

WEIL, GOTSHAL & MANGES LLP

767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Gary T. Holtzer
Robert J. Lemons

Attorneys for Westinghouse Electric Company LLC

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re	:
	:
	: Chapter 11
WESTINGHOUSE ELECTRIC	:
COMPANY LLC, et al.,	:
	: Case No. 17-10751 (MEW)
	:
Debtors.¹	: (Jointly Administered)
-----X	

**NOTICE OF HEARING ON MOTION OF
REORGANIZED WESTINGHOUSE ELECTRIC COMPANY
LLC FOR ORDER ENFORCING PLAN INJUNCTION AND
CONFIRMATION ORDER AND FOR RELATED RELIEF**

PLEASE TAKE NOTICE that upon the annexed motion (the “**Motion**”) of reorganized Westinghouse Electric Company LLC (“**WEC**”) for entry of an order pursuant to sections 105(a), 503, 524(a)(2), 1141(b), (c) and (d)(1) and 1142(b) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 3020(d) of the Federal Rules of Bankruptcy Procedures (the “**Bankruptcy Rules**”) enforcing the Plan, the Plan Injunction, and the Confirmation Order (each as defined in the Motion) and granting related relief, as more fully set

¹ On September 25, 2018, the Bankruptcy Court entered the *Order (I) Consolidating the Administration of Certain Remaining Matters at the Lead Case; (II) Entering a Final Decree Closing Certain Affiliate Cases; and (III) Granting Related Relief*, closing certain of the chapter 11 cases [ECF No. 3956]. The reorganized debtors in the remaining chapter 11 cases, along with the last four digits of each reorganized debtor’s federal tax identification number are: Westinghouse Electric Company LLC (0933), Stone & Webster Services LLC (5448), WEC Carolina Energy Solutions, Inc. (8735), WEC Carolina Energy Solutions, LLC (2002), WECTEC Global Project Services Inc. (8572), WECTEC LLC (6222), and WECTEC Staffing Services LLC (4135). The reorganized debtors’ principal offices are located at 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066.

forth in the Motion, a hearing will be held before the Honorable Michael E. Wiles, in the United States Bankruptcy Court for the Southern District of New York, located at One Bowling Green, New York, New York 10004 (the “**Bankruptcy Court**”), on **December 11, 2019 at 11:00 a.m.** (prevailing Eastern Time) (the “**Hearing**”), or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections (“**Objections**”) to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules, and shall be filed with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (b) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399 and the *Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c) and 9007 Implementing Certain Notice and Case Management Procedures*, dated April 4, 2017 [ECF No. 101], so as to be filed and received no later than **December 3, 2019 at 4:00 p.m.** (prevailing Eastern Time) (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served with respect to the Motion, WEC may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion,

which order may be entered without further notice or opportunity to be heard.

Dated: November 21, 2019
New York, New York

/s/ Robert J. Lemons

WEIL, GOTSHAL & MANGES LLP

767 Fifth Avenue

New York, New York 10153

Telephone: (212) 310-8000

Facsimile: (212) 310-8007

Robert J. Lemons

Gary T. Holtzer

Attorneys for Westinghouse Electric Company LLC

WEIL, GOTSHAL & MANGES LLP

767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:
	:
	: Chapter 11
WESTINGHOUSE ELECTRIC	:
COMPANY LLC, et al.,	:
	:
Debtors.¹	: (Jointly Administered)
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**MOTION OF REORGANIZED WESTINGHOUSE
ELECTRIC COMPANY LLC FOR ORDER ENFORCING PLAN
INJUNCTION AND CONFIRMATION ORDER AND FOR RELATED RELIEF**

THE HONORABLE MICHAEL E. WILES,
UNITED STATES BANKRUPTCY JUDGE:

Westinghouse Electric Company LLC (“WEC”) files this motion (the “**Motion**”) pursuant to the Debtors’ *Modified Second Amended Joint Chapter 11 Plan of Reorganization* [ECF No. 2986] (the “**Plan**”),² the *Findings of Fact, Conclusions of Law, and Order Confirming Modified Second Amended Joint Chapter 11 Plan of Reorganization* (ECF Nos. 2988) (the

¹ On September 25, 2018, the Bankruptcy Court entered the *Order (I) Consolidating the Administration of Certain Remaining Matters at the Lead Case; (II) Entering a Final Decree Closing Certain Affiliate Cases; and (III) Granting Related Relief*, closing certain of the chapter 11 cases [ECF No. 3956]. The reorganized debtors in the remaining chapter 11 cases, along with the last four digits of each reorganized debtor’s federal tax identification number are: Westinghouse Electric Company LLC (0933), Stone & Webster Services LLC (5448), WEC Carolina Energy Solutions, Inc. (8735), WEC Carolina Energy Solutions, LLC (2002), WECTEC Global Project Services Inc. (8572), WECTEC LLC (6222), and WECTEC Staffing Services LLC (4135). The reorganized debtors’ principal offices are located at 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066.

