

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

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In re:	:	Chapter 11
	:	
COLT HOLDING COMPANY LLC, <i>et al.</i> , ¹	:	Case No. 15-11296 (LSS)
	:	
Debtors.	:	Jointly Administered
	:	
	:	Hearing Date: July 29, 2015 at 9:30 a.m.
	:	
	:	Re: D.I. 179, 253

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**DEBTORS’ REPLY TO THE OBJECTION OF THE AD HOC CONSORTIUM
OF HOLDERS OF 8.75% SENIOR NOTES DUE 2017 TO DEBTORS’ APPLICATION
FOR ENTRY OF AN ORDER (I) AUTHORIZING THE EMPLOYMENT
AND RETENTION OF PERELLA WEINBERG PARTNERS LP AS FINANCIAL
ADVISOR, *NUNC PRO TUNC* TO THE PETITION DATE AND (II) WAIVING
INFORMATION REQUIREMENTS OF LOCAL RULE 2016-2(d)**

Colt Holding Company LLC and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”) submit this reply to the objection [D.I. 253] (the “**Objection**”) of the Ad Hoc Consortium of Holders of 8.75% Senior Notes due 2017 (the “**Consortium**”) to the Debtors’ application seeking entry of an order authorizing the employment and retention of Perella Weinberg Partners LP (“**PWP**”) as the Debtors’ financial advisor [D.I. 179] (the “**Application**”).² In support of this reply, the Debtors submit the supplemental declaration of Nikhil Menon, a Managing Director at PWP (the “**Supplemental Declaration**”) and the declaration of Keith A. Maib, the Chief Restructuring Officer of Colt Defense LLC (the “**Maib**

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are Colt Holding Company LLC (0094); Colt Security LLC (4276); Colt Defense LLC (1950); Colt Finance Corp. (7687); New Colt Holding Corp. (6913); Colt’s Manufacturing Company LLC (9139); Colt Defense Technical Services LLC (8809); Colt Canada Corporation (5534); Colt International Coöperatief U.A. (6822); and CDH II Holdco Inc. (1782). The address of the Debtors’ corporate headquarters is: 547 New Park Avenue, West Hartford, Connecticut 06110.

² Capitalized terms used but not defined in this reply have the meanings used in the Application.

Declaration” and together with the Supplemental Declaration, the “**Supporting Declarations**”). The Debtors respectfully request that the Court overrule the Objection and grant the Application for the reasons set forth below.

REPLY

1. The Debtors’ motion to employ PWP as a financial advisor should be granted for two principal reasons. First, the Debtors, in their business judgment, view the services of a financial advisor as necessary to enhance a value maximizing transaction in these cases — whether it be in the form a plan of reorganization that equitizes parties currently in the capital structure or an alternative, such as a sale transaction. The Debtors’ judgment is unsurprising and typical — financial advisors are virtually ubiquitous in large-scale restructurings with multiple levels of debt — and should be deferred to here. PWP is well equipped for the role. As described more fully below, PWP has already assisted (and will continue to do so) the Debtors in important ways, including:

- solicitation of debtor in possession (“**DIP**”) financing proposals pre-bankruptcy;
- analyzing and negotiating competing DIP proposals post-bankruptcy filing;
- analyzing incremental DIP financing needs and negotiating the terms of any incremental needs, if required;
- leading efforts in connection with negotiating a plan of reorganization and the terms of any exit financing thereunder;
- leading efforts in evaluating and negotiating a sale of substantially all of the Debtors’ assets if appropriate; and
- working with outside interested parties that have expressed interest in assisting in a providing a solution as part of restructuring of the Debtors’ obligations (such as the State of Connecticut).

2. Additionally, the terms of PWP’s engagement meet the standard for approval in this District: they are market-based and comparable to, if not lower than, the fees similar professionals customarily charge for similar services. Below, as well as in the

Supplemental Declaration, the Debtors demonstrate this fact by providing comparisons to more than a dozen recent cases of similar size with similar postures.

3. The Consortium's blanket objection to PWP's retention (which addresses the single issue of PWP's fee structure) would leave the Debtors without recourse to a financial advisor (particularly because the other retained professionals in these cases are specifically prohibited from providing the Debtors with financial advisory services), which would improperly restrict and hamper the Debtors' ongoing restructuring efforts. Indeed, it would be highly unusual and prejudicial to the estates for the Debtors to be forced to proceed without a financial advisor at this critical stage.

