

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

In Re:

**Paul A. Leitner-Wise,

Debtor.**

**Case No. 15-11345
Chapter 13**

**MOTION FOR ENTRY OF ORDER DIRECTING RULE 2004 EXAMINATION
AND PRODUCTION OF DOCUMENTS**

LWRC International, LLC (“**LWRCI**”), by counsel, pursuant to Fed. R. Bankr. P. 2004 and Local Bankruptcy Rule 2004-1, moves this Court to enter an order directing a Rule 2004 Examination of and compelling the Production of Documents by Paul A. Leitner-Wise (the “**Debtor**”), identified in **Exhibit A**, at the Washington D.C. offices of Polsinelli PC (“Polsinelli”) three days before the examination. In support thereof, the LWRCI states as follows:

1. The Debtor initiated this bankruptcy case by filing his Voluntary Petition (the “**Petition**”) under Chapter 13 of the United States Bankruptcy Code on April 20, 2015 (the “**Filing Date**”) as case number 15-11345 (the “**Third Bankruptcy**”). The Debtor previously filed Chapter 13 bankruptcy on February 15, 2013 as case number 13-10713 (the “**First Bankruptcy**”), which was dismissed on March 7, 2014 for failure to make plan payments. The Debtor filed another Chapter 13 bankruptcy case on June 27, 2014 as case number 14-12420 (the “**Second Bankruptcy**”), which was also dismissed for failure to commence payments on August 19, 2014. Thus, the above captioned case is the Debtor’s third bankruptcy filing in the last two years.

2. On May 19, 2015 debtor filed a Chapter 13 Plan [Docket #20], which Debtor subsequently amended/modified on May 26, 2015 [Docket #24] (the “**Plan**”).

3. The May 26th Plan modified Sections 6(B) and 11 of the original Plan and alleges that Debtor has a royalty contract with LWRCI which would result in at least \$1,200,000.00 being due to the Debtor. Schedule B, items 21 and 35 and Schedule G also make reference to a royalty contract with the LWRCI. LWRCI is unaware of any contract with the Debtor for royalties and has no contracts with the Debtor of any kind. The Debtor's Plan seeks to assume the alleged royalty contract with LWRCI.

4. LWRCI seeks immediate production of documents and examination of the Debtor related to this assumption and purported claim against the LWRCI, before the July 1, 2015 deadline to object to the Plan.

5. The standards regarding Rule 2004 document productions are well established. "On motion of any party in interest, the court may order the examination of any entity." Fed. R. Bankr. P. 2004(a). Additionally, the court may compel the production of documents. Fed. R. Bankr. P. 2004(c).

6. "The examination of an entity under this rule or of the debtor, under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor." Fed. R. Bankr. P. 2004(b).

7. "The broad scope of questioning that applies at a meeting of creditors also applies at a Rule 2004 examination. Any question is allowable if (1) it relates to the acts, conduct, property, liabilities, or financial condition of the debtor, or (2) it relates to any matter that may affect the administration of the bankruptcy estate or the debtor's right to a discharge." *In re Russell*, 392 B.R. 315, 359 (Bankr. E.D. Tenn. 2008).

8. "A Rule 2004 examination is a legally authorized fishing expedition." *In re Russell*, 392 B.R. at 359; *see also In re GHR Companies, Inc.*, 41 B.R. 655, 660 (Bankr. D.

Mass. 1984) (“The [Rule 2004] examination has also been likened to a necessary ‘fishing expedition.’”).

9. The clear intent of Rule 2004 (and its predecessor rules) is to give parties in interest an opportunity to examine individuals having knowledge of the financial affairs of the debtor in order to preserve the rights of creditors.” *In re GHR*, 41 B.R. at 660.

10. The requested documents are necessary for the LWRCI to investigate Debtor’s alleged claimed for rights to royalty rights, of which LWRCI is unaware.

11. Bankruptcy Rule 2004 is the fundamental discovery device in bankruptcy cases. *See In Re Muy Bueno Corp.*, 257 B.R. 843, 851 (Bkrcty. W.D. Tex. 2001). Bankruptcy Rule 2004(a) provides: "On motion of any party-in-interest, the Court may order the examination of any entity." As the Rule makes no mention of notice, the Court may order a Rule 2004 examination immediately upon request of a party-in-interest. *See, e.g., In re Hickman*, 151 B.R. 125, 128 (Bankr. N.D. Ohio 1993) (“[t]he motion may be heard *ex parte*. . .”).