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

“**Confirmation Order**”), and sections 105(a), 503, 524(a)(2), 1141(b), (c) and (d)(1) and 1142(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), seeking to enjoin and prohibit Timothy Ellis (“**Ellis**”) from continuing or commencing in any manner any action or proceeding of any kind, including the Complaint (as defined herein), with respect to any alleged conduct or claims that occurred or arose before the effective date of the Plan, August 1, 2018 (the “**Effective Date**”). In support of this Motion, the Debtors respectfully represent:

PRELIMINARY STATEMENT

1. WEC, as a Reorganized Debtor (as defined herein), seeks to enforce the terms of the Plan, the Plan Injunction, and the Confirmation Order (each as defined below) to prohibit Ellis from prosecuting, via the Complaint or otherwise, an alleged claim arising from an allegedly discriminatory employment termination that occurred prior to the Effective Date and was therefore discharged by the Plan.

2. In violation of the discharge and injunctive provisions of the Plan and the Confirmation Order, on October 26, 2018, Ellis, a former employee of WEC, filed a complaint captioned as *Timothy Ellis v. Westinghouse Electric Company LLC.*, Civil Action No. 2:18-cv-01442-MRH (the “**Complaint**”) with the United States District Court for the Western District of Pennsylvania (the “**Pennsylvania District Court**”), alleging that WEC engaged in age discrimination when it terminated his employment on May 30, 2018 (the “**Ellis Claim**”). A copy of the Complaint is attached hereto as **Exhibit B**. The Complaint is Ellis’s most recent attempt to prosecute the Ellis Claim. Previously, on July 3, 2019, Ellis submitted a charge to the Equal Employment Opportunity Commission (“**EEOC**”) for the Ellis Claim. The EEOC issued a decision against Ellis on [September 28, 2018]. Copies of the EEOC charge and the EEOC’s decision are attached hereto as **Exhibits C and D**.

3. WEC has informed the Pennsylvania District Court and discussed with counsel for Ellis that the Complaint violates the discharge and injunctive provisions of the Plan and Confirmation Order. Ellis, however, has continued to litigate the Complaint. On November 14, 2019, WEC filed a motion for summary judgment and a brief in support thereof in the Pennsylvania District Court, seeking dismissal of the two counts asserted in the Complaint against WEC as discharged and enjoined as a matter of law (the “**Summary Judgment Motion**”) [Pennsylvania District Court ECF Nos. 31, 32]. Copies of the Summary Judgment Motion and related briefing filed by WEC with the Pennsylvania District Court are attached hereto as **Exhibit E**.

4. As discussed herein, WEC submits that all of the allegations in the Complaint relate to alleged conduct by WEC that occurred before the Effective Date. Thus, the Complaint, and any other proceedings concerning pre-Effective Date allegations are barred by the Plan and the Confirmation Order. As a result of Ellis’s actions, WEC has no choice but to request that this Court enter an order to enforce the Plan and Confirmation Order by enjoining Ellis from prosecuting the Ellis Claim and compelling him to dismiss the Complaint.

BACKGROUND

I. Case Background

5. On March 29, 2017 (the “**Petition Date**”), WEC and certain of its affiliates (collectively, the “**Debtors**”) commenced with this Court voluntary cases under chapter 11 of the Bankruptcy Code, most of which have since been closed (the reorganized Debtors, collectively, the “**Reorganized Debtors**”). Additional information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the disclosure statement approved in connection with the Plan [ECF No. 2623] (the “**Disclosure Statement**”).

