowing early on.¹⁶⁵

A. Orders Facilitating the Administration of the Estate

Motion for Joint Administration

The Debtors filed a motion to jointly administer the Chapter 11 cases.¹⁶⁶ The Debtors wished to, in accordance with Section 105(a) of the Bankruptcy Code and Bankruptcy Rule

¹⁵⁸ BERNSTEIN & KUNEY, BANKRUPTCY IN PRACTICE 287.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 288.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 289.

¹⁶⁵ *Id.*

¹⁶⁶ [Debtors’ Mot. for Entry of Order \(I\) Directing Joint Administration of Related Chapter 11 Cases and \(II\) Granting Related Relief](#), 3, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 25, 2018).

1015(b), consolidate the administration of the Chapter 11 cases.¹⁶⁷ The debtors requested that the Court maintain a singular file and docket for all Chapter 11 cases jointly administered under the debtors.¹⁶⁸

As a basis for the relief, the debtors highlight that Bankruptcy Rule 1015(b) allows a joint administration when multiple petitions are pending in the same court regarding a debtor and its affiliates.¹⁶⁹ Because the Debtors were affiliates, 1015(b) grants the Court the authority to order the joint administration.¹⁷⁰ The debtors further argue that joint administration would provide great convenience while not infringing upon any substantive rights of any parties involved.¹⁷¹ Additionally, Section 105 of the Bankruptcy Code provides the Bankruptcy Court the power to enact “any order, process, or judgment ” that will facilitate the Court to quickly and fairly carry out the bankruptcy proceeding.¹⁷²

Using this broad grant of judicial discretion, among other bankruptcy rules, the Bankruptcy Court has within its power to congregate multiple debtor’s Chapter 11 proceedings into one proceeding; provided, however, that such congregation is “necessary or appropriate” given the circumstances.¹⁷³ In the case of the Debtors, pursuant to the proposed plan and the harmonized nature of the assets and ownership relationship between the Debtors, the Court approved the Debtor’s motion to jointly administer the proceedings.¹⁷⁴ The Court further approved the notice requirements of Section 342(c)(1) of the Bankruptcy Code and Rule 1005 and 2002(n) of the Bankruptcy Rules in favor of a Debtors created notice describing the integration of the various Chapter 11 cases.¹⁷⁵

¹⁶⁷ *Id.* at 5.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 7.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 8.

¹⁷² 11 U.S.C. § 105.

¹⁷³ *Id.*

¹⁷⁴ [Order \(I\) Directing Joint Administration of Related Chapter 11 Cases and \(II\) Granting Related Relief](#), 3, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 27, 2018).

¹⁷⁵ *Id.*

Motion for Consolidated List of Creditors

The Debtors filed a motion for an entry of the order that would allow the Debtors to file a consolidated list of creditors and a list of the Debtor's 30 largest unsecured creditors.¹⁷⁶ The Debtors had approximately 18,000 creditors that the Debtors must give notice of the bankruptcy proceedings to.¹⁷⁷ The local rules require the Debtors to maintain a separate mailing matrix for creditors, however the local rules also allow modification by the Court "in the interest of justice."¹⁷⁸ The Debtors already had computerized lists of creditors that can be used to provide notice.¹⁷⁹ This, the Debtors argued, would increase efficiency and convenience as opposed to having to convert the list to a creditor specific matrix format.¹⁸⁰ The Debtors further posit that a single consolidated list of the 30 largest unsecured creditors would better reflect the body of unsecured creditors that have the highest stake, as opposed to separate lists for each and every creditor.¹⁸¹

The Court found the claim was reasonable under the circumstances and within the jurisdiction of the Court.¹⁸² The Court authorized the Debtors to file a consolidated list of creditors and to file a consolidated list of the 30 largest unsecured creditors.¹⁸³ The Court further waived the local rule requirements that required separate mailing matrices to be submitted and allowed a consolidated list of creditors to be submitted.¹⁸⁴ However, the Court stipulated that if any of the Chapter 11 cases converted to a Chapter 7, then the applicable Debtor must file the individualized credit matrix.¹⁸⁵

¹⁷⁶ [Debtors' Mot. for Entry of Order Authorizing Debtors to File \(I\) Consolidated List of Creditors and \(II\) Consolidated List of Top Thirty Creditors](#), 1, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 25, 2018).

¹⁷⁷ *Id.* at 4.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 4-5.

¹⁸⁰ *Id.* at 5.

¹⁸¹ *Id.*

¹⁸² [Order Authorizing Debtors to File \(I\) Consolidated List of Creditors and \(II\) Consolidated List of Top Thirty Creditors](#), 1, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 27, 2018).

¹⁸³ *Id.* At 2.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

Motion Appointing Prime Clerk as Claims and Noticing Agent

The Debtors filed an application to appoint Prime Clerk LLC as the claims and noticing agent for the Chapter 11 case.¹⁸⁶ The application requested Prime Clerk to assume all responsibility for distribution of notices, as well as the maintenance, processing, and docketing of claims in the Debtors' chapter 11 filing.¹⁸⁷ The Debtors emphasized that this selection would satisfy the Court's "Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)."¹⁸⁸ The aforementioned protocol satisfied by the Debtors required the Debtors to review proposals from two other claims and noticing agents to ensure a competitive selection process.¹⁸⁹ The Debtors also argued that Prime Clerk's rates are reasonable based upon the quality and efficiency of service provided.¹⁹⁰ The Debtors also had approximately 18,000 creditors that required notice, which would have been too burdensome for the Clerk.¹⁹¹

The Court approved the application to have Prime Clerk LLC act as the Debtors' claims and noticing agent relating to the bankruptcy proceeding, pursuant to Bankruptcy Code 156(c).¹⁹² Essentially, Prime Clerk was authorized to act as the custodian of court records related to the bankruptcy proceeding.¹⁹³ The Court reasoned that, in light of the approximate 18,000 creditors in the joint Chapter 11 proceeding, many of which were suspected to file a claim against the Debtors, the bankruptcy Clerk's Office would not be able to properly handle the amount of notices, documents, claims, and otherwise that were associated with this case.¹⁹⁴ It would be unduly burdensome and time consuming, the Court reasoned, for the Clerk's Office to attempt to tackle this momentous task of acting as custodian of record for the Debtor's case, and so it designated a reputable, third-party bankruptcy custodian of record at the request of the Debtors.¹⁹⁵

¹⁸⁶ [Debtor's Application for Appointment of Prime Clerk LLC as Claims and Noticing Agent](#), 1, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 25, 2018).

¹⁸⁷ *Id.* At 3-4.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 4.

¹⁹² [Order Authorizing Retention and Appointment of Prime Clerk LLC as Claims and Noticing Agent](#), 1, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 27, 2018).

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

B. Motions that Smooth Day to Day Operations

Motion to Pay Certain Prepetition Claims

The Debtors filed a motion seeking authorization of payment to certain creditors' claims.¹⁹⁶ The third-party creditors were treated as unimpaired with regards to the Plan and included vendors, suppliers, common carriers, and service providers.¹⁹⁷ The motion further sought to authorize the related banks and financial institutions to honor and process payments related to the unimpaired creditors' claims.¹⁹⁸ Finally, the motion required the creditors to maintain financial terms throughout the bankruptcy case that are at least favorable as the current terms as of the petition date.¹⁹⁹ The aggregate of prepetition claims owed was approximately \$55 million as of the petition date.²⁰⁰ The Debtors argued that the payment of these claims was essential to maintaining smooth day-to-day operations and preserving the value of the businesses throughout the bankruptcy filing. Furthermore, the Debtors posited that because the claims are unimpaired, their payment would only serve to further expedite the distribution of funds to the creditors that they were already entitled to upon the finalization of the Plan.²⁰¹

Upon reviewing the motion, the relief requested was found to be reasonable, in line with all relevant laws, and within the Court's jurisdiction to grant.²⁰² The Court granted the motion on an interim basis; the Court authorized the payment of prepetition claims that arose within the ordinary course of business, authorized banks to honor and process payment related to said claims, ordered the creditors to honor the terms of the prepetition claims and scheduled a final hearing

¹⁹⁶ [Debtors' Mot. for Entry of Interim and Final Orders \(I\) Authorizing the Debtors to Pay Certain Prepetition Claims in the Ordinary Course of Business, \(II\) Authorizing Banks to Honor and Process Checks and Electronic Transfer Requests Related Thereto, \(III\) Requiring Creditors to Maintain Customary Terms as a Condition to Payment, and \(IV\) Scheduling a Final Hearing, 2](#), *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 25, 2018).

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 2.

²⁰⁰ *Id.* at 5.

²⁰¹ *Id.* at 5.

²⁰² [Interim Order 2, \(I\) Authorizing the Debtors to Pay Certain Prepetition Claims in the Ordinary Course of Business, \(II\) Authorizing Banks to Honor and Process Checks and Electronic Transfer Requests Related Thereto, \(III\) Requiring Creditors to Maintain Customary Terms as a Condition to Payment, and \(IV\) Scheduling a Final Hearing, 2](#), *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 27, 2018).

date.²⁰³ The Court included the caveat that the payments not exceed an aggregate of \$48 million, unless authorized in the future through notice and hearing.²⁰⁴

Motion to Continue Insurance Programs

The Debtors filed a motion to allow the continuation of certain insurance programs and to authorize payment by the Debtors into said programs as well as authorize banks to receive and process related payments.²⁰⁵ During ordinary business, the Debtors maintained 15 insurance programs, many of which with multiple policies.²⁰⁶ The Debtors estimated the yearly aggregate insurance payments due in 2018 to be \$5.1 million.²⁰⁷ The Debtors reasoned that the continuation of insurance programs was integral to the smooth running and preservation of value of the business.²⁰⁸ Furthermore, many of the programs are required by law.²⁰⁹ For example, Section 1112(b)(4)(C) of the Bankruptcy Code states that failure to maintain insurance programs that yields a risk to either the estate or the public is grounds for dismissal of a chapter 11 case.²¹⁰

The Court found the request for relief reasonable to further preserve the value of the businesses and in the best interest of the Debtors.²¹¹ The Court authorized the Debtors to maintain, continue, renew, pay, and modify the related insurance programs at their sole discretion.²¹² Additionally, the Court approved the relevant banking and financial institutions to process the payments relating to the insurance programs.²¹³

²⁰³ *Id.*

²⁰⁴ *Id.* at 2-3.

²⁰⁵ [Debtors' Motion for Entry of an Order \(I\) Authorizing Debtors to \(A\) Continue Debtors' Insurance Programs, \(B\) Pay Certain Obligations in Respect Thereof Postpetition, and \(II\) Authorizing Banks and Financial Institutions to Pay All Checks and Electronic Payment Requests Related to the Foregoing](#), 1-2, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 25, 2018).

²⁰⁶ *Id.* at 4.

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 5.

²⁰⁹ *Id.* at 6.

²¹⁰ *Id.* at 7.

²¹¹ [Order \(I\) Authorizing Debtors to \(A\) Continue Debtors' Insurance Programs \(B\) Pay Certain Obligations in Respect thereof Postpetition, and \(II\) Authorizing Banks and Financial Institutions to Pay All Checks and Electronic Payment Requests Relating to the Foregoing](#), 2, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 27, 2018).

²¹² *Id.*

²¹³ *Id.* At 4.

Motion to Continue Operation of Cash Management System

The Debtors utilized a cash management system in their operations, totaling 28 bank accounts.²¹⁴ Through the ordinary use of the bank accounts, the debtors incur bank fees related to maintenance, wire transfers, depository service charges, and other charges averaging an aggregate of \$200,000- \$250,000 monthly charges.²¹⁵ The Debtors, relating to the cash management system, used various preprinted business forms including letterhead, purchase orders, and invoices.²¹⁶ The Debtors would be forced by the U.S. Trustee's *Operating Guidelines for Chapter 11 Cases* to change all of the business forms in order to update the forms on the Debtor's status as debtors in possession.²¹⁷ Finally, in connection to the cash management system, the Debtors postulated that claims may arise from one Debtor to another. The fund transfers are tracked under intercompany transactions, but under the procedures at place on the petition date, the Debtors are not able to track intercompany transactions.²¹⁸

Debtors filed a motion requesting authorization to continue operating the cash management system and the charge card programs, as well as to honor and pay the related bank fees.²¹⁹ The Debtors also requested to maintain existing business forms such as letterheads and invoices, to continue intercompany transactions, for a 30-day extension to comply with section 345(b) of the Bankruptcy Code, and to schedule a final hearing.²²⁰ 11 U.S.C. §345(b) requires an entity going through bankruptcy to account for the money deposited or invested, to promptly repay the capital, and to utilize faithful performance of duties as a depository.²²¹

The Debtors argued the continuation of the cash management system was vital to operational stability and elimination of unnecessary inefficiencies and expenses.²²² While the U.S. Trustee Guidelines call for a debtor to close all existing bank accounts and open various new bank

²¹⁴ [Debtors Mot. for Entry of Interim and Final Orders \(I\) Authorizing the Debtors to \(A\) Continue Operating Cash Management System, \(B\) Honor Certain Prepetition Obligations Related Thereto, \(C\) Continue Charge Card Programs and Pay All Related Obligations and Fees, \(D\) Maintain Existing Business Forms, and \(E\) Continue Performing and Granting Administrative Priority for Intercompany Transactions, \(II\) Granting the Debtors an Extension to Comply with the Requirements of Section 345\(b\), and \(III\) Scheduling a Final Hearing, 4, In re: Remington Outdoor Company, Inc., et al, 18-10684 \(BLS\) \(Bankr. D. Del. Filed March 25, 2018\).](#)

²¹⁵ *Id.* at 12.

²¹⁶ *Id.*

²¹⁷ *Id.* at 13.