12. Courts routinely reinforce the broad scope of Rule 2004 examinations. *See, e.g., In Re Duratech Indus., Inc.*, 241 B.R. 283, 289 (Bankr. E.D.N.Y. 1999) (“The scope of a Rule 2004 examination is exceptionally broad . . .”); *In Re Bazemore*, 216 B.R. 1020, 1023 (Bankr. S.D. Ga. 1998) (“FRBP 2004 is broadly read.”); *In Re Szadkowski*, 198 B.R. 140, 141 (Bankr. D. Md. 1996) (“A Rule 2004 examination allows a broad ‘fishing expedition’ into an entity’s affairs for the purpose of obtaining information relevant to the administration of the bankruptcy estate.”); *In Re Dinubilo*, 177 B.R. 932, 939 (Bankr. E.D. Cal. 1993) (“The range of discoverable subject matter in a Rule 2004 examination is ‘unfettered and broad.’”); *In re Lang*, 107 B.R. 130, 132 (Bankr. N.D. Ohio 1989)(“The Rule contemplates a broad and far-reaching inquiry into the debtor’s affairs.”); *Matter of Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985) (“The general rule is that the scope of a Rule 2004 examination is very broad and great latitude of inquiry is

ordinarily permitted."); *In Re Johns-Manville Corp.*, 42 B.R. 362, 364 (S.D. N.Y. 1984) (in the context of a Rule 2004 examination, "the inquiry may `cut a broad swath through the debtor's affairs, those associated with him, and those who might have had business dealings with him!").

A New York bankruptcy court cogently concluded:

The purpose of a Rule 2004 examination is to assist a party in interest in determining the nature and extent of the bankruptcy estate, revealing assets, examining transactions and assessing whether wrongdoing has occurred. (citation omitted) The scope of Rule 2004 examination is very broad, broader even than discovery under the Federal Rules of Civil Procedure.

In re Recoton Corp, 307 B.R. 751, 755 (Bankr. S.D.N.Y 2004).

13. LWRCI seeks to conduct a Rule 2004 examination of the Debtor on the following subject matters the (the "**Examination Topics**"):

- Debtor's current, or the Third Bankruptcy;
- The Debtor's Plan;
- The Debtor's filings in the First, Second and Third Bankruptcies;
- The alleged Royalty Contract between LWRCI and the Debtor;
- The Debtor's business, income and liabilities;
- Any licenses or royalty agreements with any other entity.
- Any asserted claim by the Debtor against LWRCI, its affiliates or agents;
- Any patents or other intellectual property owned by the Debtor;
- Debtor's assumption of the Royalty Contract between him and LWRCI;
- Debtor's previous bankruptcies;
- Debtor's current and future business prospects;
- Debtor's relationship with LWM-Letiner-Wise or Leitner-Wise Defense, LTD;
- Location, ownership or control of the documents requested in this Motion;
- Debtor's actions in reviewing and locating documents requested in this Motion;
- Matters concerning the multiple bankruptcy filings; and
- Matter arising from review of the documents produced by the Debtor.

14. Another Court has cogently observed: "Discovery should not be a sporting contest or a test of wills, particularly in a bankruptcy case where the parties' resources are limited and the dollar value of the stakes is often low." *In re Spoonemore*, 370 B.R. 833, 844 (Bkrcty. D. Kan. 2007). LWRCI is clearly entitled to the information and documentation it

has requested and, therefore, an order compelling attendance and compliance within 14 days should issue. Therefore LWRCI requests the Court issue an Order to require the Debtor to appear at the offices of Polsinelli on or before June 30, 2015 at 9:00 a.m. for a Rule 2004 examination, or such other date as may be agreed upon by the Parties.

15. Rule 2004(c) contemplates the production of documents in conjunction with a Rule 2004 examination. LWRCI seeks production by the Debtor within three (3) business days prior to the Rule 2004 examination the documents listed on **Exhibit A**, attached hereto.

16. Pursuant to Local Rule 2004-1, and contemporaneously with filing this Motion, LWRCI's counsel has contacted the Debtor's counsel to determine a jointly agreeable date for the examination and production of documents, and hopes to present the Court with an agreed Order, but due to the time constraints imposed by the Debtor's Plan, LWRCI files this Motion in the event that such a convenient date is not agreed upon.

WHEREFORE, LWRCI respectfully moves this Court to enter an Order from the Debtor to appear and testify under oath at a Rule 2004 examination at a date to be agreed upon but not later than June 30, 2015 in the office of undersigned counsel, and to produce all documents set forth in **Exhibit A** at the Washington D.C. offices of Polsinelli three (3) business days prior to the examination date, and for such other and further relief as this Court deems just and proper.

Date: June 10, 2015

LWRC INTERNATIONAL, LLC
By Counsel

POLSINELLI PC

/s/ George E. Kostel _____

George E. Kostel, Esq.

VSB No. 34757

gkostel@polsinelli.com

Noam B. Fischman, Esq.

(*pro hac vice* forthcoming)

<mailto:nfischman@polsinelli.com> Andrew

Nazar, Esq.