II. The Plan Funding Agreement, Plan and Confirmation Order

6. On January 12, 2018, Brookfield WEC Holdings LLC, Toshiba Nuclear Energy Holdings (UK) Limited and TSB Nuclear Energy Services Inc. executed a Plan Funding Agreement (as amended, the “PFA”), pursuant to which Brookfield WEC Holdings Inc. acquired WEC (through the acquisition of newly issued stock in reorganized TSB Nuclear Energy Services Inc.) and Brookfield WEC EMEA Holdings Ltd. (together with Brookfield WEC Holdings Inc., “**Brookfield**”) acquired existing equity of Westinghouse Electric (UK) Holdings Limited. The transaction closed on August 1, 2018, concurrent with WEC’s emergence from chapter 11 (the “**Closing**”). Under the Plan and PFA (as amended pursuant to an order entered by the Bankruptcy Court on July 27, 2018), (i) all assets owned by the Debtors immediately prior to the Closing, other than those explicitly identified as “Excluded Assets” pursuant to the terms of the PFA, remained assets of the Reorganized Debtors and (ii) only liabilities of the Debtors explicitly designated as “Assumed Liabilities” were assumed by the applicable Reorganized Debtors, in each case, upon WEC’s acquisition by Brookfield at the Closing. Plan ¶ 7.1; PFA ¶ 2.02(b); Confirmation Order ¶¶ 14-15. These Assumed Liabilities were enumerated on Exhibit I to the Plan. Under the terms of the PFA, Brookfield did not have to complete the purchase of Westinghouse if the Plan provided for the assumption by the Debtors of liabilities in addition to the Assumed Liabilities. *See* PFA ¶ 11.02(f)(2). Brookfield’s refusal to complete the purchase would have prevented the occurrence of the Effective Date and eliminated the source of distributions to the Debtors’ creditors.

7. Pursuant to the Plan and the PFA, the Excluded Assets and all liabilities of the Debtors (other than the Assumed Liabilities) were transferred by the Debtors to Wind Down Co immediately prior to the Closing. Under the Plan and PFA, all property of the Debtors’ estates, other than Excluded Assets (as defined in the PFA) vested in the Reorganized Debtors on the Effective Date. Plan ¶ 1.64; PFA ¶ 2.02(a).

8. As of the Effective Date, the Plan and the Confirmation Order, with limited exceptions not applicable here, “forever waived, released and discharged the Debtors, Wind Down Co, and the Reorganized Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Interests, rights and liabilities that arose prior to the Effective Date.” Plan § 11.3; *see also* Plan § 11.1, Confirmation Order ¶¶ 12, 14, 34. Similarly, the Plan and Confirmation Order provide that on the Effective Date, the Debtors’ assets vested in the Reorganized Debtors free and clear of claims, except as provided pursuant to the Plan or the Confirmation Order. *See* Plan §§ 5.1, 5.4(c), Confirmation Order ¶¶ KK, 7, 34. Consistent with the extent of discharges, releases, and limitations of liability under the Plan and Confirmation Order, the Plan further provides that all Entities (as defined in section 101(15) of the Bankruptcy Code) are “precluded from asserting against the Reorganized Debtors, the Estates, Wind Down Co, the Plan Oversight Board, the Plan Investor, their successors and assigns and their assets and properties, any other Claims or Interests based upon any documents, instruments or any act or omission, transaction or other activity of any kind or nature that occurred before the Effective Date.” Plan § 11.1; *see also* Plan § 11.9; Confirmation Order ¶¶ 15, 34, 45.

III. The Claims Bar Dates

9. On June 28, 2017, the Court entered the *Order Pursuant to 11 U.S.C. § 502(b)(9), Fed. R. Bankr. P. 2002 and 3003(c)(3), and Local Rule 3003-1 (I) Establishing Deadline for Filing Proofs of Claim and Procedures Relating Thereto and (II) Approving Form and Manner of Notice Thereof* [ECF No. 0788] (the “**Bar Date Order**”). The Bar Date Order set September 1, 2017 (the “**General Bar Date**”) and September 25, 2017 at 5:00 p.m. (Prevailing Eastern Time) as the deadlines by which non-governmental claimants and governmental claimants, respectively, had to file proofs of claim. The Bar Date Order also provides that any creditor who

failed to submit a proof of claim on or before the prepetition claims bar date shall be forever enjoined from asserting a prepetition claim against the Debtors, their estates, or their property. Bar Date Order ¶ 4.

10. Pursuant to section 2.1 of the Plan, parties asserting Administrative Expense Claims³ were required to file and serve on the Debtors their request for payment on or before the 30th day after the Effective Date (the “**Administrative Expense Bar Date**”) or be forever barred from asserting Administrative Expense Claims. The *Notice of Occurrence of Effective Date of Debtors’ Modified Second Amended Joint Chapter 11 Plan of Reorganization* (ECF No. 3705) (the “**Notice of Effective Date**”) filed in these cases also notified recipients of the Plan’s procedures for the resolution of any outstanding administrative expense claims and the Administrative Expense Bar Date. The Notice of Effective Date specifically stated:

PLEASE TAKE FURTHER NOTICE that, unless otherwise provided by the Plan, the Confirmation Order, any other applicable order of the Court, or agreed to by the holder of an Allowed Administrative Expense Claim and the Debtors, all requests for payment of Administrative Expense Claims must be filed and served on the Debtors **no later than August 31, 2018** (the “**Administrative Expense Claims Bar Date**”). Holders of Administrative Expense Claims that are required to file and serve a request for payment of such Administrative Expense Claims that do not file and serve such a request by the Administrative Expense Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Expense Claims against the Debtors, or their property and such Administrative Expense Claims shall be deemed discharged as of the Effective Date.