²¹⁸ *Id.*

²¹⁹ *Id.* at 2.

²²⁰ *Id.*

²²¹ 11 U.S.C. §345(b).

²²² *Id.* at 14.

accounts for different categories such as taxes and cash collateral, this would greatly harm the Debtors' operations due to the Debtors' cash management structure of moving funds through 28 different bank accounts.²²³ Authority is given by 11 U.S.C. § 363(c)(1), as this allows a debtor to use its estate's property through the ordinary course of business without conducting a hearing.²²⁴ Furthermore, the Debtors argued use of the existing business forms would prevent further disruption and expenses.²²⁵ Additionally, the Debtors there was cause to allow an extension under Section 345 of the Bankruptcy Code.²²⁶ The Debtors presented the Court's authority to grant leeway under Section 345(b) from the 1994 amendments to the Bankruptcy Code.²²⁷ The Debtors argued that cause existed because the benefits outweighed the negatives, strict adherence of the deadline would cause undue distraction and potential increased estate costs to deal with, and because similar extensions have been granted previously by the Court.²²⁸ Similarly, the Debtors argued that the continuation of intercompany transactions were necessary to avoid disruption of the administration of estates.²²⁹

Having reviewed the motion, the Court granted relief on an interim basis and authorized the debtors to act at their sole discretion.²³⁰ The Court authorized the continuation of the cash management system, the continuation of the charge card programs, extended the compliance time of Section 345(b) by 30 days, and the continuation of intercompany transactions.²³¹ The Court stipulated that cash was prohibited from being transferred from the Remington Outdoor Company Accounts without consent of the third lien creditors as defined in the Plan.²³² The Court further authorized the continued use of the Debtor's business forms with the stipulation that the Debtors must, after using the supply of current checks, reorder checks marked with the "Debtor in

²²³ *Id.*

²²⁴ *Id.* at 15.

²²⁵ *Id.* at 18.

²²⁶ *Id.* at 19.

²²⁷ *Id.*

²²⁸ *Id.* at 21.

²²⁹ *Id.* at 22.

²³⁰ [Interim Order \(I\) Authorizing the Debtors to \(A\) Continue Operating Cash Management System, \(B\) Honor Certain Prepetition Obligations Related Thereto, \(C\) Continue Charge Card Programs and Pay All Related Obligations and Fees, \(D\) Maintain Existing Business Forms, and \(E\) Continue Performing and Granting Administrative Priority for Intercompany Transactions, \(II\) Granting the Debtors an Extension to Comply with the Requirements of Section 345\(b\), and \(III\) Scheduling a Final Hearing](#), 1, *In re: Remington Outdoor Company, Inc.*, et al, 18-10684 (BLS) (Bankr. D. Del. Filed March 27, 2018).

²³¹ *Id.* at 2-5.

²³² *Id.* at 6.

Possession” title.²³³ The Court scheduled the Final Hearing for April 18, 2018.²³⁴ The Court reasoned that the relief requested was in the best interests of all parties, and that the Debtor’s notice of the Motion and opportunity for the hearing was appropriate under the circumstances, determining that the legal and factual bases set forth justify cause for relief.²³⁵

Motion to Remit and Pay Certain Prepetition Taxes and Fees

In order to do the least amount of damage to the Debtor’s business as possible, so that the business may stay operational and continue conducting sales and other business throughout the process of the Chapter 11 bankruptcy proceedings, the Debtors filed a motion to authorize the Debtors, at their discretion, to remit and pay certain prepetition taxes, governmental assessments and fees.²³⁶ The motion also allowed authorization to banks to handle all payment operations related to the prepetition taxes, assessments and fees.²³⁷ This motion was aimed at reducing the amount of damage to the efficiency and day-to-day operations of the Debtor’s business during and after the Chapter 11 bankruptcy proceedings.²³⁸

The Debtors explained that in the course of ordinary business, the Debtors incur a variety of fees and taxes, which are usually paid through the Debtor’s banks.²³⁹ The Debtors estimated that a current amount around \$14 million in taxes and fees remain unpaid as of the petition date.²⁴⁰ The Debtors explained that the Debtor’s estate would benefit from payment of the unpaid tax claims and such a payment authorization would only affect the timing of the payment without impacting the rights or recoveries of any creditor.²⁴¹ Furthermore, the Debtors reasoned, these taxes represent secured and high-priority claims against the Debtor’s estate, such that the taxes and other related fees would be paid at the end of the bankruptcy proceeding.²⁴²

²³³ *Id.* at 3.

²³⁴ *Id.* at 10.

²³⁵ *Id.* at 2.

²³⁶ [Debtors’ Mot. for Entry of Interim and Final Orders \(I\) Authorizing Debtors to Remit and Pay Certain Prepetition Taxes, Governmental Assessments, and Fees, \(II\) Authorizing Banks and Financial Institutions to Pay All Checks and Electronic Payment Requests Relating to the Foregoing and \(III\) Scheduling a Final Hearing](#), 1, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 25, 2018).

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.* At 4.

²⁴⁰ *Id.*

²⁴¹ *Id.* At 7-8.

²⁴² *Id.* at 4-6.

The taxes incurred by the Debtors in the ordinary course of their regular business, and thus the taxes and fees the Debtors desired to pay in the interim, those taxes that were payable within the first 21 days of the Chapter 11 bankruptcy proceeding, pursuant to Order 61, can be broken down as follows²⁴³:

Federal Excise Taxes	\$0
State Sales and Use Taxes	\$250,000
Real Estate Taxes	\$0
Personal Property Taxes	\$1,000
Miscellaneous Taxes and Fees	\$1,000

Upon examining the requested relief, the Court found it to be reasonable and in the best interest of the Debtors' business.²⁴⁴ The Court granted the order on an interim basis to authorize the Debtors to remit or pay the taxes and fees that would become payable prior to a final order entry in an aggregate of \$350,000 or less.²⁴⁵ The Court ordered that any payment made by the Debtors pursuant to the authority of the order was subject to the approved budget.²⁴⁶ The Court set the date of April 18, 2018 for a final hearing on whether, after the interim order had expired, the Debtors would be able to continue paying taxes and other governmental fees incurred during the ordinary course of business of the Debtors.²⁴⁷

²⁴³ *Id.*

²⁴⁴ [Interim Order \(I\) Authorizing Debtors to Remit and Pay Certain Prepetition Taxes, Governmental Assessments, and Fees, \(II\) Authorizing Banks and Financial Institutions to Pay All Checks and Electronic Payment Requests Relating to the Foregoing and \(III\) Scheduling a Final Hearing](#), 1, *In re: Remington Outdoor Company, Inc., et al.*, 18-10684 (BLS) (Bankr. D. Del. Filed March 27, 2018).

²⁴⁵ *Id.* at 2.

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 3.

Motion to Maintain Certain Customer and Consumer Programs

The Debtors filed a motion to continue the customer and consumer programs, honor and pay fees and obligations related to the programs, and to authorize banks to process payments related to the programs.²⁴⁸ The programs functioned to increase the loyalty and sales of customers and consumers of the Debtor's firearm or firearm-related products.²⁴⁹ The Debtors' programs were broken down into four categories:

1. Customer Rebates, which, for the 2017 calendar year, amounted to approximately \$4,000,000 in expenses;²⁵⁰
2. Show Special programs, which amounted to \$1,700,000 in prepetition liabilities and costs that have accrued and have not been paid;²⁵¹
3. Consumer Rebates, which, for the 2017 calendar year, the Debtors' honored nearly \$20,000,000 in consumer rebates; and²⁵²
4. Consumer Warranty Program, which amounted to between \$200,000 and \$250,000 in outstanding, prepetition liability.²⁵³

The Debtors reasoned that consumer backlash and decreased rapport with the Debtor's general customer base could occur if the loyalty and other goodwill programs were not honored during the Chapter 11 bankruptcy proceeding.²⁵⁴ The Court found the relief requested to be in the best interests of the Debtors estates, their creditors, and other parties in interest.²⁵⁵ The Court filed an order that authorized the Debtors to honor the prepetition liabilities incurred by the Debtors, and to continue to accrue and pay any further expenses related to the continuance of those

²⁴⁸ [Debtors' Mot. for Entry of an Order \(I\) Authorizing Debtors to \(A\) Maintain Certain Customer and Consumer Programs and \(B\) Honor or Pay Certain Prepetition Obligations Related Thereto, and \(II\) Authorizing Banks and Financial Institutions to Pay All Checks and Electronic Payment Requests Relating to the Foregoing](#), 2, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 25, 2018).

²⁴⁹ *Id.* at 4.

²⁵⁰ *Id.*

²⁵¹ *Id.* at 6.

²⁵² *Id.*

²⁵³ *Id.* at 7.

²⁵⁴ *Id.* at 9.

²⁵⁵ [Order \(I\) Authorizing the Debtors to \(A\) Maintain Certain Customer and Consumer Programs and \(B\) Honor or Pay Related Prepetition Obligations and \(II\) Authorizing Banks and Financial Institutions to Pay All Checks and Electronic Payment Requests Relating to the Foregoing](#), 2, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 27, 2018).

consumer and customer programs.²⁵⁶ The banks and financial institutions, as always, were ordered to comply and facilitate the transactions.²⁵⁷

Motion for Utility Services Adequate Assurance

The Debtors filed a motion seeking adequate assurance of payment for future utility services, preventing utility companies from altering or discontinuing services, and establishing procedures for determining adequate assurance of payment.²⁵⁸ Through day-to-day operations, the Debtors spent an estimate of \$835,314.40 monthly on utility services including electricity, gas, internet, waste disposal, and telephone services.²⁵⁹ The Debtors stated they intended to pay the prepetition utility service charges in a timely manner and the Debtors believed the post-petition liquidity sufficient to pay the post-petition utility obligations.²⁶⁰ The Debtors proposed to grant an additional assurance of payment by depositing \$417,657.20 (half of an average monthly utilities expenditure) to an account to be used in repayment of debts owed from utilities.²⁶¹

In consideration of this assurance to utility companies that they will receive payment, the utility companies that provide to the Debtors any sort of utility service were ordered to continue service to the Debtors, and were not able to alter, refuse, or discontinue services to the Debtors; provided, however, that the utility company received adequate and personal notice of the order and the bankruptcy proceedings.²⁶² The order provided some form of relief to the affected utility companies in the form of giving the utility companies an ability to file an Adequate Assurance Request in writing with the bankruptcy court within 14 days of receiving notice of the order or within 30 days of the Petition Date.²⁶³ The Adequate Assurance Request, among other things, required the utility company to explain why the utility company believes the proposed adequate

²⁵⁶ *Id.* at 1-2.

²⁵⁷ *Id.* at 2.

²⁵⁸ [Debtors' Mot. for Entry of Interim and Final Orders \(I\) Determining Adequate Assurance of Payment for Future Utility Services, \(II\) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, \(III\) Establishing Procedures for Determining Adequate Assurance of Payment, and \(IV\) Scheduling a Final Hearing](#), 2, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 25, 2018).

²⁵⁹ *Id.* at 4.

²⁶⁰ *Id.* at 4-5.

²⁶¹ *Id.* at 5.

²⁶² *Id.*

²⁶³ *Id.* at 7.

assurance was not sufficient for future payment.²⁶⁴ If a utility company filed an Adequate Assurance Request, the Debtors were charged with negotiating and resolving the request, providing whatever assurance that was reasonably necessary to assure the utility company of payment.²⁶⁵

The Debtors' basis for relief includes Section 366 of the Bankruptcy Code, which protects the debtor from the immediate termination or change in utility service after filing.²⁶⁶ Furthermore, the Debtors argue that adequate assurance of payment was reasonable and, as such, relief should be granted.²⁶⁷

The Court found the relief requested to be reasonable and within their jurisdiction to grant.²⁶⁸ The Court granted the order on an interim basis and prohibited all utility services attached to the order from altering or discontinuing service to the Debtors until a final order was entered.²⁶⁹ The Court further ordered the Debtor to deposit the full adequate assurance amount to a newly created account for the payment to the utility companies within 20 days after the petition date.²⁷⁰

Motion for Continuation of Employee Payments and Benefit Programs

The Debtors filed a motion to authorize post-petition and prepetition payment of certain employee obligations incurred in the ordinary course of business with the caveat that the payments do not exceed an aggregate cap of \$12,850 per employee and a total aggregate of \$4.4 million.²⁷¹

The Debtors at the time employed around 2700 employees across multiple locations including manufacturing plants and corporate offices.²⁷² Throughout the ordinary course of

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.* at 8.

²⁶⁷ *Id.* at 10.

²⁶⁸ [Interim Order \(I\) Determining Adequate Assurance of Payment for Future Utility Services, \(II\) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, \(III\) Establishing Procedures for Determining Adequate Assurance of Payment, and \(IV\) Scheduling a Final Hearing](#), 2, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 27, 2018).

²⁶⁹ *Id.*

²⁷⁰ *Id.* at 3.

²⁷¹ [Debtors' Mot. for Entry of Interim and Final Orders \(I\) Authorizing Debtors to \(A\) Pay Prepetition Wages, Salaries, Other Compensation, and Employee Benefits, and \(B\) Continue Existing Employee Benefit Plans and Programs, \(II\) Authorizing Banks and Financial Institutions to Pay All Checks and Electronic Payment Requests Relating to the Foregoing, and \(III\) Scheduling a Final Hearing](#), 2, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 27, 2018).