4. The Consortium's Objection does not challenge the appropriateness of PWP's retention under section 327(a) of the Bankruptcy Code. Nor does the Consortium dispute either the expertise or qualifications of PWP or its conduct during these chapter 11 cases. Rather, the Consortium alleges that because the "case dynamic has changed," PWP's fee structure is out of step with the current case circumstances. As discussed below, the Consortium's arguments are incorrect and minimize the nature and extent of the services provided by PWP in connection with these cases. Because the Debtors believe the services PWP has provided and will continue to provide are necessary and the economic terms of PWP's retention are reasonable, the Objection should be overruled and the Debtors should be permitted to retain PWP on the terms set forth in the Application and the Engagement Agreement.

A. The Terms and Conditions of the Debtors' Retention of PWP are Reasonable and Should be Approved under Section 328(a) of the Bankruptcy Code

5. Section 328(a) of the Bankruptcy Code provides, in relevant part, that a debtor "with the court's approval, may employ or authorize the employment of a professional person under section 327 . . . on any reasonable terms and conditions of employment, including

on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis” *Id.* § 328(a). In deciding whether to approve the retention of a financial advisor under section 328(a), “the appropriate inquiry is whether taken as a whole, the terms of the retention are fair and reasonable, and the retention is in the [best] interest of the estate.” *In re Joan & David Halpern Inc.*, 248 B.R. 43, 47 (Bankr. S.D.N.Y. 2000). In making such a determination, courts consider a non-exhaustive list of factors, including:

- (a) whether the terms of engagement reflect normal business terms in the marketplace;
- (b) whether the parties are sophisticated entities with equal bargaining power who engaged in an arm’s length negotiation;
- (c) whether the retention is in the best interests of the estate;
- (d) whether there is creditor opposition to the retention and the compensation procedures;³ and
- (e) whether, given the size, circumstances, and posture of the case, the amount of compensation is reasonable.

See In re Insilco Techs., Inc., 291 B.R. 628, 634 (Bankr. D. Del. 2003). A debtor’s decision to retain a professional on reasonable terms is entitled to deference under the “business judgment” standard of review. *See United Artists Theatre Co. v. Walton (In re United Artists Theatre Co.)*, 315 F.3d 217, 233 (3d Cir. 2003) (finding the business judgment rule “well suited” to considering professional retentions in the bankruptcy context.) These tests are met here, and the Objection should be overruled.

³ No other creditor constituency besides the Consortium has objected to PWP’s retention. Based on informal comments received from the Creditors’ Committee, PWP agreed to make payment of its final fixed fee of \$1,000,000 contingent upon (i) the confirmation of a chapter 11 plan of reorganization or liquidation or (ii) the sale of substantially all of the Debtors’ assets. In addition, in response to informal comments from the U.S. Trustee, PWP made additional disclosures regarding its disinterestedness under section 327(a) of the Bankruptcy Code in the Supplemental Declaration.

6. As set forth in the Supporting Declarations, the terms of PWP's proposed retention (i) were negotiated at arm's length; (ii) reflect normal business terms in the marketplace for similar services; and (iii) are fair and reasonable under the circumstances. The Debtors and PWP are each sophisticated business entities with equal bargaining power; neither were compelled to transact business with one another. The structure and amount of PWP's fees are both in line with PWP's normal billing practices and reflect usual and customary compensation for financial advisors in similar-sized chapter 11 cases.

7. Courts have recognized that "what constitutes 'reasonable' compensation for professionals, takes a 'market-driven' approach." *In re Insilco*, 291 B.R. at 633-34 (quoting *In re Busy Beaver Bldg. Ctrs., Inc.*, 19 F.3d 833, 852 (3d Cir. 1994)). As noted in the Supplemental Declaration, PWP's total potential fees of \$1.9 million (of which more than half is a non-guaranteed payment contingent on confirmation of a plan or consummation of a sale of substantially all of the Debtors' assets) is at the lower end of the range of fees of financial advisors in recent comparable cases on both a dollar basis and as a percentage of the debtor's total prepetition liabilities. PWP has prepared an analysis, attached hereto as Exhibit A, of the compensation of financial advisors in 19 comparable chapter 11 cases. This comparison set of cases provides important evidence on the fairness and reasonableness of PWP's fees — indeed, in many of those cases (as is the case here), DIP financing was provided by parties within the existing capital structure and existing lenders were equitized, as may occur here. The Objection, on the other hand, does not set forth evidence that the fees contemplated by PWP's retention are not "market," or that its terms are not customary.