Id.

³ ¶1.2 of the Plan defines Administrative Expense Claims to include any claim for payment of an administrative expense of a kind specified in section 503(b) of the Bankruptcy Code.

IV. The Ellis Claim and Ellis's Failure to File Claims or Object to the Plan

11. Ellis asserts that pursuant to the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.*, on May 31, 2018, he was unlawfully terminated by WEC based on his age. Complaint ¶¶ 9; 18. As described above, Ellis pursued the Ellis Claim with the EEOC, was denied by the EEOC, and is currently prosecuting the Ellis Claim in the Pennsylvania District Court.

12. The Debtors served a notice of the General Bar Date on Ellis on July 5, 2017, at which time he was still employed with the Debtors. *See* Affidavit of Service (ECF No. 881). Ellis did not file a proof of claim in these cases. Pursuant to the terms of the Bar Date Order, therefore, Ellis is barred from asserting any claims that arose prior to the Petition Date.

13. The Debtors served a notice of the approval of the Disclosure Statement, the Confirmation Hearing date, and the deadline to object to the Plan on Ellis on February 22, 2018. *See* Affidavit of Service (ECF No. 2802). Ellis did not, at any time, formally or informally, object to the Plan, the Confirmation Order, or the discharge and injunction provisions contained therein. The Ellis Claim is not a claim enumerated in the Plan as an Assumed Liability.

14. The Debtors served the Notice of the Effective Date, including notice of the Administrative Expense Claims Bar Date and the consequences of failure to timely file a request for payment of an Administrative Expense Claim, on Ellis on August 2, 2018. *See* Affidavit of Service (ECF No. 3724). Ellis failed to assert an Administrative Expense Claim in the Chapter 11 Cases. Therefore, he is now enjoined from asserting an Administrative Expense Claim arising from the Petition Date through the Effective Date.

JURISDICTION

15. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference M-431, dated January 31, 2012

(Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

16. “All courts retain the jurisdiction to interpret and enforce their own orders.” *In re Residential Capital, LLC*, 512 B.R. 179, 188–89 (Bankr. S.D.N.Y. 2014) (quoting *In re Charter Commc’ns*, No. 09–11435, 2010 WL 502764, at *4 (Bankr. S.D.N.Y. Feb. 8, 2010)); *see also Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009) (“[A]s the Second Circuit recognized ... the Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders.”); Fed. R. Bankr. P. 3020(d); 11 U.S.C. § 1142(b) (“The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.”).

17. “While a bankruptcy court’s jurisdiction diminishes in importance following plan confirmation, the action in this case is ‘sufficiently close in time to confirmation of the Plan and sufficiently critical to the integrity of the Plan’s structure that it is proper for this Court to take firm control and decide’ the Motion.” *Residential Capital*, 512 B.R. at 189 (quoting *Charter Commc’ns*, 2010 WL 502764, at *4);⁴ *see also In re General Media, Inc.*, 335 B.R. 66 (Bankr. S.D.N.Y. 2005) (“[W]here a motion seeks to ‘prevent the prosecution of causes of action expressly prohibited by the confirmation order,’ it would be ‘difficult to identify judicial acts that are any more critical to the orderly functioning of the bankruptcy process or more closely tethered to core bankruptcy jurisdiction.’”) (internal citations and quotation marks omitted); *see also In re*

⁴ Also finding that, while both a bankruptcy court and a state court could rule on a plan injunction, “[t]he bankruptcy court is the most familiar with the record of the confirmation hearing; and there is a much smaller risk of erosion of its provisions and the injunction due to inconsistent interpretations across courts.” *Id.*

Petrie Retail, Inc., 304 F.3d 223, 230 (2d Cir. 2002) (finding that bankruptcy court retained core jurisdiction post-confirmation ‘to interpret and enforce its own orders, particularly when disputes arise over a bankruptcy plan of reorganization’)).