²⁷² *Id.* At 4.

business, the Debtors pay various employee-related expenses including wages and salaries, vacation time, paid absences, business expense allowances, bonuses, employee benefit programs, and other benefits.²⁷³

The Debtors maintained that it is imperative to continue employee payments without disruption until reorganization is complete to stabilize business proceedings.²⁷⁴ Any delay of payment would have caused employee morale issues and further disrupt reorganization plans.²⁷⁵ The Debtors derived further support for prepetition payments through the necessity of payment doctrine which allows prepetition payments to be made during reorganization if it is necessary to continuing day-to-day operations.²⁷⁶ The Debtors sought an interim order to continue the employee-related payments at their sole-discretion, authorization to pay employee-related payments that were owed prepetition, to authorize the banks to accept and process the payments, and to schedule a final hearing.²⁷⁷ The Debtors divided the payment caps into various categories as follows:²⁷⁸

Employee Obligation	Interim Cap Amount
ADP Fees	\$100,000
Business Expense Reimbursements	\$125,000
Payroll Withholding	\$225,000
Medical Plan	\$2,100,000
Dental Plan	\$80,000
FSAs	\$53,500
Life Insurance and AD&D	\$81,000

²⁷³ *Id.*

²⁷⁴ *Id.* at 16.

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 17.

²⁷⁷ *Id.*

²⁷⁸ [Interim Order \(I\) Authorizing Debtors to \(A\) Pay Prepetition Wages, Salaries, Other Compensation, and Employee Benefits, and \(B\) Continue Existing Employee Benefit Plans and Programs, \(II\) Authorizing Banks and Financial Institutions to Pay All Checks and Electronic Payment Requests Made by Debtors Relating to the Foregoing, and \(III\) Scheduling a Final Hearing](#), 3, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 27, 2018).

401(k) Plan	\$1,400,000
Worker's Compensation	\$250,000
COBRA	\$2,000
Total	\$4.4 million

Upon review, the Court granted the interim motion having found that the requested relief was in the best interests of all parties and the debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances.²⁷⁹ The Court authorized the Debtors to honor the prepetition employee obligations up to a total of \$4.4 million separated into various categories, as requested by the debtors.²⁸⁰ A final hearing to remove said limitations in payment authorization was ordered for April 18, 2018.²⁸¹

C. Substantive Orders

Motion for Scheduling Combined Hearing on Adequacy of Disclosure Statement and Confirmation of Plan.

The Debtors filed a motion to schedule a combined hearing on the adequacy of the Disclosure Statement and confirmation of the Plan.²⁸² The relief requested included:

- “(a) scheduling the Combined Hearing on the adequacy of the Disclosure Statement and confirmation of the Plan;
- (b) approving the form (attached hereto as Exhibit B) and manner of the Combined Notice of the Combined Hearing and commencement of these Chapter 11 Cases;

²⁷⁹ *Id.* at 2.

²⁸⁰ *Id.*

²⁸¹ *Id.* at 5.

²⁸² [Debtors' Mot. for Entry of \(I\) Order \(A\) Scheduling Combined Hearing on Adequacy of Disclosure Statement and Confirmation of Plan, \(B\) Approving Form and Manner of Notice of Combined Hearing and Commencement of Chapter 11 Cases, \(C\) Approving Solicitation of Non-Accredited Holders, \(D\) Establishing Procedures for Objecting to Disclosure Statement or Plan, \(E\) Conditionally Waiving Requirement to File Statements and Schedules, and \(F\) Directing that a Meeting of Creditors Not Be Convened, and \(II\) Order \(A\) Approving Prepetition Solicitation Procedures, \(B\) Approving Adequacy of Disclosure Statement, and \(C\) Confirming Plan](#), 1, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 25, 2018).

- (c) approving the solicitation of the Non-Accredited Holders and the form of the Non-Accredited Holder Notice(attached hereto as Exhibit C);
- (d) establishing the procedures for objecting to the adequacy of the Disclosure Statement or to confirmation of the Plan;
- (e) conditionally waiving the requirement that Debtors file the Schedules and Statements; and
- (f) directing that the U.S. Trustee not convene the Creditors' Meeting if the Plan is confirmed within seventy-five (75) days of the Petition Date.”²⁸³

The specific key dates requested by the debtors and granted by the Court with regards to the combined hearing are as follows:²⁸⁴

Key Dates and Deadlines	Proposed Schedule
Deadline for Schedules and Statements (only if Confirmation Order has not been entered) ⁴	June 15, 2018

Key Dates and Deadlines	Proposed Schedule
Deadline to mail Combined Notice	March 29, 2018
Deadline to file Plan Supplement	April 19, 2018 ³
Voting Deadline	April 26, 2018
Objection Deadline	April 26, 2018
Reply Deadline	May 1, 2018
Combined Hearing	May 3, 2018

²⁸³ *Id.* at 5.

²⁸⁴ *Id.* at 5-6.

Additionally, the Debtors requested that after the combined hearing, that the Court approve the solicitation procedures, the Plan, and the adequacy of the Disclosure Statement.²⁸⁵ The Court has authority to schedule a combined hearing of the approval of a disclosure statement and confirmation of a chapter 11 plan under Section 105(d)(2)(B)(vi) of the Bankruptcy Code as the Court deems appropriate to aid in efficiency and the best use of resources.²⁸⁶ The Debtors argued that the combined hearing would result in the usage of less judicial resources and the expedited process would benefit the Debtor's efforts in restructuring through minimizing adverse effects through allowing for expedited distributions of funds and reducing administrative expenses.²⁸⁷

The Court determined that the relief requested was in the best interest of all parties and found the notice of the motion was appropriate under the circumstances.²⁸⁸ With a few modifications to the proposed schedule pictured below, the Court approved the motion in its entirety, excluding the request to approve the Plan, solicitation procedures, and adequacy of the Disclosure Statement as the hearing had not taken place yet.²⁸⁹

²⁸⁵ *Id.*

²⁸⁶ 11 U.S.C. § 105(d)(2)(B)(vi).

²⁸⁷ [Debtors' Mot. for Entry of \(I\) Order \(A\) Scheduling Combined Hearing on Adequacy of Disclosure Statement and Confirmation of Plan, \(B\) Approving Form and Manner of Notice of Combined Hearing and Commencement of Chapter 11 Cases, \(C\) Approving Solicitation of Non-Accredited Holders, \(D\) Establishing Procedures for Objecting to Disclosure Statement or Plan, \(E\) Conditionally Waiving Requirement to File Statements and Schedules, and \(F\) Directing that a Meeting of Creditors not be Convened, and \(II\) Order \(A\) Approving Prepetition Solicitation Procedures, \(B\) Approving Adequacy of Disclosure Statement, and \(C\) Confirming Plan, 6-7, In re: Remington Outdoor Company, Inc., et al, 18-10684 \(BLS\) \(Bankr. D. Del. Filed March 25, 2018\).](#)

²⁸⁸ [Order \(A\) Scheduling Combined Hearing on Adequacy of Disclosure Statement and Confirmation of Plan, \(B\) Approving Form and Manner of Notice of Combined Hearing and Commencement of Chapter 11 Cases, \(C\) Establishing Procedures for Objecting to Disclosure Statement or Plan, \(D\) Conditionally Waiving Requirement to File Statements and Schedules, and \(F\) Directing that a Meeting of Creditors Not Be Convened, 1, In re: Remington Outdoor Company, Inc., et al, 18-10684 \(BLS\) \(Bankr. D. Del. Filed March 27, 2018\).](#)

²⁸⁹ *Id.* at 5.

Key Dates and Deadlines	Proposed Schedule
Voting Record Date	March 19, 2018
Deadline to mail Combined Notice	March 29, 2018 March 28, 2018
Deadline to file Plan Supplement	April 19, 2018 April 18, 2018
Voting Deadline	April 26, 2018
Deadline to object to adequacy of the Disclosure Statement and confirmation of the Plan	April 26, 2018
Deadline to file reply to objections, the form of confirmation order, and voting certification	April 30, 2018 at 12:00 p.m. ET
Combined Hearing	May 3, 2018 May 2, 2018 at 1:00 p.m. ET

Motion to Obtain Post-Petition Financing

Debtor-in-Possession Financing (“DIP Financing”) allows a lender to finance the reorganization of a company undergoing Chapter 11 bankruptcy proceedings.²⁹⁰ This grants the debtor much needed liquidity to continue financing operations.²⁹¹ While lending to an organization in bankruptcy may seem counterintuitive on its face, the lender is granted special court protections and a higher priority than other liens.²⁹²

As the Debtors sought to achieve adequate financing to continue operations, they filed a motion to approve a debtor-in-possession term loan facility (“Dip Term Facility”) and a debtor-in-possession asset-based loan facility (“DIP ABL Facility”).²⁹³ The Debtors sought to secure

²⁹⁰ Will Kenton, *Debtor-In-Possession (DIP) Financing*, Corp. Fin & Acct. (last updated Nov. 13, 2020), <https://www.investopedia.com/terms/d/debtorinpossessionfinancing.asp>.

²⁹¹ *Id.*

²⁹² BERNSTEIN & KUNEY, BANKRUPTCY IN PRACTICE 276.

²⁹³ [Mot. of Debtors for Entry of Interim and Final Orders \(I\) Authorizing Debtors to Obtain Postpetition Secured Financing, \(II\) Authorizing Postpetition Use of Cash Collateral, \(III\) Granting Adequate Protection to Prepetition Secured Parties, \(IV\) Scheduling Final Hearing, and \(V\) Granting Related Relief with Respect to ABL DIP/Exit ABL Facilities Commitment Letter](#), 1-2 *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 26, 2018).

\$145,000,000 from the DIP Term Facility and \$193,000,000 from the DIP ABL Facility.²⁹⁴ The Debtors sought to approve administrative super-priority under Section 364(c)(1).²⁹⁵ This is sought usually when regular administrative priority does not suffice to convince the lender of making a loan.²⁹⁶ Other than professional fees, this super-priority grants the lender priority over every other administrative expense.²⁹⁷

The Debtors argued that the DIP Facilities should be approved under Section 364(c), which stipulates that post-petition credit requires a finding that the debtor is not able to get unsecured credit.²⁹⁸ The Debtors argued this requirement was met because, after reaching out to 30 potential lenders, none agreed to provide unsecured financing.²⁹⁹ Furthermore, the Debtors argued DIP Financing was vital to providing sufficient liquidity for restructuring and the implementation of the Plan that would eliminate eight-figures of debt and position the Debtors for long-term success.³⁰⁰

The Court approved the DIP Financing.³⁰¹ The Court reasoned that granting these interim motions was necessary to prevent “immediate and irreparable harm to the Debtors and their estates, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates and their creditors and equity holders, and it would be essential for the continued operation of the Debtors’ business. The Court then scheduled the final hearing for the Final Order of approval of DIP Facilities for April 18, 2018.³⁰²

²⁹⁴ *Id.* at 4-9.

²⁹⁵ *Id.* at 4.

²⁹⁶ BERNSTEIN & KUNEY, BANKRUPTCY IN PRACTICE 278.

²⁹⁷ *Id.*

²⁹⁸ [Mot. of Debtors for Entry of Interim and Final Orders \(I\) Authorizing Debtors to Obtain Postpetition Secured Financing, \(II\) Authorizing Postpetition Use of Cash Collateral, \(III\) Granting Adequate Protection to Prepetition Secured Parties, \(IV\) Scheduling Final Hearing, and \(V\) Granting Related Relief with Respect to ABL DIP/Exit ABL Facilities Commitment Letter](#), 67-68 *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 26, 2018).

²⁹⁹ *Id.*

³⁰⁰ *Id.* at 2-3.

³⁰¹ [Interim Order \(I\) Authorizing Debtors to \(A\) Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364\(c\)\(1\), 364\(c\)\(2\), 364\(c\)\(3\), 364\(d\)\(1\) and 364\(e\), \(B\) Grant Senior Liens and Superpriority Administrative Expense Status, and \(C\) Utilize Cash Collateral Pursuant to 11 U.S.C. 363; \(II\) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, 364, and 507; \(III\) Scheduling Final Hearing, and \(IV\) Granting Related Relief with Respect to ABL DIP/Exit ABL Facilities Commitment Letter and Fees](#), 2 *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 28, 2018).

³⁰² *Id.*

Appointment of Committees

Section 1102(a)(1) of the U.S. Bankruptcy Code allows the appointed U.S. Trustee to appoint a committee of creditors who hold unsecured claims against the Debtor.³⁰³ Additional committees for different classes of creditors or equity holders as the U.S. Trustee deems appropriate.³⁰⁴ In the case of Remington’s bankruptcy proceeding, the U.S. Trustee appointed an Official Committee of Unsecured Creditors consisting of two corporations, a law firm, and two individuals.³⁰⁵ Throughout the bankruptcy proceeding, Fox Rothschild LLP acted as the principal attorneys for the Committee of Unsecured Creditors.³⁰⁶

Section 1102 states that the U.S. Trustee “shall appoint a committee of creditors holding unsecured claims... as soon as practicable after the order for relief” after the Chapter 11 bankruptcy case is filed.³⁰⁷ The appointed committees’ function in a predictable way. Section 1102(b)(3) of the U.S. Bankruptcy Code requires the committee to receive information and provide updates to the various members of the unsecured claims class.³⁰⁸ In theory, this requirement ensures that: (i) the committee stays up to date with the needs and claims of the potentially many different individuals and corporations that have unsecured claims; and (ii) the individuals and corporations are aware of what decisions the committee has come to during the bankruptcy case.³⁰⁹ In effect, this requirement may be treated more as a formality. Often, unsecured creditors have other obligations and distractions in their life such that focusing on the minute details of a bankruptcy case is too burdensome.³¹⁰ Those unsecured creditors frequently leave most of the necessary decisions in a bankruptcy proceeding to the appointed committee.³¹¹

Unsecured creditor committees typically take two different approaches to a bankruptcy proceeding. In some cases, unsecured creditor committees are strongly involved in the bankruptcy

³⁰³ 11 U.S.C § 1102.