(*pro hac vice* forthcoming)

<mailto:anazar@polsinelli.com> 1401 Eye

Street, N.W., Suite 800

Washington, D.C. 20005

Telephone: (202) 783-3300

Facsimile: (202) 783-3535

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June 2015, a true and correct copy of *MOTION FOR ENTRY OF ORDER DIRECTING RULE 2004 EXAMINATION AND PRODUCTION OF DOCUMENTS* was filed using the Court's CM/ECF service, served electronically to Debtors' counsel, the Trustee, and served on all interested parties by ECF notification from the Court, and served by first-class United States mail, postage prepaid, to:

Paul A. Leitner-Wise
Chapter 13 Debtor
917 Juniper Place
Alexandria, VA 22304

William Francis Markley
Attorney for Debtor
1940 Duke Street, Suite 200
Alexandria, VA 22314

Thomas P. Gorman
Eva Choi
Chapter 13 Trustee
300 N. Washington Street, Suite 400
Alexandria, VA 22314

/s/ George E. Kostel
George E. Kostel
VSB #34757
Polsinelli PC
1401 Eye Street, N.W., Suite 800
Washington, D.C. 20005
Telephone: (202) 783-3300
Facsimile: (202) 783-3535
gkostel@polsinelli.com

Counsel for Creditor LWRC International, LLC

EXHIBIT A

Definitions

As used in this Exhibit A, the following terms shall have the meanings set forth below:

1. “**Affiliated Companies**” the term “Affiliated Companies” includes, but is not limited to the following entities:
 - a. LWM-Letiner-Wise
 - b. Leitner-Wise Defense, LTD
2. “**Debtor**” shall refer to Paul A. Leitner-Wise.
3. “**LWRCI**” shall refer to LWRC International, LLC.
4. Reference to the Debtor and/or his Affiliated Companies shall include all of their officers, directors, and agents, including without limitation, accountants, lawyers and investment bankers.
5. The “**Royalty Contract**” shall refer to Royalty Contract with LWRCI identified on Section 6(B) of the Debtor’s Plan as further identified on Part B of the Debtor’s Schedules.
6. The “**Patents**” shall refer to all patent rights identified on the Debtor’s Schedules.
7. The “**LWRCI Royalties**” shall refer to the claim of \$1.2 million owed allegedly owed by LWRCI to the Debtor as asserted in Section 11 of Debtor’s Plan.
8. “**Document**” is used in the broadest possible sense and means, but is not limited to, all originals, copies (if the originals are not available), non-identical copies, (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise), and drafts of the following items, whether printed or recorded (through a sound, video or other electronic, magnetic or digital recording system) or reproduced by hand: letters, correspondence, telegrams, telexes, memoranda, notes, records, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, Post-It notes, stenographic notes, notebooks, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, tax returns and other filings required by statute or regulation, contracts, agreements, appraisals, analyses, purchase orders, confirmations, invoices, publications, articles, books, pamphlets, circulars, press-releases, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, tables, bulletins, photostats, speeches, data sheets, pictures, photographs, illustrations, drawings, blueprints, films, plans, tape recordings, videotapes, disks, diskettes, data tapes and/or readable computer-produced interpretations or transcriptions thereof, electronically transmitted messages (“E-mail”), voice mail messages, inter-office communications, advertising, packaging and promotional materials, and any other writings, papers and tangible objects whatsoever containing information including, but not limited to, information contained in any computer,

even if not yet printed out, that is within the possession, custody or control of the (Accountants) and its subsidiaries, divisions and affiliates.

9. “**Communication**” means both oral and written communications, whether found in hard copy or in electronic format, and means all conversations, presentations, discussions, speeches, meetings, telephone calls, documents, writings, emails, and all other means by which information, data, language or documents are transmitted, passed or otherwise conveyed from one or more persons or entities to one or more other persons or entities.

10. “**Petition Date**” shall mean April 20, 2015.

11. The singular of any word includes the plural, and the plural includes the singular.

12. Any capitalized term, not otherwise defined herein, shall have the same meaning as defined in the MOTION FOR ENTRY OF ORDER DIRECTING RULE 2004 EXAMINATION AND PRODUCTION OF DOCUMENTS.

Documents To Be Produced

LWRCI requests the following be produced:

1. The Royalty Contract, including any amendments, alterations, or modifications thereto.

2. All Communications of the Debtor or his Affiliated Companies discussing, referring to, or relating to the Royalty Contract or the LWRCI Royalties.

3. All Documents (other than Communications) in control or possession of the Debtor or his Affiliated Companies discussing, referring to, or relating to the Royalty Contract or the LWRCI Royalties.

4. All Documents that support the Debtor’s Claim to the LWRCI Royalties.

5. All Documents used by the Debtor in evaluating, valuing, or estimating the worth or value of the Royalty Contract or the LWRCI Royalties.

6. Any and all versions, outlines, drafts, revisions, and/or marked-up copies of the Royalty Contract.

7. Any and all Documents related to the Patents and the Royalty Contract or the LWRCI Royalties.

8. Any Documents related to any cause of action, whether asserted or not, against LWRCI or its affiliates or agents by the Debtor or his Affiliated Companies.

9. Any and all Documents related to ownership or right to the intellectual property that is the subject of the Royalty Contract or the LWRCI Royalties.

10. Any and all documents relating to the attempted assumption of the Royalty Contract.

11. Any and all documents related to the Royalty Contract or the LWRCI Royalties and the First or Second Bankruptcies.