18. The Plan provides for the following retention of jurisdiction:

[T]he Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under, and related to the Chapter 11 Cases for, among other things, the following purposes: . . . to determine any motion, adversary proceeding, application, contested matter, or other litigated matter pending on or commenced after the Confirmation Date; . . . **to issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the Consummation, implementation or enforcement of the Plan, the Confirmation Order, or any other order of the Bankruptcy Court. . . to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Plan Funding Agreement, the Confirmation Order**, the Plan Oversight Board By-Laws, or any agreement, instrument, or other document governing or relating to any of the foregoing. . . to take any action and issue such orders as may be necessary to **construe, interpret, enforce, implement, execute**, and consummate the Plan or to maintain the integrity of the Plan following Consummation. . . [and] to hear and determine any rights, Claims or Causes of Action held by or accruing to the **Reorganized Debtors pursuant to the Bankruptcy Code** or pursuant to any federal statute or legal theory

Plan § 13 (emphases added). The Confirmation Order similarly contains a retention of jurisdiction provision, providing, in relevant part, that “[p]ursuant to sections 105(a) and 1142 of the Bankruptcy Code, this Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the Chapter 11 Cases, the Plan, and the implementation of this Confirmation Order, including, without limitation, those matters set forth in Section 11 of the Plan.” Confirmation Order ¶ 48.

19. Ellis’s allegedly discriminatory termination on May 30, 2018 – after the Petition Date but before the Effective Date - would have given rise to an administrative claim against the WEC bankruptcy estate that was discharged by the Plan on the Effective Date. A claim for wrongful termination arises at the time of termination. *In re AMR Corp.*, No. 11-15463 (SHL),

2016 Bankr. LEXIS 1666, at *14-15 (Bankr. S.D.N.Y. Apr. 14, 2016) *subsequently aff'd*, No. 18-753, 2019 WL 1528140 (2d Cir. Apr. 9, 2019) (“For purposes of a discharge in bankruptcy, a claim arises at the time of the events giving rise to the claim An employment discrimination claim is deemed to arise on the date the employee learns of the employer’s discriminatory conduct. Employment discrimination claims that arise before the effective date of the confirmation of a reorganization plan under § 1141 are discharged by the effectuation of the plan.”) (internal citations and quotations omitted); *Cost v. Super Media*, 482 B.R. 857, 862 (S.D.N.Y. 2012); *Anderson v. Acme Mkts.*, 287 B.R. 624, 630 (E.D. Pa. 2002) (“[a]n employment discrimination suit accrues as of the date of the alleged adverse employment action”—which in this case was the date of plaintiff’s termination by defendant.) Claims for employment discrimination that arise postpetition are properly treated as administrative expense claims during bankruptcy cases. *See, e.g., Goldman, Sachs & Co. v. Esso V.I., Inc. (In re Duplan Corp.)*, 212 F.3d 144, 155 (2d Cir. 2000) (finding that “[a]ny claim that arose during the reorganization . . . in the ordinary course . . . is an Administrative Claim under the Plan.”); *Pension Benefit Guar. Corp. v. Sunarhauserman, Inc. (In re Sunarhauserman, Inc.)*, 126 F.3d 811, 818 (6th Cir. 1997) (finding that claim arising post-petition is “entitled to administrative expense status”). If Ellis was wrongfully terminated, any resulting claim would have been an Administrative Expense Claim due to his termination from WEC after the Petition Date but before the Effective Date. As discussed herein, because of Ellis’s failure to properly assert the Ellis Claim in these cases, the Ellis Claim was discharged under the Plan and Confirmation Order. The Court accordingly has jurisdiction to enforce the Confirmation Order by hearing this Motion and granting the relief requested herein

RELIEF REQUESTED

20. Pursuant to sections 105(a), 503, 524(a)(2), 1141(b), (c) and (d)(1) and 1142(b) of the Bankruptcy Code, Bankruptcy Rule 3020(d), sections 1.64, 2.1, 5.1, 5.4, 7.1, 11.1,

11.3, 11.9 and 13 of the Plan, sections 2.02, 11.02 of the PFA, and paragraphs KK, 7, 12, 14, 15, 34, 45 and 48 of the Confirmation Order, the Debtors request that this Court issue an order (i) finding that Ellis violated the Plan and the Confirmation Order by commencing and continuing the Complaint, (ii) enjoining Ellis from seeking any other relief against WEC based on any alleged conduct or claims that occurred or arose before the Effective Date of the Plan, (iii) directing Ellis to dismiss the Complaint with prejudice, and (iv) granting WEC such other and further relief as is just. A proposed form of order granting the relief requested herein is annexed hereto as **Exhibit A** (the “**Proposed Order**”).

LEGAL ARGUMENT

I. The Court Should Enjoin Ellis from Prosecuting the Complaint Because It Violates the Plan Injunction

21. Section 105(a) of the Bankruptcy Code authorizes the Court to “issue any order, process or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code, including “taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.” *See* 11 U.S.C. § 105(a). “The Court’s power under § 105(a) of the Bankruptcy Code extends beyond confirmation.” *In re Chateaugay Corp.*, 201 B.R. 48, 71 (Bankr. S.D.N.Y. 1996), *aff’d in part*, 213 B.R. 633 (S.D.N.Y. 1997).