³⁰⁴ *Id.*

³⁰⁵ [Notice of Appointment of Committee of Unsecured Creditors](#), *In re* Remington Outdoor Company, Inc., et al., Docket no 127, Case no 18-10684-BLS, filed April 9, 2018.

³⁰⁶ [Motion of Official Committee of Unsecured Creditors for an Order Authorizing the Retention and Employment of Fox Rothschild LLP as Attorneys for Official Committee of Unsecured Creditors](#), Docket no 214, Case no 18-10684-BLS, filed April 27, 2018.

³⁰⁷ 11 U.S.C § 1102.

³⁰⁸ *Id.*

³⁰⁹ BERNSTEIN & KUNEY, BANKRUPTCY IN PRACTICE 27-30.

³¹⁰ *Id.*

³¹¹ *Id.*

case, seeking to extrapolate money from the various secured creditors to be paid toward the unsecured creditor classification claims.³¹² In other cases, however, the unsecured creditor committees are appointed in name only, and have little to no effect on the bankruptcy proceeding as a whole.³¹³

In the case of Remington, the Debtors entered the 2018 Chapter 11 filing with a plan pre-negotiated. While many of the thousands of unsecured creditors likely didn't review the Plan, they nonetheless didn't object to the Plan in any substantial way. In fact, only thirteen filings were made on behalf or for the benefit of the Official Committee of Unsecured Creditors, with most of those filings dealing only with administrative matters.³¹⁴

Prepackaged Bankruptcy

The Debtors' bankruptcy proceeding can be classified as a prepackaged bankruptcy. A prepackaged bankruptcy allows a company to traverse bankruptcy more quickly and efficiently by negotiating the terms of and soliciting votes on a plan of reorganization prior to the filing of a bankruptcy petition.³¹⁵ In a prepackaged bankruptcy, the Debtor typically approaches its largest and most significant creditors in an effort to enter into an out-of-court restructuring agreement with the creditors. If the creditors and debtor are able to resolve any disputes between the parties, obtain and solicit the necessary votes prior to the filing of the bankruptcy petition, then all that is left during the bankruptcy proceeding is the procedural steps needed to confirm the pre-negotiated plan.³¹⁶ Despite this, the prepackaged plan is not exempt from any bankruptcy rules or regulations throughout the bankruptcy case³¹⁷; actual approval of the proposed plan is still required by the holders of at least two-thirds in dollar amount and more than 50% of the claims in each class of creditors.³¹⁸ In order to ensure that the prepackaged plan will be approved by the bankruptcy court, a debtor must know if the requisite creditor classes and voters will approve the prepackaged plan,

³¹² *Id.*

³¹³ *Id.*

³¹⁴ [Motion of Official Committee of Unsecured Creditors for an Order Authorizing the Retention and Employment of Fox Rothschild LLP as Attorneys for Official Committee of Unsecured Creditors](#), Docket no 214, Case no 18-10684-BLS, filed April 27, 2018.

³¹⁵ The Prepackaged Bankruptcy Strategy, Practical Law Practice Note 9-503-4934.

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ 11 U.S.C. §1126(c).

so the debtor engages in disclosure about the proposed plan to possible voters, and the solicitation of votes on the proposed plan.³¹⁹

Bankruptcy Code §1126(b)(1) governs prepetition solicitation and disclosure requirements stating, in part, that prepetition solicitation for votes is allowable only if the solicitation and disclosures complies with “any applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation.”³²⁰ This means that companies seeking to solicit votes prior to the bankruptcy petition often have to look to other laws and regulations regarding the disclosure of information to shareholders, creditors, or other parties.³²¹ An example of this are the vast securities regulations that govern over disclosure to shareholders. Companies who wish to disclose information about their business to shareholders or potential shareholders would have to comply with the regulations set forth in the 1933 and 1934 securities acts.³²² Other regulations, such as blue skys laws, would also apply to the disclosures.³²³ As one can imagine, this is a complicated and tedious process, requiring significant help from attorneys specializing in the applicable areas of law that govern over the solicitation and disclosures attempted by the company.

As for the plan itself, in order to be approved by the bankruptcy court, the prepackaged plan must meet certain feasibility and other requirements set forth in the bankruptcy code. § 1129(a)(11) of the Bankruptcy Code requires that for the Plan to be confirmed, it must not be likely to be followed by the liquidation or need for further financial reorganization.³²⁴ This condition is often referred to as the "feasibility" of the Plan. For purposes of determining whether the Plan meets this requirement, Remington, in consultation with its financial and market advisors, analyzed its ability to meet its obligations under the Plan.³²⁵ As part of that analysis, Remington, used their financial advisor, Alvarez & Marsal, LLC (“A&M”), and investment banker, Lazard Freres & Co. LLC (“Lazard”), to prepare a consolidated projected financial result for each of the fiscal years through 2022.³²⁶

³¹⁹ *Id.*

³²⁰ 11 U.S.C. §1126(b)(1).

³²¹ The Prepackaged Bankruptcy Strategy, Practical Law Practice Note 9-503-4934.

³²² *Id.*

³²³ *Id.*

³²⁴ 11 U.S.C. §1129(a)(11).

³²⁵ [Disclosure Statement for Joint Prepackaged Chapter 11 Plan of Remington Outdoor Company, Inc. and Its Affiliated Debtors and Debtors in Possession](#), Docket no 14, Case no 18-10684, filed March 25, 2018, Exhibit C.

³²⁶ *Id.*

Summary Financial Projections (in millions of dollars)					
Period Ending	2018	2019	2020	2021	2022
Projected Income Statement					
EBITDA	5.0	49.4	85.6	97.6	109.7
Projected Cash Flow Statement					
Net Cash	35.2	9.2	35.0	46.8	57.3
Projected Key Balance Sheet Items					
Total Debt	156.8	158.6	159.7	160.7	161.8
Total Liquidity	102.5	86.1	121.8	168.7	226.6

Section 1129(a)(7) of the Bankruptcy Code requires that the members of an Impaired Class that vote to reject the Plan will receive or retain under the Plan property of a value that is not less than the amount they would receive if the Debtors were liquidated under chapter 7.³²⁷

Remington prepared a Liquidation Analysis based on a hypothetical liquidation under chapter 7 of the Bankruptcy Code as to the claims that would be satisfied under the proposed plan.³²⁸ The Liquidation Analysis is a hypothetical exercise that was prepared for the purpose of generating a reasonable good-faith estimate of the proceeds that would be realized if the Debtors were liquidated in accordance with.³²⁹ The Liquidation Analysis was used to satisfy the "best interest of creditors" test required by Section 1129(a)(7).³³⁰

The following table illustrates the estimated Allowed Claims under the Plan for each class, as well as the aggregate recoveries, by percentage of their claims, that each Allowed Claim was estimated to receive in a hypothetical chapter 7 liquidation of the Debtors' assets.³³¹

³²⁷ 11 U.S.C. § 1129(a)(7).

³²⁸ [Disclosure Statement for Joint Prepackaged Chapter 11 Plan of Remington Outdoor Company, Inc. and Its Affiliated Debtors and Debtors in Possession](#), Docket no 14, Case no 18-10684, filed March 25, 2018, Exhibit D..

³²⁹ *Id.*

³³⁰ 11 U.S.C. § 1129(a)(7).

³³¹ [Disclosure Statement for Joint Prepackaged Chapter 11 Plan of Remington Outdoor Company, Inc. and Its Affiliated Debtors and Debtors in Possession](#), Docket no 14, Case no 18-10684, filed March 25, 2018, Exhibit D.

Aggregated Recovery Summary (in millions of dollars)				
		Under Plan	Under Best Interest Test	
Class	Claims or Interests	Estimated Claim Amount (\$)	Low Recovery (%)	High Recovery (%)
1	Priority Non-Tax Claims	n.a.	n.a.	n.a.
2	Other Secured Claims, ROC	n.a.	100	100
2	Other Secured Claims, Other Debtors	12.5	67	100
3	ABL Facility Claims	114.8	100	100
4	Term Loan Claims	557.6	11	25
5	Third Lien Notes Claims	232.8	36	26
6	General Unsecured Claims, ROC	n.a.	n.a.	n.a.
6	General Unsecured Claims, Other Debtors	160	0	0

Through this hypothetical analysis, the Debtors attempted to show, and the bankruptcy court agreed, that the prepetition negotiated plan and the associated restructuring agreement solicited for and agreed upon by the applicable creditors was the best solution for solving the financial crisis the Debtors were experiencing.³³²

Chapter 11 Plan

A chapter 11 plan can be defined simply as a contract between the debtor, the debtors' creditors, along with equity interest-holders, and administrative claimants.³³³ Remington filed its first plan of reorganization on March 25, 2018.³³⁴ The Debtors sought approval of both the

³³² *Id.*

³³³ BERNSTEIN & KUNEY, BANKRUPTCY IN PRACTICE 538.

³³⁴ [Notice of Filing of First Amended Plan Supplement Pursuant to Joint Prepackaged Chapter 11 Plan of Remington Outdoor Company, Inc. and its Affiliated Debtors and Debtors in Possession](#), 1, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed April 20, 2018).

prepackaged plan and Disclosure Statement.³³⁵ The Plan provided for the elimination of approximately \$620 million in debt.³³⁶

The plan was a joint and prepackaged chapter 11 plan, meaning that Remington and its creditors had worked together on the plan prior to filing that must then be approved by the court and shareholders.³³⁷ The goal of implementing a prepackaged plan is to save expenses and shorten the length of turnaround time of bankruptcy.³³⁸ Furthermore, creditors are more likely to be agreeable during negotiations while reworking terms if they have a say prior to filing.³³⁹ The alternative to a prepackaged deal yields a “surprise and then a scramble to deal with the delinquent debtor with more uncertainty about how long the process will take.”³⁴⁰

Requirements

The main objective of filing a chapter 11 petition is to, “create a viable economic entity by reorganizing the debtor’s debt structure . . . [through] a reorganization of existing assets.”³⁴¹ Essentially, Remington would like to emerge with less debt and more stable financing. In order to meet the legal requirements of chapter 11, the plan must abide by the requirements of §1129(a).³⁴² While §1129(a) lists 16 requirements, “most [requirements] are little more than boilerplate requirements or are inapplicable in most cases.”³⁴³ The largest hurdle to overcome occurs when the Plan contains an impaired voting class.³⁴⁴ Impairment applies to a class when the plan would alter or change rights innate to that class of creditors.³⁴⁵

³³⁵ [Objection of the Securities and Exchange Commission to Approval of the Disclosure Statement and Confirmation of the Debtors’ Joint Prepackaged Chapter 11 Plan](#), 4, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed April 26, 2018).

³³⁶ *Id.*

³³⁷ Adam Hayes, *Prepackaged Bankruptcy*, Investopedia (Sept. 29, 2021), <https://www.investopedia.com/terms/p/prepackagedbankruptcy.asp>.

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *Chapter 11 Bankruptcy*, Legal Information Institute (May 2020), https://www.law.cornell.edu/wex/chapter_11_bankruptcy.

³⁴² BERNSTEIN & KUNEY, *BANKRUPTCY IN PRACTICE* 538.

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

On May 4, 2018, the Disclosure Statement was approved and the Plan confirmed, with those voting for the Plan having accepted it.³⁴⁶ The Court found the Plan met all requirements of §1129.³⁴⁷ Along with most of the general/boilerplate requirements, 11 U.S.C. §1129(a)(10) was found to be met.³⁴⁸ While there were three impaired classes of claims, two of the classes (Class 4- the Term Loan Claims and Class 5- the Third Lien Notes Claims) had voted in favor of the Plan.³⁴⁹ Specifically, 100% of the Class 5 Claims voters voted in support of the Plan and 97% of the Class 4 Claims voters voted in support of the Plan.³⁵⁰

Claims

Remington’s Plan is meant to encompass “good faith compromise and settlement of all claims and interests and controversies pursuant to the Plan, and all distributions made to holders of Allowed Claims in any Class and Interests in accordance with the Plan are intended to be . . . final.”³⁵¹ “The Plan constitutes a separate chapter 11 plan of reorganization for each Remington Entity.”³⁵²

The Plan provides for the following classes of claims:

Class	Claim/Interest	Treatment	Voting	Allowance
1	Priority Non-Tax Claim	“Each holder of an Allowed Class 1 Claim shall (i) receive in full and final satisfaction, settlement, release, and discharge of, and in exchange for, each such Claim, payment equal to the Allowed amount of such	“Class 1 is Unimpaired under the Plan. Holders of Allowed Class 1 Claims are conclusively presumed to have accepted the Plan	N/A

³⁴⁶ [Order \(A\) Approving Solicitation Procedures, \(B\) Approving Adequacy of Disclosure Statements, and \(C\) Confirming Plan](#), 1, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed May 5, 2018).

³⁴⁷ 10

³⁴⁸ *Id.* at 15

³⁴⁹ *Id.*

³⁵⁰ [Objection of the Securities and Exchange Commission to Approval of the Disclosure Statement and Confirmation of the Debtors’ Joint Prepackaged Chapter 11 Plan](#), 2, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed April 26, 2018).

³⁵¹ [Joint Prepackaged Chapter 11 Plan of Remington Outdoor Company, Inc. and its Affiliated Debtors and Debtors in Possession](#), 23, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 25, 2018).