8. The Debtors first engaged PWP to provide financial advice and assistance in connection with a potential restructuring of certain of the Debtors' debt in November 2014.

The prepetition restructuring of the Debtors' secured debt resulted in additional liquidity of approximately \$25 million to the Debtors, of which holders of the 8.75% Senior Notes received \$10.9 million (approximately \$6.5 million of which was received by the Consortium) in the form of interest payments in November 2014. PWP's fees for those transactions were 100% creditable to its total fee in connection with this engagement. Over the course of its engagement, PWP has agreed to multiple modifications and amendments to its fee structure specifically to accommodate the Debtors' cash position to the point where its fees are now heavily back-ended. Given these changes, as well as the fact that PWP has agreed to make the final \$1 million of its fees contingent on confirmation of a plan or consummation of a sale transaction, PWP's aggregate fees and the structure and timing of those fees as contemplated in the Engagement Agreement are reasonable, appropriate, and "market."

9. Notwithstanding the foregoing, the Consortium contends that PWP's fee proposal "seems rich, and remarkably out of step with current case circumstances," however, there is no evidence that the terms of PWP's retention are off-market or that debtors frequently — or even occasionally — proceed in chapter 11 cases of this size and scope without a financial advisor. The Debtors disagree with the Consortium's characterization of the work performed by PWP and note that they have been transparent with the Consortium and others since the outset of these cases regarding the terms of PWP's engagement. For example, PWP's fees were clearly set forth in the initial DIP budget, which was negotiated with the Consortium in connection with entering into the DIP facilities. Neither the Consortium nor its advisors disapproved of the initial proposed DIP budget that identified the amounts potentially payable in respect of PWP's fees. Instead, the Consortium approved the initial DIP budget as a condition to funding its DIP facility, thereby tacitly encouraged PWP to continue providing services to the Debtors.

B. PWP Has Provided and Continues to Provide Critical Services to the Debtors and their Estates

10. PWP has devoted significant time and resources to these chapter 11 cases. PWP personnel are in constant contact with the Debtors' key advisors as well as the Debtors' senior executives. As set forth in the Supporting Declarations, PWP has been advising the Debtors on, among other things, restructuring alternatives, the DIP financing process, the Sale Transaction (as defined below), and related matters. Thus, the Consortium's argument that PWP's role in these cases does not justify its proposed compensation is wrong.

11. Prior to the commencement of these cases, PWP was retained to assist the Debtors with the restructuring of their prepetition secured debt, among other things. Subsequently, PWP assisted the Debtors in the negotiation and preparation of the Offer to Exchange, Consent Solicitation Statement, and Disclosure Statement Soliciting Acceptances of a Prepackaged Plan of Reorganization (the "**Offer to Exchange and Disclosure Statement**"), the restructuring support agreement executed by the Debtors and certain of their prepetition lenders and the equity sponsor, and the amended Offer to Exchange and Disclosure Statement, which reflected the terms of the restructuring support agreement. After the rejection of the amended Offer to Exchange and Disclosure Statement, the Debtors directed PWP to implement a marketing process for the sale of substantially all of the Debtors' assets as a going concern (the "**Sale Transaction**"). Since that time, PWP has spent considerable time and effort establishing a fulsome and transparent marketing process in connection with the Sale Transaction, contacting an extensive list of potential bidders and preparing and disseminating information packages and non-disclosure agreements to interested parties.

12. Contrary to the Consortium's allegations in the Objection, the Debtors have not abandoned the Sale Transaction, although the proposed sale contemplated at the outset

of the case is no longer being contemplated. Rather, the Debtors plan on extending the deadlines set forth in the Debtors' motion to approve bidding procedures, and are continuing to consider a Sale Transaction as a possible exit strategy in these cases, to the extent a sale yields value maximization. Since the Petition Date, PWP has solicited expressions of interest from approximately 150 strategic and financial purchasers. This extensive effort resulted in the execution of approximately 20 non-disclosure agreements with potential bidders, some of whom are in the process of conducting due diligence with respect to the assets. PWP continues to maintain active communication, including in-person meetings and numerous calls and emails, with each of the potential bidders. PWP's services in connection with the Sale Transaction will not cease upon the conclusion of the marketing process. If the Debtors enter into the next stage of the sale process, PWP's expertise will be critical to the evaluation and negotiation of any potential bids and the selection of qualified bidders and ultimately, if appropriate, the successful bidder. Without a financial advisor who can provide banking and M&A expertise, the Debtors' ability to conduct a successful sale process could be severely compromised. This is especially so because the Debtors' other advisors are precluded from running a sale process. As is customary in this District, the proposed order authorizing the retention of Mackinac Partners LLC as crisis managers for the Debtors specifically prohibits Mackinac Partners from providing any financial advisory services to the Debtors [D.I. 209].