22. While generally, Federal Rule of Bankruptcy Procedure 7001(7) requires a party to file an adversary proceeding to obtain an injunction or certain other equitable relief, an adversary proceeding is not required “when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief.” *In re Christ Hosp.*, 502 B.R. 158, 183 (Bankr. D.N.J. 2013), *aff’d*, No. CIV.A. 14-472 ES, 2014 WL 4613316 (D.N.J. Sept. 12, 2014); *In re Kalikow*, 602 F.3d 82, 93-94 (2d Cir. 2010); *In re Bryant*, 296 B.R. 516, 520 (Bankr. D. Colo. 2003) (finding that “an adversary

proceeding is *not* necessary to obtain injunctive or other equitable relief *that is provided for in a plan* when substantive law permits such relief.”) (emphases in original).

23. That is precisely the case here. As stated above, the Plan and Confirmation Order clearly provide that as of the Effective Date, “all Claims and Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against... the Debtors and any of their assets, property or Estates” are unequivocally satisfied, discharged and released, and all Entities are “precluded from asserting against the Reorganized Debtors, the Estates... any other Claims or Interests based upon any documents, instruments or any act or omission, transaction or other activity of any kind or nature that occurred before the Effective Date.” Plan § 11.1; *see also* Confirmation Order ¶¶ 14-15.

24. In addition, Plan § 11.3 provides, in relevant part:

Except as otherwise expressly provided in the Plan, upon the Effective Date, in consideration of the distributions to be made under the Plan, each holder of a Claim or Interest and any Affiliate of such holder ***shall be deemed to have forever waived, released and discharged the Debtors, Wind Down Co, and the Reorganized Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Interests, rights and liabilities that arose prior to the Effective Date*** Upon the Effective Date, all such persons shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim or Interest against the Debtors, Wind Down Co and the Reorganized Debtors.

25. Furthermore, section 11.9 of the Plan contains the Plan Injunction, which provides as follows:

Except as otherwise provided in the Plan or the Confirmation Order, all entities who have held, hold, or may hold Claims or interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities that: (1) are subject to compromise and settlement pursuant to the terms of the Plan; (2) have been released pursuant to section 11.6 hereof; (3) have been released pursuant to section 11.7 hereof; (4) are subject to exculpation pursuant to section 11.8 hereof (but only to the extent of the exculpation provided in section 11.8); or (5) are otherwise stayed or

terminated pursuant to the terms of the Plan, shall be permanently enjoined and precluded, from and after the Effective Date, from taking any of the following enforcement actions against the Debtors, the Reorganized Debtors, the Released Parties or any of their respective assets or property on account of any Claims, interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities that have been waived, discharged or released pursuant to the Plan: (a) commencing or continuing in any manner any action or other proceeding of any kind, including on account of any Claims, interests, causes of action, or liabilities that have been released, compromised or settled; (b) enforcing, levying, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order; (c) creating, perfecting, or enforcing any lien, claim, or encumbrance of any kind; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any debt, liability, or obligation due to the Debtors, Reorganized Debtors, or Released Parties; and (e) commencing or continuing any act, in any manner, or in any place to assert any Claim, or send any notice or invoice in respect of any claim, waived, discharged or released under this Plan or that does not otherwise comply with or is inconsistent with the provisions of this Plan....

Plan, § 11.9.

26. In addition, the Plan explicitly provides that:

On the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property of the Debtors' Estates other than Excluded Assets and any Cause of Action preserved for the benefit of Wind Down Co under Section 5.12 or Section 11.2 hereof shall vest in the Reorganized Debtors free and clear of all Claims, liens, encumbrances, charges and other interests, except as provided pursuant to the Plan Funding Agreement, this Plan and the Confirmation Order. From and after the Effective Date, the Reorganized Debtors may operate their businesses and use, acquire, and dispose of property without supervision by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan and the Confirmation Order.

Plan, § 5.1.

27. Section 524(a)(2) of the Bankruptcy Code provides that a discharge under the Bankruptcy Code “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived....” 11 U.S.C. §

524(a)(2). Upon confirmation of a plan, the debtor, subject to exceptions that are not applicable here, is discharged from debts that arose prior to the date of confirmation. *See* 11 U.S.C. § 1141(d)(1). Thus, once a plan is confirmed, parties are barred from pursuing claims that arose prior to confirmation.