³⁵² *Id.*

		Claim, in Cash, on the later of the Effective Date and the date such Claim becomes due and payable in the ordinary course of business or (ii) be otherwise rendered Unimpaired.” ³⁵³	pursuant to section 1126(f) of the bankruptcy Code and therefore, are not entitled to vote to accept or reject the Plan.” ³⁵⁴	
2	Other Secured Claims	“Each holder of an Allowed Class 2 Claim shall (i) receive in full and final satisfaction, settlement, release, and discharge of, and in exchange for, each such Claim, payment equal to the Allowed amount of such Claim, in Cash, on the later of the Effective Date and the date such Claim becomes due and payable in the ordinary course of business or (ii) be otherwise rendered Unimpaired.” ³⁵⁵	“Class 2 is Unimpaired under the Plan. Holders of Allowed Class 2 Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the bankruptcy Code and therefore, are not entitled to vote to accept or reject the Plan.” ³⁵⁶	N/A
3	ABL Facilities Claim.	“Each holder of an Allowed Class 3 Claim shall (i) receive in full and final satisfaction, settlement, release, and discharge of, and in exchange for, each such Claim, payment equal to the Allowed amount of such Claim, in Cash, on the later of the Effective Date and the date such Claim becomes due and payable in the ordinary course of business or (ii) be otherwise rendered Unimpaired.” ³⁵⁷	“Class 3 is Unimpaired under the Plan. Therefore, holders of Allowed Class 3 Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the bankruptcy Code and therefore, are not entitled to vote to accept or reject the Plan.” ³⁵⁸	\$114,500,000 plus any interest, fees, expenses, or amounts due pursuant to the ABL Facility Loan Documents.
4	Term Loan Claims	Each class 4 holder is entitled to receive “its Pro Rata share	Voting is Impaired, so holders of Class 4	\$550,475,000 plus any interest, fees

³⁵³ *Id.*

³⁵⁴ *Id.* at 24.

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ *Id.* at 25.

		of (i) 82.5% of the New Common Units (ii) to the extent such holder is an Electing Term Loan Lender, its Pro Rata Class 4 Shares of either (a) the Litigation Trust Class A interests or (b) any amounts allocated for distribution to the Electing Term Loan Lenders under a Litigation Settlement, and (iii) to the extent not previously paid to the Term Loan Lenders in accordance with the terms of the Interim DIP Order, Cash in an amount equal to the approximately \$2.67 million interest payment that was due to the Term Loan Lenders on February 1, 2018.” ³⁵⁹	can vote to accept or reject the plan. ³⁶⁰	and expenses pursuant to the terms of the Term Loan Agreement. ³⁶¹
5	Third Lien Notes Claims	Each class 5 holder is entitled to receive its “Pro Rata share of: (i) the ROC DIP Distribution, (ii) the Third Lien Noteholder Cash Distribution, (iii) the New Warrants, and (iv) to the extent such holder is an Electing Third Lien Noteholder, its Pro Rate Class 5 Shares of either (a) the Litigation Trust Class B Interests, or (b) any amounts allocated for distribution to the Electing Third Lien Noteholders under a Litigation Settlement.” ³⁶²	Voting is impaired so class holders are able to vote to accept or reject the Plan. ³⁶⁴	\$226,012,000 plus any interest, fees, and expenses pursuant to the terms of the Third Lien Notes Indenture.” ³⁶⁵

³⁵⁹ *Id.*

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *Id.*

³⁶⁴ *Id.*

³⁶⁵ *Id.*

		OpCo also agrees to transfer Cash to ROC of the amount of \$924,375.61 for repayment of fees ROC paid from January 30, 2018 and March 16, 2018. ³⁶³		
6	General Unsecured Claims	Each Holder of a class 6 claim shall receive payment equal to the amount of the claim or such other treatment that renders the claim holder unimpaired. ³⁶⁶	Voting is Unimpaired. Holders of Class 6 claims are presumed to have accepted the Plan based upon 1126(f) of the Bankruptcy Code. ³⁶⁷	N/A
7	Intercompany Claims	It is within the determined Remington Entities' discretion to pay, reinstate, or cancel the claim to any extent or give any other treatment to leave the holder Unimpaired. ³⁶⁸	Voting is Unimpaired. Holders of Class 7 claims are presumed to have accepted the Plan based upon 1126(f) of the Bankruptcy Code. ³⁶⁹	N/A
8	Settled Intercompany Claims	No Class 8 Claim holder will receive payment. ³⁷⁰	Voting is Impaired and each class 8 holder is deemed to have rejected the Plan. ³⁷¹	N/A
9	Interests in ROC	No Class 9 Claim holder will receive payment. ³⁷²	Voting is Impaired and each class 9 holder is deemed to have rejected the Plan so is not entitled to cast a vote. ³⁷³	N/A
10	Intercompany Interests	Class 10 holders will have their Interest reinstated or receive any other treatment	Voting is Unimpaired. Holders are presumed to have accepted the Plan based upon 1126(f)	N/A

³⁶³ *Id.*

³⁶⁶ *Id.* at 26.

³⁶⁷ *Id.*

³⁶⁸ *Id.* at 27.

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ *Id.*

		that renders them Unimpaired. ³⁷⁴	of the Bankruptcy code and, so, are not eligible to vote to accept or reject the Plan. ³⁷⁵	
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The status of the claims and the respective voting rights can be summarized as follows:³⁷⁶

<u>Class</u>	<u>Claims or Interests</u>	<u>Status</u>	<u>Voting Rights</u>
1	Priority Non-Tax Claims	Unimpaired	Deemed to accept
2	Other Secured Claims	Unimpaired	Deemed to accept
3	ABL Facility Claims	Unimpaired	Deemed to accept
4	Term Loan Claims	Impaired	Entitled to vote
5	Third Lien Notes Claims	Impaired	Entitled to vote
6	General Unsecured Claims	Unimpaired	Deemed to accept
7	Intercompany Claims	Unimpaired	Deemed to accept
8	Settled Intercompany Claims	Impaired	Deemed to reject
9	Interests in ROC	Impaired	Deemed to reject
10	Intercompany Interests	Unimpaired	Deemed to accept

Plan Provisions

The Plan did not provide for consolidating the Estates of Remington.³⁷⁷ It also did not deal with recoveries for debtors on an individual basis.³⁷⁸ Instead, it encompassed all allowed claims and interests, “through a series of compromises and settlements.”³⁷⁹

Overall, the Debtors, at the petition date, had approximately \$1.3 billion in debt.³⁸⁰ The Plan followed a similar objective of the first-day relief requested by Remington in that the

³⁷⁴ *Id.*

³⁷⁵ *Id.* at 28.

³⁷⁶ *Id.* at 23.

³⁷⁷ *Id.* at 29.

³⁷⁸ *Id.*

³⁷⁹ *Id.*

³⁸⁰ [Objection of the Securities and Exchange Commission to Approval of the Disclosure Statement and Confirmation of the Debtors’ Joint Prepackaged Chapter 11 Plan](#), 3, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed April 26, 2018).

overarching goal was to “deliver the Debtors’ balance sheet while insulating their ordinary course operations as much as possible from any impact from the bankruptcy filings.”³⁸¹ In doing so, the Plan provides for the removal of approximately \$620 million of debt.³⁸²

ABL Facility Claims

Pursuant to the Plan, the ABL Facility claims did not release any amount of the prepetition indebtedness of approximately \$114.5 million and would receive full compensation of the amount due to the ABL Facility claims lenders.³⁸³ The allowed ABL Facility claims, and the agreements that detail the obligations and duties of the Debtors were released by the claim holders.³⁸⁴ In order to repay the ABL Facility claims, after reorganization, the Debtors would enter into a new ABL Facility, in the amount of \$193 million, with a portion of that new loan amount to repay the ABL Facility claims.³⁸⁵ In essence, the Debtors reorganized the prepetition indebtedness of the ABL Loan Facility by taking out an additional loan, with different and new obligations under a new ABL loan agreement, by paying in full the amount of the ABL Facility claims with the proceeds of the new ABL Facility.

Allowed Term Loan Claims

The term loan claims were impaired. As such, the claimholders would not receive full compensation in the amount of the claims. Furthermore, the Plan provides for a significant amount of term loan claims to be eliminated. The claims total an aggregate of \$550,475,000 that was to be exchanged for 82.5% of shares in the reorganized company and interests in a litigation trust.³⁸⁶ The litigation trust was to be formed if the litigation settlement did not occur in time.³⁸⁷ Essentially,

³⁸¹ [Debtors’ Memorandum of Law in Support of an Order \(I\) Approving the Debtors’ Disclosure Statement and \(II\) Confirming the Debtors’ Joint Prepackaged Chapter 11 Plan](#), 2, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed April 30, 2018).

³⁸² *Id.*

³⁸³ [First Amended Joint Prepackaged Chapter 11 Plan of Remington Outdoor Company, Inc. and its Affiliated Debtors in Possession](#) (Technical Modification), 33, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed April 30, 2018).

³⁸⁴ *Id.*

³⁸⁵ *Id.*

³⁸⁶ [Joint Prepackaged Chapter 11 Plan of Remington Outdoor Company, Inc. and its Affiliated Debtors and Debtors in Possession](#), 30, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 25, 2018).

³⁸⁷ *Id.* at 39.

Remington's estate assets and power will be transferred to the litigation trust to help deal with the claims in the event that a settlement is not reached in time.³⁸⁸

Allowed Third Lien Notes Claims

Like the term loan claims, the third lien note claims were also impaired. Therefore, claimholders did not receive full compensation in the amount of the claims. The Plan instead provided the allowed third lien notes of a total amount of \$226,012,000 to be exchanged for;

1. 17.5% of shares in the reorganized company, in addition to cash in the amount of unpaid interest that occurred post-petition on the Debtor's DIP Financing facility;
2. \$39.3 million, minus various fees and expenses;
3. Four-year warrants in exchange for 15% of the equity the newly organized Remington and;
4. Interest in the litigation trust if the claimholder decided to assign the claim against the Debtors.³⁸⁹

Objections to Confirmation

The Plan contained a broad third-party liability release provision.³⁹⁰ This provision served to release claims arising from any claims and causes of action except for fraud, willful misconduct, or gross negligence against the Debtors, lenders, and creditors.³⁹¹ The first release provision read as follows;

“ Except as otherwise expressly provided in the Plan, on and after the Effective Date, to the maximum extent permitted by applicable law, each Releasing Party shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged the

³⁸⁸ *Id.*

³⁸⁹ [Objection of the Securities and Exchange Commission to Approval of the Disclosure Statement and Confirmation of the Debtors' Joint Prepackaged Chapter 11 Plan](#), 4, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed April 26, 2018).

³⁹⁰ [Joint Prepackaged Chapter 11 Plan of Remington Outdoor Company, Inc. and its Affiliated Debtors and Debtors in Possession](#), 57, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 25, 2018).

³⁹¹ [Objection of the Securities and Exchange Commission to Approval of the Disclosure Statement and Confirmation of the Debtors' Joint Prepackaged Chapter 11 Plan](#), 5, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed April 26, 2018).

*Released Parties from, and covenanted not to sue on account of, any and all claims, interests, obligations (contractual or otherwise), rights, suits, damages, Causes of Action . . . , remedies and liabilities whatsoever, including any derivative claims assertable by or on behalf of a Remington Entity.”*³⁹²

Similarly, the Plan’s exculpation clause was objected to by the SEC and read as follows;

*“No Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any claims (including any Cause of Action), whether known or unknown, foreseen or unforeseen.”*³⁹³

The provision would prevent exculpated parties from incurring liability to creditors for any act or omission connected to the restructuring endeavor and the Chapter 11 case, aside from those involving misconduct, fraud, or gross negligence.³⁹⁴

On March 26th, 2018, the day of the objection deadline to the Plan, the Securities and Exchange Commission filed an objection to the approval of the disclosure statement and confirmation of the Plan.³⁹⁵ The SEC’s main claim was that the Plan “would release the liability of, and permanently enjoin actions against, non-debtor third parties.”³⁹⁶

Releasing liability of the non-debtor class is prohibited by section 524 of the Bankruptcy Code, “which provides that only debts of the debtors are affected by chapter 11 discharge provisions.”³⁹⁷ The SEC further argued that while releases can be permitted when the parties expressly consent to them and the releases would not cause unequal treatment among similarly positioned class members, that neither condition was present with the Debtors.³⁹⁸

First, the SEC asserted that the release is not consensual. The SEC argues that a general vote in favor of the plan is not equal to consent but would require term lenders or third lien

³⁹² [Joint Prepackaged Chapter 11 Plan of Remington Outdoor Company, Inc. and its Affiliated Debtors and Debtors in Possession](#), 57, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed March 25, 2018).

³⁹³ *Id.* at 58.

³⁹⁴ [Objection of the Securities and Exchange Commission to Approval of the Disclosure Statement and Confirmation of the Debtors’ Joint Prepackaged Chapter 11 Plan](#), 5, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed April 26, 2018).

³⁹⁵ *Id.* at 1.

³⁹⁶ *Id.* at 2.

³⁹⁷ *Id.*

³⁹⁸ *Id.*

noteholders to consent independently to the non-debtor liability release because the creditors who voted to accept the Plan were considered to have accepted.³⁹⁹

Additionally, the SEC argued that the “standard to be approved as a non-consensual release was not met because it is not: (i) fair to the term lenders and third lien noteholders; (ii) necessary to the reorganization; and (iii) supported by the facts of this case.”⁴⁰⁰ Nonconsensual non-debtor release is exceedingly rare and has been deemed by the Third Circuit to be used as a last resort and an “extraordinary remedy.”⁴⁰¹ The SEC furthered the argument that the third-party release affected neither the assets nor the administration of the Debtors’ estate.⁴⁰² As such, the SEC contended, the court may not have the subject matter jurisdiction to approve the release.⁴⁰³

On April 30th, 2018, Remington filed a memorandum in support of the Plan and defended their third-party release clauses from the SEC’s filed objection.⁴⁰⁴ The Debtors emphasized that the Plan’s general favorable treatment of unsecured creditors reflects the viewpoint of the debtors and consenting creditors when they devised the Plan.⁴⁰⁵ This was argued to be in the parties’ best-interest to opt for a prepackaged plan in order to deliver the balance sheet and insulate the day to day operations from impact.⁴⁰⁶ Furthermore, the main economic stakeholders gave the Plan almost unanimous support.⁴⁰⁷ 100% of the Class 5 Claim holders and 97% of the Class 4 claim holders voted in support of the Plan.⁴⁰⁸ In addition to the debtors and consenting creditors believing the Plan to be the best option, the recently appointed committee agreed.⁴⁰⁹

Remington also highlighted that neither of the Plan’s exculpation provisions included a release of liability on any creditor’s unimpaired claims against the debtors or their estates.⁴¹⁰ Instead, as is the custom on a large chapter 11 case, the releases were mainly provided for the security of creditors who are taking actions or making allowances in applying the restructuring.