13. Of course, a Sale Transaction is not necessarily the path these cases will take, and a feasible plan of reorganization hopefully will emerge and come to fruition. Under a plan scenario, PWP would play an important role in connection with confirmation. The Debtors would require PWP's assistance in establishing the feasibility of such plan. Moreover, in the event that the Consortium proposes a plan of reorganization, the Debtors, with the assistance of

PWP, will need to independently evaluate the feasibility of such plan, including the terms of any exit financing, and determine whether the plan is in the best interests of the Debtors and their estates. Again, these are services that PWP is uniquely situated to provide for the Debtors. In sum, all paths to a successful exit from these chapter 11 cases require the ongoing services of PWP.

14. As set forth in greater detail in the declaration of Nikhil Menon in support of the Debtors' DIP financing [D.I. 14], PWP was also actively involved in the negotiations that preceded execution of the Debtors' original DIP financing documents. In anticipation of the commencement of these cases, PWP contacted, on behalf of the Debtors, a number of traditional asset-backed lenders as well as, regional banks and hedge funds to determine the terms of alternate DIP financing. Upon the filing of the Consortium's original competing DIP proposal [D.I. 61], PWP spent a significant amount of time and resources analyzing the terms of the Consortium's DIP proposal, negotiating with the advisors for both the incumbent DIP lenders and the Consortium to seek improved terms, and advising the Debtors' management team and other advisors on a virtually around the clock basis. On multiple occasions, PWP advised the Debtors' independent committee of the board of managers of the economic terms of the competing DIP proposals. After the Debtors determined, with PWP's assistance, to proceed with the Consortium's DIP proposal, PWP worked extensively with the Debtors' advisors, and interfaced with the Consortium's advisors on the final documentation in connection with the DIP facilities.

15. Not only did PWP provide value enhancing advice and services to the Debtors in connection with entering into the DIP facilities, but PWP continues to assist the Debtors in evaluating financing options. As the Court knows, the original DIP facilities in these

cases contemplated \$20 million in new money as a bridge to a Sale Transaction within 90 days of the Petition Date. The DIP facilities approved by the Court provide the same \$20 million in new money, but require that money to last over a longer time frame. Thus, the Debtors may need incremental financing, which has not been committed by any party. If the Debtors do need additional capital, they need a financial advisor to help them evaluate their options in obtaining it and structuring any additional financing. It would be off-market and highly unusual for the Debtors to evaluate financing options without an advisory firm and doing so could significantly disadvantage the Debtors in their ability to obtain competitive financing. Even if the Consortium (and the Debtors' other incumbent DIP lender) agrees to provide additional funding, those terms need to be evaluated and an appropriate market check needs to be conducted to ensure that the Debtors can negotiate such terms appropriately.

16. Finally, as this Court is aware, certain parties are seeking to bring public resources to bear as part of a solution in these cases. *See In re Colt Holding Company LLC Transcript of July 10, 2015 Hearing* at 52:21-53:21 (disclosing the State of Connecticut's interest in meeting with stakeholders to discuss a potential resolution of these cases). The Debtors welcome these efforts — and require PWP's services in evaluating proposals from, and negotiating with, the State of Connecticut or any other party that has creative alternatives that can lead to a successful, expeditious resolution of these cases.

17. The Debtors remain at a critical juncture in these cases, evaluating all options for going forward successfully, while maximizing value and remaining as a going concern. PWP has an important role to play in that process, and the Debtors have demonstrated that PWP's retention is in the Debtors' best interests and the terms of the retention are fair and reasonable. Granting the Consortium's Objection would deny the Debtors PWP's services, thus

improperly and severely restricting the Debtors' ability to act in their role as debtors in possession responsible for exercising their business judgment and evaluating the best options available for their estates.

For the reasons described above, the Debtors respectfully request that the Objection be overruled and that the terms and conditions of PWP's retention as set forth in the Application and the Engagement Agreement be approved as reasonable terms and conditions of employment under section 328(a) of the Bankruptcy Code.

Dated: July 27, 2015
Wilmington, Delaware

/s/ Jason M. Madron

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