28. The discharge and injunctive provisions of the Plan and the Confirmation Order “carry out § 1141(d)(1) of the Bankruptcy Code... and § 524(a)(2) of the Bankruptcy Code.” *In re Nw. Airlines Corp.*, No. 05-17930 (ALG), 2008 WL 630449, at *4 (Bankr. S.D.N.Y. Mar. 5, 2008). These injunctive and discharge provisions are “critical features” of the Debtors’ chapter 11 cases that cannot be disregarded. *See Cent. Virginia Cmty. Coll. v. Katz*, 546 U.S. 356, 363–64 (2006) (“Critical features of every bankruptcy proceeding are the exercise of exclusive jurisdiction over all of the debtor’s property, the equitable distribution of that property among the debtor’s creditors, and the ultimate discharge that gives the debtor a ‘fresh start’ by releasing him, her, or it from further liability for old debts.”).

29. Thus, bankruptcy courts routinely enjoin parties from prosecuting actions in other courts that violate plan injunctions. *See, e.g., In re AMR Corp.*, 2016 Bankr. LEXIS 1666 (enforcing plan injunction provision of debtors’ confirmed chapter 11 plan by compelling claimant to dismiss its district court and administrative court actions); *In re Residential Capital, LLC*, No. 12-12020 (MG) (Bankr. S.D.N.Y. March 26, 2014) (Docket No. 6702) (enforcing plan injunction provision of debtors’ confirmed chapter 11 plan by compelling claimant to dismiss its state court action under threat of contempt of court); *In re Lear Corp.*, No. 09-14326 ALG, 2012 WL 443951 (Bankr. S.D.N.Y. Feb. 10, 2012) (enforcing plan injunction provision of debtors’ confirmed chapter 11 plan with respect to portion of claimants district court cause of action arising prior to the effective date of the plan.); *In re Lothian Oil, Inc.*, 531 F. App’x 428, 435 (5th Cir. 2013)

(upholding the bankruptcy court’s enforcement of plan injunction provision of debtors’ confirmed chapter 11 plan to enjoin claimants state court actions); *In re Kimball Hill, Inc.*, 565 B.R. 878 (Bankr. N.D. Ill. 2017) (enforcing plan injunction provision of debtor’s confirmed chapter 11 plan by compelling claimant to dismiss its state court action under threat of contempt of court).

30. Discharge of administrative expense claims is governed by section 503 of the Bankruptcy Code. *See In Collins v. J&N Rest. Assoc’s, Inc.*, 676 Fed. Appx. 18 (2d Cir. 2017) (noting that administrative expense claims are governed by section 503 of the Bankruptcy Code). Bankruptcy Courts have the inherent authority to “establish a bar date by which time all administrative expenses must be asserted against the debtor or face discharge.” *Id.* (citing *In re Eagle-Picher Indus., Inc.*, 447 F.3d 461, 464–65 (6th Cir. 2006); *Sanchez v. Nw. Airlines, Inc.*, 659 F.3d 671, 677 (8th Cir. 2011) (noting that creation of “bar date for the majority of administrative expenses” may “force creditors to comply with this bar date or face a discharge”). This is what the Court approved in these cases. Recently, this Court found that claims arising after the confirmation date but before the effective date of a plan were discharged where a plan established an administrative expense bar date for such claims. *See Hr’g Tr.* at 11-12, *In re CM Wind Down Topco Inc.*, No. 17-13381 (SCC) (Bankr. S.D.N.Y. Dec. 12, 2018) (Chapman, J.), ECF No. 1105. Courts in the Second Circuit and other courts routinely enter similar orders governing the allowance and discharge of administrative claims in accordance with section 503 of the Bankruptcy Code.⁵

⁵ *See, e.g., In re SunEdison, Inc.*, No. 16-10992 (Bankr. S.D.N.Y. July 28, 2017) [ECF No. 3735] (administrative claims bar date set 30 days after effective date with untimely claims discharged); *In re BCBG Max Azria Glob. Holdings, LLC*, No. 17-10466 (Bankr. S.D.N.Y. July 25, 2017) [ECF No. 591] (same); *In re Sabine Oil & Gas Corp.*, No. 15-11835 (Bankr. S.D.N.Y. July 27, 2016) [ECF No. 1359] (same); *In re Energy Future Holdings Corp.*, No. 14-10979 (Bankr. D. Del. Feb. 27, 2018) [ECF No. 12763] (same); *In re La Paloma Generating Comp., LLC*, No. 16-12700 (Bankr. D. Del. Nov. 6, 2017) [ECF No. 869] (same).

31. By definition, administrative expense claims can and do arise through the effective date of a plan, thereby necessitating an administrative claims bar date to address all such claims through that date. Among other things, this is necessary to allow a debtor to comply with section 1129(a)(9) of the Bankruptcy Code, which requires a chapter 11 plan to provide for the payment in full of allowed administrative expense claims on a plan's effective date.⁶ Accordingly, in WEC's chapter 11 cases, this Court approved a bar date for filing administrative expense claims set thirty days after the Effective Date to ensure that administrative expense claimants had the opportunity to assert their claims. Numerous courts in this and other districts have confirmed chapter 11 plans with similar or identical administrative claims procedures. *See Supra* Note 8.