³⁹⁹ *Id.* at 6.

⁴⁰⁰ *Id.* at 8

⁴⁰¹ *Id.*

⁴⁰² *Id.*

⁴⁰³ *Id.*

⁴⁰⁴ [Debtors’ Memorandum of Law in Support of an Order \(I\) Approving the Debtors’ Disclosure Statement and \(II\) Confirming the Debtors’ Joint Prepackaged Chapter 11 Plan](#), 1, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed April 30, 2018).

⁴⁰⁵ *Id.* at 2.

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.* at 3.

⁴¹⁰ *Id.* at 4.

For these instances, the allowances and actions included, “the provision of DIP and exit financing and the equitization and subordination of senior secured claims in order to leave all other claims, including General Unsecured Claims, unimpaired.”⁴¹¹ The release provisions were specifically drafted to be consistent with the Court’s established precedent.⁴¹²

The provisions, Remington asserted in the memo, were consensual due to the fact that they were provided by those parties who were involved in the restructuring agreement and therefore were supportive of the releases, voted in favor of the Plan, or did not opt out of the releases.”⁴¹³ Remington asserted that the releases given by creditors who were presumed to accept the Plan were adequate because those creditors received sufficient consideration.⁴¹⁴ The consideration was sufficient because the prepetition secured creditors, in effect, underwrote the un-impairment of the creditors’ claims by equitizing and subordinating the existing secured claims and by financing the forward-looking operations.⁴¹⁵ Remington highlighted that if these concessions by the secured creditors were not to occur, then it is highly likely that a forced liquidation would occur, which would lead to the unsecured claims receiving absolutely no recovery.⁴¹⁶

Additionally, Remington argued the liability release provisions were appropriate by law through precedent.⁴¹⁷ The releases were critical in the agreement to provide the assurance of the steps restructuring will occur in a neat manner.

Finally, Remington urged the Court to view the SEC’s objections through a broader lens and focus more on the reality of the cases as opposed to the theoretical.⁴¹⁸ In this regard, the fact that such a complex restructuring was given virtually unanimous stakeholder acceptance should be given great weight.⁴¹⁹ In summary, the Debtors argued that the Plan was consensual, did not violate any laws, and the SEC’s objections should be overruled.

The Court, having considered the amended Plan, objections, response to the objections, and multiple declarations in support of the Plan, found the Plan to be reasonable, made in good

⁴¹¹ *Id.*

⁴¹² *Id.*

⁴¹³ *Id.* at 5.

⁴¹⁴ *Id.*

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*

⁴¹⁷ *Id.* at 6.

⁴¹⁸ *Id.* at 7.

⁴¹⁹ *Id.*

faith, aligning with laws and precedent, and that the objection was unpersuasive.⁴²⁰ On May 4, 2018 the Court issued an order confirming the Plan, Disclosure Statement, and solicitation procedures.⁴²¹

Chapter 22 Bankruptcy

Whilst implementing, adhering to, and carrying out the 2018 Plan, and after the conclusion of the 2018 bankruptcy proceeding, the Debtors attempted to turn their business around. The Debtors hired a new Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer in 2019.⁴²² With the new executive officers, the Debtors “undertook an analysis” of the business conglomerate as a whole, re-evaluating their primary objectives and their financial structure.⁴²³ The Debtors reduced the amount of excess inventory of their many manufacturing companies and put an emphasis on “increased profitability” by updating their operational strategies to a more efficient standard.⁴²⁴ The Debtors and their new executives put importance on growing their defense and law enforcement streams of revenue, as well as their international and dealer sales markets.⁴²⁵ The Debtors’ attributed a significant markup of efficiency and amount of savings to the new executives “best efforts,” but, regrettably, the Debtors’ financial position continued to deteriorate.⁴²⁶ The Debtors’ faced an apparently insurmountable problem of supply costs, unable to purchase raw materials at a price that would allow them to grow their revenue margins.⁴²⁷ In 2019, the Debtors had approximately \$437.5 million in sales, with an EBITDA of approximately \$74.7 million.⁴²⁸ In contrast, in 2016, two short years prior to the first bankruptcy filing, the Debtors realized \$865.1 million in sales with an EBITDA of \$119.8 million.⁴²⁹ Furthermore, as more fully discussed below, a certain Priority Term Loan Agreement required a collateral base for

⁴²⁰ [Notice of Entry Order Confirming Joint Prepackaged Chapter 11 Plan of Remington Outdoor Company, Inc. and its Affiliated Debtors and Debtors in Possession to All Parties in Interest in the Above-Captioned Chapter 11 Cases](#), 1, *In re: Remington Outdoor Company, Inc., et al*, 18-10684 (BLS) (Bankr. D. Del. Filed May 7, 2018).

⁴²¹ *Id.*

⁴²² [Disclosure Statement for Joint Chapter 11 Plan of the Debtors](#), Docket no. 1369, Case no. 20-81688-CRJ11, filed January 25, 2021 (hereinafter, the “*First Disclosure Statement*”).

⁴²³ *Id.*

⁴²⁴ *Id.*

⁴²⁵ *Id.*

⁴²⁶ *Id.*

⁴²⁷ *Id.*

⁴²⁸ *Id.*

⁴²⁹ *Id.*

the Debtors.⁴³⁰ This meant that the Debtors were required to have, at the time the Priority Term Loan Agreement was entered into, at least \$105 million in readily available collateral for their creditors.⁴³¹ The Debtors could not liquidate, acquire debt, or remove assets that would reduce the Debtors' total available collateral under \$105 million. This Priority Term Loan Agreement collateral floor was reduced to \$87.5 million, and then to \$67.5 million prior to the 2020 bankruptcy filing.⁴³²

As stated above, the Debtors' accessibility to new forms of credit were severely limited by the collateral floor. Borrowing any new credit triggered a clause in the Priority Term Loan Agreement such that the Debtors had to "post cash collateral in the amount" of the difference between the collateral base and the new borrowing base.⁴³³ These operating restrictions proved to outweigh the relief that the COVID-19 pandemic had for Remington.⁴³⁴ The pandemic created a marked increase in demand for the Debtors' products; however, the Debtors were required to suspend operations for a portion of the COVID-19 pandemic, inhibiting their ability to capitalize in the newly created interest in their products.⁴³⁵ Emergency COVID-19 relief measures, such as the deferment of payment of certain taxes, including the firearms and ammunition excise tax, were not enough to alleviate the fundamental problem of the Debtors business in late 2019. They had insufficient liquidity, and an inability to generate more liquidity, to fund raw material purchases needed to "scale up production" and produce goods.⁴³⁶

In late 2019, the Debtors commenced exploration of a major corporate restructure, or a possible outright sale.⁴³⁷ The Debtors began negotiating in late 2019 and early 2020 with several different interest parties. In April 2020, the board of directors of Remington Outdoor Company created a special corporate restructuring committee of independent and disinterest persons to evaluate the option of a corporate restructure.⁴³⁸ The Debtors entertained and solicited many offers for different combinations of the Debtors assets or interests in the Debtors business. The Debtors entered into a "substantially final purchase agreement and debtor in possession financing

⁴³⁰ *Id.*

⁴³¹ *Id.*

⁴³² *Id.* at 9.

⁴³³ *Id.* at 13.

⁴³⁴ *Id.*

⁴³⁵ *Id.*

⁴³⁶ *Id.*

⁴³⁷ *Id.* at 14.

⁴³⁸ *Id.*

agreement” with one bidder.⁴³⁹ The agreement was pending approval of regulatory and legal compliance review, but the Debtors began to worry that the transaction would not be cleared in a timeframe such that the Debtors business would be able to avoid total collapse.⁴⁴⁰ Though several parties continued diligence, legal, and compliance efforts, and the Debtors continued negotiation with interested parties, the liquidity position of the Debtors, and the restrictions thereof, “necessitated” a Chapter 11 petition.⁴⁴¹

The 2020 Bankruptcy Filing

The last filing associated with the 2018 bankruptcy proceeding was filed on the 28th of January, 2019.⁴⁴² Approximately a year and a half later, on July 27th, 2020, Remington filed for Chapter 11 bankruptcy once again.⁴⁴³ The 2020 Remington Bankruptcy proceeding started off in a similar manner to the 2018 bankruptcy filing, where Remington jointly filed with its subsidiaries and sought to administer the bankruptcy proceeding as a joint case.⁴⁴⁴ Debtors Remington Outdoor Company, FGI Holding Company, FGI Operating Company, Remington Arms Company, Barnes Bullets, TMRI, RA Brands, FGI Finance, Remington Arms Distribution Company, Huntsville Holdings, 32E productions, Great Outdoors HoldCo, and Outdoor Services were all implicated in the 2020 bankruptcy petition.⁴⁴⁵ Debtors 32E Productions, and Outdoor Services LLC (“New Parties”) were new parties to the Remington series of bankruptcy proceedings, though Outdoor Services LLC and 32E Productions were mentioned as subsidiaries of different parties to the 2018 bankruptcy.⁴⁴⁶ Importantly, however, the 2020 bankruptcy proceeding was the first time the New Parties were actually implicated under the suit, and their assets combined in the bankruptcy

⁴³⁹ *Id* at 15.

⁴⁴⁰ *Id.*

⁴⁴¹ *Id.*

⁴⁴² [Order Approving Amended Stipulation of Reorganized Debtors and Litigation Trustee to Extend Deadline for Litigation Trustee to File Notice of Intent to Bring Specific Avoidance Action](#), Docket no 374, Case no 18-10684-BLS, filed on January 28, 2019.

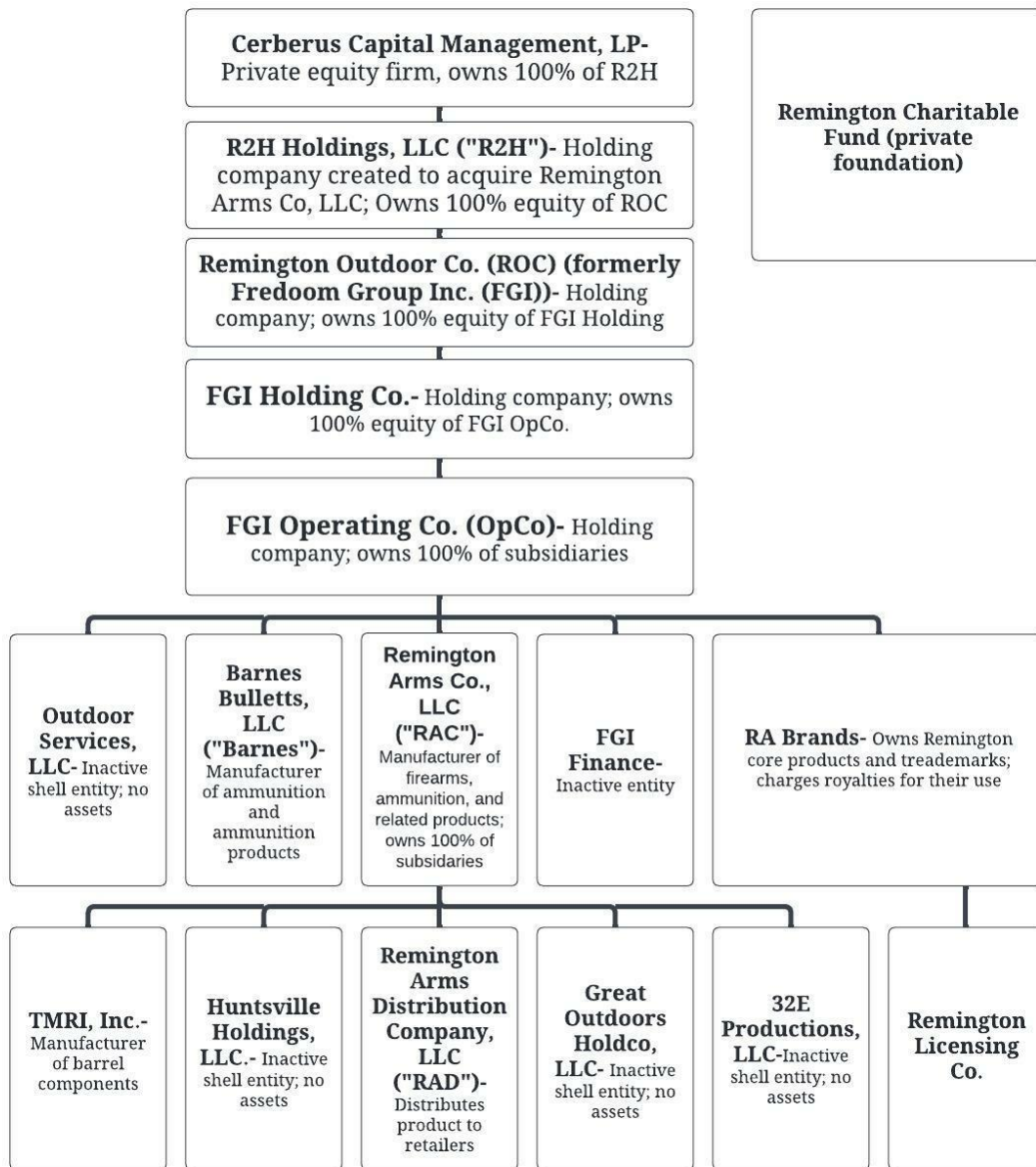
⁴⁴³ [Voluntary Petition for Non-Individuals Filing for Bankruptcy](#), Docket no 1, Case no 20-81688-11, Filed July 27, 2020.

⁴⁴⁴ [First Disclosure Statement](#) at 1.

⁴⁴⁵ *Id.*

⁴⁴⁶ *Id*; See also [Voluntary Petition for Non-Individuals Filing for Bankruptcy](#), Docket no 1, Case no 20-81688-11, filed July 27, 2020 at 6.

estate.⁴⁴⁷ A organizational chart of the Debtors at the time of the 2020 bankruptcy filing is as follows⁴⁴⁸:



⁴⁴⁷ *Id.*

⁴⁴⁸ [Declaration of Ken D'Arcy in Support of Chapter 11 Petitions and First Day Pleadings of Remington Outdoor Company, Inc. and Its Affiliated Debtors and Debtors in Possession](#), Docket no 6, Case no 20-81688-CRJ11, filed July 27, 2020, at 45.

Pursuant to the 2018 bankruptcy enacted plan, the Debtors emerged with “a more streamlined capital structure” that consisted of four main debt obligations: (i) an asset-based loan facility that was refinanced with the proceeds of the priority term loan facility mentioned in the 2018 Plan, (ii) a “first-lien-last-out term” loan facility, a (iii) an exit term loan facility, and (iv) a real property-secured promissory note owed to the City of Huntsville, Alabama.⁴⁴⁹

Asset-based Loan Facility

The asset-based loan facility was borrowed under FGI Operating Company, with the other business entities contained in the chart above acting as guarantors under the loan.⁴⁵⁰ The asset-based loan facility was refinanced utilizing a Priority Term Loan Facility, which included the collateral-base floor requirements, a first priority lien on the guarantor’s intellectual property, accounts receivable, inventors, and any proceeds garnered from thereof.⁴⁵¹ The Priority Term Loan Facility and associated loan was further secured by liens on almost all of the other assets of the guarantors and FGI Operating Company, provided that there was a cap of up to \$31 million on the assets and proceeds from the other collateral.⁴⁵² From a liquidation standpoint, The Priority Term Loan would receive \$31 million from the liquidation of the other assets, at which point the Priority Term Loan Facility would shift down to third priority on the other assets.⁴⁵³

As of the date of the 2020 petition, the principal balance outstanding under the Priority Term Loan Facility was approximately \$74.5 million, with the addition of any accrued or unpaid interest, fees, and other expenses enumerated in the loan agreement.⁴⁵⁴ As more fully discussed below, the Priority Term Loan Facility was paid in full with the proceeds of the assets and liquidation sale of the Debtors pursuant to the 2020 bankruptcy plan.⁴⁵⁵

⁴⁴⁹ *Id.* at 7.

⁴⁵⁰ *Id.* at 8-10.

⁴⁵¹ *Id.*

⁴⁵² *Id.*

⁴⁵³ *Id.*

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.*

First-Lien-Last-Out Term Loan Facility (“FILO Term Loan Facility”)

Once again, FGI Operating Company was the principal borrower under the FILO Term Loan Facility, and, once again, the other Debtors acted as guarantors under the loan agreement.⁴⁵⁶ As discussed in more depth below, the FILO Term Loan Facility was paid in full with the proceeds of the asset sale and liquidation of the Debtors pursuant to the 2020 bankruptcy plan.⁴⁵⁷

Exit Term Loan Facility

The Exit Term Loan Facility was borrowed by FGI Operating Company in an original amount of \$100 million, which increased to the amount of \$110.7 million as of the petition date of the 2020 bankruptcy.⁴⁵⁸ As always, the other Debtors acted as guarantors under the loan agreement.⁴⁵⁹ Because of the full payment of the FILO Term Loan Facility and the Asset-based Loan Facility, the Exit Term Loan Facility enjoys a first priority security interest and lien on substantially all of the Debtors assets, including all of the prepetition collateral, for the amount of \$110.7 million.⁴⁶⁰ The Exit Term Loan Facility principal lenders were treated as an impaired class under the 2020 bankruptcy Plan.⁴⁶¹ In exchange for a full release of their credit claims, the Exit Term Loan Facility lenders will receive a pro-rata share of the collateral proceeds from the sale of the Debtors’ assets.⁴⁶² Any additional or left over amount not received by the lenders was treated as a unsecured claim against the Debtor’s remaining assets.⁴⁶³ Those general unsecured claims, as provided under the Plan, received its pro rata share of the Creditor Trust Interests.⁴⁶⁴

Huntsville Secured Note

Similar to the noncompliance described in the 2018 bankruptcy Plan, debtor Remington Arms Company continued to not meet the employment goals laid out in the Agreement between

⁴⁵⁶ *Id.* at 11-12.

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.* at 12-13.

⁴⁵⁹ *Id.*

⁴⁶⁰ *Id.*

⁴⁶¹ *Id.*

⁴⁶² *Id.*

⁴⁶³ *Id.*

⁴⁶⁴ [First Disclosure Statement](#) at 26-27.

Remington Arms Company and the City of Huntsville.⁴⁶⁵ As of the 2020 petition date, the full amount of the secured note is still outstanding to the City of Huntsville, in the amount of \$12.5 million.⁴⁶⁶ According to the 2020 bankruptcy Plan, the City of Huntsville is to receive the full amount of \$12.5 million back from the liquidation and sale of Remington and its assets.⁴⁶⁷

Other Liabilities

A. Intercompany Note. One of the major liabilities discussed and addressed in the 2018 bankruptcy proceeding was the intercompany promissory note between Remington Arms Company and FGI Operating Company in the amount of \$100 million.⁴⁶⁸ The note substantiated loans made by FGI Operating Company to Remington Arms Company for the purpose of funding and continuing Remington Arms Company's and its subsidiaries' "working capital needs."⁴⁶⁹ Pursuant to Article V Part B of the 2020 Plan, all creditors' claims and liabilities were merged into one estate.⁴⁷⁰ This includes both FGI Operating Company and Remington Arms Company. Because the assets and liabilities of FGI Operating Company and Remington Arms Company were merged into one large estate, the intercompany promissory note was voided.⁴⁷¹ The note evidenced a promise of a subsidiary corporation to repay the principal corporation for a loan. Since the assets and liabilities of all of the Debtors' merged into one estate pursuant to the 2020 bankruptcy proceeding, the note between a principal and subsidiary company effectively morphed into a note promising repayment to one's self.

B. General Liabilities. The Debtors approximate that they have \$30 million in outstanding claims owed to "various vendors, suppliers, and service providers, including the claims reflected in the Debtors' current accounts payable" as of the petition date.⁴⁷²

C. Common Stock. As of the petition date, Remington Outdoor Company had 13,272,325 shares of common stock issued and outstanding.⁴⁷³ Remington Outdoor Company also had 2,342,175

⁴⁶⁵ *Id* at 28.

⁴⁶⁶ *Id*.

⁴⁶⁷ *Id*.

⁴⁶⁸ *Id* at 11-12.

⁴⁶⁹ *Id*.

⁴⁷⁰ *Id* at 27.

⁴⁷¹ *Id* at 11-12.

⁴⁷² *Id*.

⁴⁷³ *Id*.

warrants outstanding which gave each warrant holder the right to purchase one share of common stock per warrant, with a par value of \$.01 per share.⁴⁷⁴ Remington Outdoor Company was dissolved pursuant to the 2020 bankruptcy plan, and as such, the common stock issued and outstanding became worthless. Payment for the warrants was rejected by the “Order Approving Debtors’ First Omnibus Motion for Entry of an Order Approving Rejection of Certain Executory Contracts and unexpired Nonresidential Real Property Leases” pursuant to Section 365 of the U.S. Bankruptcy Code.⁴⁷⁵

D. Tort Liability. One of the major issues contained in the 2020 bankruptcy proceeding was the product liability claims brought by the families’ of the victims of the 2012 Sandy Hook shooting. As of the 2020 petition date, the Debtors’ continued to fight the product liability actions and denied or disputed many of the claims associated with the suits.⁴⁷⁶ Approval of the 2020 plan was once rejected by the Judge Clifton Jessup, presiding over the Debtors’ bankruptcy petition, due to the position the first iteration of the Plan left the Sandy Hook tort litigants in.⁴⁷⁷ The original plan left little recovery options for the tort litigants, instead the plan gave the tort litigants only the right to litigate.⁴⁷⁸ Due to the claims being unsettled or unliquidated at the time of the bankruptcy proceeding, a number was not placed as to the amount of liability due, if any, to the product liability claimants. The enacted Plan excluded the tort claimants from participating in the general, unsecured claims trust set aside for the unsecured creditors, but rather allowed the victims’ families to pursue damages and recoveries against the Debtors’ insurance companies.⁴⁷⁹

The 2020 Bankruptcy Plan

A general summary of the treatment of the different classes of creditors during and after the 2020 Plan is as follows⁴⁸⁰:

⁴⁷⁴ *Id.*

⁴⁷⁵ *Id.*; See also [Order Approving Debtors’ First Omnibus Motion for Entry of an Order Approving Rejection of Certain Executory Contracts and unexpired Nonresidential Real Property Leases](#), Docket no 1150, Case no 20-81688-CRJ11, filed November 19, 2020.

⁴⁷⁶ *Id.*

⁴⁷⁷ Dietrich Knauth, *Court: Remington Liquidation Plan Confirmed After Final Revisions On Tort Litigation*, INSURANCE DEBTWIRE (2021), [Debtwire.com](#) (last visited May, 15, 2022).

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.*

⁴⁸⁰ [First Disclosure Statement](#) at 25.

<u>Class</u>	<u>Claims or Interests</u>	<u>Status</u>	<u>Voting Rights</u>
1	Priority Non-Tax Claims	Unimpaired	Deemed to accept
2	Other Secured Claims	Unimpaired	Deemed to accept
3	Exit Term Loan Claims	Impaired	Entitled to vote
4	Huntsville Note Claim	Unimpaired	Deemed to accept
5	General Unsecured Claims	Impaired	Entitled to vote
6	Tort Convenience Class Claims	Impaired	Entitled to vote
7	Tort Claims	Impaired	Entitled to vote
8	Intercompany Claims	Impaired	Deemed to reject
9	Interests in the Debtors	Impaired	Deemed to reject

In stark contrast to the 2018 bankruptcy petition, the 2020 bankruptcy proceeding consisted of the Debtors seeking to conduct a Section 363 of the U.S. Bankruptcy Code to sell substantially all of the assets of their business. In the 2018 bankruptcy, the goal of the proceeding was to eliminate and trim the debt the various Debtors’ business entities in order to streamline their financials and to exit the bankruptcy court with an ability to continue effectuating their ordinary business. As shown above, unfortunately, external and internal factors affecting the Debtors’ business proved to be insurmountable. With the 2020 bankruptcy, the Debtors and the Debtors owners sought to dissolve the current Remington businesses and sell the assets contained in the bankruptcy estate using Section 363 of the U.S. Bankruptcy Code.⁴⁸¹

Section 363 of the U.S. Bankruptcy Code provides that a company or a conglomerate of companies can sell substantially all of its assets, outside the ordinary or regular course of business, with court approval.⁴⁸² Section 363(b) provides guidelines on the procedure of obtaining a court approval of Section 363 sale, among the requirements is a mandatory motion and hearing in front of the bankruptcy court.⁴⁸³ A typical Section 363 sale involves selling only some of a debtor’s assets; however, Remington sought to sell substantially all of its business assets. A sale of substantially all of a debtor’s assets has additional requirements set forth in the U.S. Bankruptcy Code, including providing a “sound business purpose.”⁴⁸⁴ A debtor simply cannot insist on a sale,

⁴⁸¹ *Id* at 14.

⁴⁸² 11 U.S.C. § 363.

⁴⁸³ *Id.*

⁴⁸⁴ Buying Assets in a Section 363 Bankruptcy Sale: Overview, Practical Law Practice Note Overview 1-385-0115.

there must be sound and valid business reasons for outright selling substantially all of the debtor's assets.⁴⁸⁵ Sound business reasons can take many forms, though bankruptcy courts typically examine the general wellbeing of the assets. If, for instance, assets of a debtor are decreasing in value, a bankruptcy judge might find that the deprecating nature of the assets is a "sound business purpose" to sell substantially all of the debtor's assets.⁴⁸⁶

A typical sale under Section 363 occurs through a public auctioning process overseen by the bankruptcy court, though some Section 363 sales can be conducted privately.⁴⁸⁷ Purchasers in a private or public sale authorized by the bankruptcy court typically receive the assets purchased free and clear of liens attached to the assets prior to the sale.⁴⁸⁸ Purchasers may also enjoy a somewhat premium price of the assets, depending on the competition between purchasers and the notoriety of the bankruptcy proceeding.⁴⁸⁹

The Sale

Because of the failed sale prior to the filing of the bankruptcy proceedings, the Debtors began the process of a Section 363 sale of substantially all of the Debtors assets. The Debtors filed a Bidding Procedures Motion with the Bankruptcy Court in order to seek approval for the Debtors to solicit and select the highest or best offer for the sale of substantially all of the Debtors Assets.⁴⁹⁰ After approval of the Debtors' motion, the Bankruptcy Court deemed September 4, 2020, as the deadline for all of the interested bidders to all or portions of the bankruptcy estate to submit their bids.⁴⁹¹ On September 8, 2020, JJE Capital Holdings, LLC was appointed the "stalking-horse" bidder.⁴⁹² The "stalking-horse" bidder, in the context of a bankruptcy proceeding, is the initial or first bidder on the assets of a bankruptcy company. JJE Capital Holdings, LLC bid \$65 million for the Debtors' ammunitions businesses and intellectual property.⁴⁹³ According to the Debtors, this set off a larger bidding war between "over a dozen" different bidders that took place over the eight

⁴⁸⁵ *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983).

⁴⁸⁶ Buying Assets in a Section 363 Bankruptcy Sale: Overview, Practical Law Practice Note Overview 1-385-0115.

⁴⁸⁷ *Id.*

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.*

⁴⁹⁰ [First Disclosure Statement](#) at 17.

⁴⁹¹ *Id.* at 18.

⁴⁹² *Id.*

⁴⁹³ *Id.*

days preceding the final deadline of September 24, 2020.⁴⁹⁴ The various accepted bids amounted to approximately \$157 million in proceeds put towards the bankruptcy estate.⁴⁹⁵ The accounts receivable of the Debtors, as well as some real estate ownership didn't get bid on, and remained in possession of the bankruptcy estate.⁴⁹⁶ Four bidders won parts of the core businesses of the Debtors, and three other bidders won non-core brands of the Debtors. As of January 25th, 2021, the bankruptcy court had approved the bids and the Debtors closed the sale to the seven bidders.⁴⁹⁷

The Bidders

Vista Outdoor bid \$81.4 for Remington Ammunition and the Remington brand. Vista also won Remington's Lonoke, Arkansas, ammo manufacturing facility in its winning purchase.⁴⁹⁸ Sierra Bullets now owns Barnes Bullets and its brand for the amount of \$30.5 million.⁴⁹⁹ Sierra Bullets, owned by the Salt Lake City-based firm Clarus Corporation, intends to continue manufacturing bullets through Barnes' brand, with a focus of keeping the Barnes Brand alive and true to its original purpose and meaning.⁵⁰⁰ Bushmaster, the brand of gun used in the Sandy Hook mass shooting, was purchased by Franklin Armory for \$1.7 million.⁵⁰¹ Franklin Armory, owned by various private equity firms, specializing in building state-compliant guns for states with more stringent gun-control laws, such as California, including places that require binary trigger systems.⁵⁰² DPMS Panther Arms, another brand under Remington's control, was purchased by similarly linked private equity firms in the bankruptcy sale for \$2.5 million.⁵⁰³ Marlin Firearms, acquired by Remington Outdoor Company in 2007, was purchased for approximately \$30 million by Ruger.⁵⁰⁴ Marlin, according to the then President and CEO of Ruger Chris Killoy, will continue to manufacture and create Marlin firearms.⁵⁰⁵ The manufacturing facility in Illion, New York,

⁴⁹⁴ *Id.* at 19.

⁴⁹⁵ *Id.*

⁴⁹⁶ *Id.*

⁴⁹⁷ *Id.*

⁴⁹⁸ Peg Brickley, *Bankrupt Gun Maker Remington Outdoor to be Broken Up and Sold*, THE WALL STREET JOURNAL (2020), [wsj.com](https://www.wsj.com) (last visited May, 15, 2022).

⁴⁹⁹ *Id.*

⁵⁰⁰ *Id.*

⁵⁰¹ *Id.*

⁵⁰² *Id.*

⁵⁰³ *Id.*

⁵⁰⁴ *Id.*

⁵⁰⁵ *Id.*

which had been shut down by the Debtors in 2020⁵⁰⁶, along with the barrel-making plant in Lenoir City, Tennessee, was purchased by Roundhill Group, LLC for \$13 million.⁵⁰⁷ Roundhill Group, LLC, appears to be a private equity or investment company centered in the states of Pennsylvania and Florida. Finally, Tapco was acquired by Sportsman’s warehouse for \$100,000.⁵⁰⁸

The Leftovers

The Debtors employed B. Riley Real Estate, LLC, to act as a broker to market and sell their remaining real property assets, including the two facilities in Huntsville, Alabama, and Madison, North Carolina.⁵⁰⁹ All other assets not sold to the primary seven bidders was to be sold during or after the bankruptcy proceeding.⁵¹⁰

Sandy Hook Suit Settlement

On or about February 15, 2022, the families of the Sandy Hook victims reached a settlement with Remington for (i) \$73 million, and (ii) a release of thousands of internal documents that, in part, detailed the marketing strategies of the now dissolved rifle and ammunition company.⁵¹¹ Due to the bankruptcy proceeding in 2020, Remington itself did not payout the \$73 million to the tort claimants but instead Remington’s four insurance companies agreed to pay the amount in full to the families.⁵¹²

Conclusion of the Two Bankruptcy Proceedings – Fee Schedules

Remington ultimately paid over \$37.5 million to satisfy their professional fees over the course of the two proceedings. These fees were paid for various services such as legal counsel, administrative advising, investment advising, counsel for the committee of unsecured creditors,

⁵⁰⁶ Donna Thompson, *Over 200 Former Remington Arms Employees Expected to be Called Back by Month’s End*, END HERKIMER TIMES TELEGRAM (2021), [timestelegram.com](https://www.timestelegram.com).

⁵⁰⁷ Peg Brickley, *Bankrupt Gun Maker Remington Outdoor to be Broken Up and Sold*, THE WALL STREET JOURNAL (2020), [wsj.com](https://www.wsj.com) (last visited May, 15, 2022).

⁵⁰⁸ *Id.*

⁵⁰⁹ [First Disclosure Statement](#) at 19.

⁵¹⁰ *Id.*

⁵¹¹ Rick Rojas et al., *Sandy Hook Families Settle with Gunmaker for \$73 Million Over Massacre*, THE NEW YORK TIMES (2022), [nytimes.com](https://www.nytimes.com).

⁵¹² *Id.*

tax planning, auditors, and financial advising. Some of these professionals billed at rates of \$1,250.00 an hour or more.

2018 Fees

Name of Applicant	Fees	Expenses	Total
Fox Rothschild LLP ⁵¹³	59,092.00	89.37	59,181.37
Lowenstein Sandler LLP ⁵¹⁴	80,321.50	274.52	80,596.02
Prime Clerk LLC ⁵¹⁵	39,674.80	774.37	40,449.17
Milbank, Tweed, Hadley & Mc Cloy LLP ⁵¹⁶	2,827,350.00	51,555.69	2,878,905.69
Lazard Freres & Co. LLC ⁵¹⁷	8,540,000.00	4,975.18	8,544,975.18
Alvarez & Marsal North America, LLC ⁵¹⁸	798,060.00	55,736.82	853,796.82
Grant Thornton LLP ⁵¹⁹	74,828.00	10,436.94	85,264.94
Deloitte Tax LLP ⁵²⁰	284,678.25	13,516.74	298,194.99

⁵¹³ [First and Final Fee Application of Fox Rothschild LLP for Compensation for Services Rendered and Reimbursement of Expenses as Counsel to the Official Committee of Unsecured Creditors](#), Docket no 276, Case no 18-10684-BLS, filed May 29, 2018.

⁵¹⁴ [Summary of First and Final Application of Lowenstein Sandler LLP as Special Conflicts Counsel for Debtors Remington Outdoor Company, Inc. for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred](#), Docket no 286, Case no 18-10684-BLS, filed June 12, 2018.

⁵¹⁵ [Notice of First and Final Fee Application of Prime Clerk LLC, Administrative Advisor to the Debtors, for Compensation for Services and Reimbursement of Expenses](#), Docket no 290, Case no 18-10684-BLS, filed June 20, 2018.

⁵¹⁶ [First and Final Application of Milbank, Tweed, Hadley, & McCloy LLP, Counsel to Reorganized Debtors, for Approval and Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred](#), Docket no 291, Case no 18-10684-BLS, filed June 20, 2018.

⁵¹⁷ [Cover Sheet for First and Final Fee Application of Lazard Freres & Co. LLC as Investment Banker to the Debtors for Allowance of Compensation and Reimbursement of Expenses](#), Docket no 292, Case no 18-10684-BLS, filed June 20, 2018.

⁵¹⁸ [First and Final Fee Application of Alvarez & Marsal North America, LLC for Payment of Compensation and Reimbursement of Expenses as Financial Advisors to the Debtors](#), Docket no 293, Case no 18-10684-BLS, filed June 20, 2018.

⁵¹⁹ [First and Final Application of Grant Thornton LLP, Independent Auditor to Reorganized Debtors, for Approval and Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred](#), Docket no 294, Case no 18-10684-BLS, filed June 20, 2018.

⁵²⁰ [First and Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered and Reimbursement of Expenses as Tax Services Provider to the Debtors and Debtors-in-Possession](#), Docket no 295, Case no 18-10684-BLS, filed June 20, 2018.

Pachulski Stang Ziehl & Jones LLP ⁵²¹	214,678.00	3,703.12	218,381.12
Total	12,918,682.55	141,062.75	13,059,745.30

2020 Fees

Name of Applicant	Fees	Expenses	Total
Akin Gump Strauss Hauer & Feld LLP ⁵²²	2,192,815.00	1,591.03	2,194,406.03
AlixPartners LLP ⁵²³	801,499.50	0.00	801,499.50
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC ⁵²⁴	409,362.50	1,706.20	411,068.70
Burr & Forman LLP ⁵²⁵	1,258,239.00	32,979.97	1,291,218.97
Direct Fee Review LLC (Fee Examiner) ⁵²⁶	36,212.50	0.00	36,212.50
Fox Rothschild LLC ⁵²⁷	1,082,950.00	30,571.45	1,113,521.45
O'Melveny & Myers LLP ⁵²⁸	13,678,673.00	165,153.66	13,843,826.66
M-III Advisory Partners, LP ⁵²⁹	4,771,836.50	3,337.95	4,775,174.45
Total	24,231,588.00	235,340.26	24,466,928.26

⁵²¹ [First and Final Application for Compensation and Reimbursement of Expenses of Pachulski, Stang, Ziehl, & Jones LLP, as Co-Counsel for the Debtors and Debtors in Possession](#), Docket no 296, Case no 18-10684-BLS, filed June 21, 2018.

⁵²² [Fee Examiner's Final Report Regarding Third Interim and Final Fee Application Request of Akin Gump Strauss Hauer & Feld LLP](#), Docket no. 2019, Case no 20-81688-CRJ11, filed June 8, 2021.

⁵²³ [Fee Examiner's Final Report Regarding Third interim and Final Fee Application Request of AlixPartners, LLP](#), Docket no 2012, Case no 20-81688-CRJ11, filed June 7, 2021.

⁵²⁴ [Fee Examiner's Final Report Regarding Third Interim and Final Fee Application Request of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC](#), Docket no 1995, Case no 20-81688-CRJ11, filed June 2, 2021.

⁵²⁵ [Fee Examiner's Final Report Regarding Third Interim and Final Fee Application Request of Burr & Forman LLP](#), Docket no 2020, Case no 20-81688-CRJ11, filed June 8, 2021.

⁵²⁶ [Summary of Fourth Monthly and Final Fee Application of Direct Fee Review LLC for Allowance of Compensation and Reimbursement of Expenses](#), Docket no 1795, Case no 20-81688-CRJ11, filed April, 14, 2021.

⁵²⁷ [Fee Examiner's Final Report Regarding Third Interim and Final Fee Application Request of Fox Rothschild LLC](#), Docket no 2021, Case no 20-81688-CRJ11, filed June 8, 2021.

⁵²⁸ [Fee Examiner's Final Report Regarding Third Interim and Final Fee Application Request of O'Melveny & Myers LLP](#), Docket no 1981, Case no 20-81688-CRJ11, filed May 25, 2021.

⁵²⁹ [Fee Examiner's Final Report Regarding Third Interim and Final Fee Application Request of M-III Advisory Partners, LP](#), Docket no 2022, Case no 20-81688-CRJ11, filed June 8, 2021.

Remington Today

Remington, since its inception as one of the primary gun and ammunition makers in America, has survived despite the significant reorganizations stemming from the two bankruptcy proceedings. Remington's remaining assets were sold off pursuant to the liquidation and asset sale plan in the 2020 bankruptcy plan.⁵³⁰ Remington's remaining real estate was sold off or sold as a package with the purchase of certain Debtor brands.⁵³¹ One may ask why, if Remington was dissolved, is a company going by the name of Remington still manufacturing arms? Why can you still purchase bullets made by Barnes, or why can you go onto the "Remington.com" website and shop for arms or ammunition? Remington Outdoor Company, and all its subsidiaries, as business entities, were completely dissolved. The assets of the Debtors, the intellectual property, the manufacturing plants, the workforce, and the guns and ammunition made under the former Debtors' businesses still exist in the world. The Remington brand and ammunition facility was acquired by Vista Outdoor, who vowed to create a "renewed focus on ammunition" and to start a "new chapter in Remington's iconic history."⁵³² Other brands formerly owned by Remington Outdoor Company will continue to develop under new governance. Through new direction, new participants, and new ownership, Remington and its related subsidiaries are still operating today. Remington, as a brand, will continue to manufacture and grow its ammunition and arms business. Remington rifles, handguns, and other arms will likely continue to impact and dominate the market. Gun stores, shows, and online markets will continue to sell and promote Remington arms, so those loyal to the brand will still be able to enjoy Remington arms for some time to come.

⁵³⁰ [First Disclosure Statement](#) at 24.

⁵³¹ *Id.*

⁵³² Remington.com, *About us*, <https://www.remington.com/about-us.html#event-remington-joins-vista-outdoor> (last visited May 16, 2022).