32. Although section 503 of the Bankruptcy Code, rather than section 1141, governs the Plan's ability to address administrative expense claims, the Plan's treatment of administrative expense claims would also be consistent with section 1141 of the Bankruptcy Code if it were applicable. Section 1141(d)(1) provides:

Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—

(A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title, whether or not—

- (i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;
- (ii) such claim is allowed under section 502 of this title; or
- (iii) the holder of such claim has accepted the plan

11 U.S.C. § 1141(d)(1) (emphasis added). As set forth in §1141, all debts that arose prior to and through the confirmation are discharged through the successful confirmation of a plan. Section

⁶ As required by the Bankruptcy Code, the Plan provided for payment in full of allowed administrative expense claims on the Effective Date or such later date of the allowance of any administrative expense claim. Plan ¶ 2.1.

1141(d)(1) also specifically provides that the section can be modified through the language of the plan. 11 U.S.C. 1141(d)(1) (“Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan...”). The Plan modified the terms of the discharge as expressly permitted by § 1141(d)(1). Specifically, Section 11.3 of the Plan provides:

Except as otherwise expressly provided in the Plan, upon the Effective Date, in consideration of the distributions to be made under the Plan, each holder of a Claim or Interest and any Affiliate of such holder shall be deemed to have forever waived, released and discharged the Debtors, Wind Down Co, and the Reorganized Debtors, ***to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Interests, rights and liabilities that arose prior to the Effective Date***

Id. (emphasis added).

33. Numerous courts in this District and elsewhere have expressly acknowledged that chapter 11 plans and confirmation orders may discharge claims arising through a plan’s effective date. *See Cost*, 482 B.R. at 862 (“Thus, the Confirmation Order discharged and released all debts and claims that existed before December 31, 2009, the Effective Date of the Plan”); *Holmes v. Air Line Pilots Ass’n, Int’l*, 745 F. Supp. 2d 176, 196 (E.D.N.Y. 2010) (“Thus, the Discharge and Release Clause covers all debts and claims that existed before April 30, 2007, the Effective Date of the Plan. Accordingly, the applicability of the Discharge and Release Clause to the plaintiffs’ claims against Delta hinges primarily upon the court’s determination of whether the plaintiffs’ claims arose prior to April 30, 2007.”); *In re Orleans Homebuilders, Inc.*, 2017 WL 665953, at *9 (Bankr. D. Del. Feb. 17, 2017) (“I conclude that the Plan’s Discharge and Injunction enjoins the Association from pursuing any claims against the Reorganized Debtors arising prior to the Plan’s Effective Date...However, the Plan’s Discharge and Injunction does not affect any claims arising post-Effective Date.”); *Gilbert v. N. Am. Airlines*, 2014 WL 1271057, at *6 (E.D.N.Y. Mar. 26, 2014) (“Thus, the Reorganization Plan covers all debts and claims that existed

before the effective date of the Reorganization Plan, including employment discrimination claims.”).

34. Pursuant to the terms of the Plan and Confirmation Order, and the above-cited provisions of the Bankruptcy Code, the Ellis Claim was discharged on the Effective Date. The injunctions in the Plan and Confirmation Order bar Ellis from commencing or continuing any actions for claims that were discharged under the Plan, including the Ellis Claim. Ellis, however, filed and continued prosecution of the Complaint in contravention of the terms and provisions of the Plan and Confirmation Order. This Court has specifically retained jurisdiction under the Confirmation Order to prevent this sort of interference with WEC’s rights. *See* Confirmation Order ¶ 48; Fed. R. Bankr. P. 3020(d).

35. Accordingly, WEC respectfully requests that this Court enter an order consistent with the clear terms and provisions of the Confirmation Order and the Plan compelling Ellis to dismiss the Complaint and to refrain from taking any additional actions to prosecute the Ellis Claim.

Notice

36. Notice of this Motion has been provided in accordance with Bankruptcy Rule 3007 and the *Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c) and 9007 Implementing Certain Notice and Case Management Procedures*, dated April 4, 2017 [ECF No. 101]. WEC submits that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

37. No previous request for the relief sought herein has been made to this or any other court.

WHEREFORE, WEC respectfully requests entry the Proposed Order and such other and further relief as is just.

Dated: November 21, 2019
New York, New York

/s/ Robert J. Lemons

WEIL, GOTSHAL & MANGES LLP

767 Fifth Avenue

New York, New York 10153

Telephone: (212) 310-8000

Facsimile: (212) 310-8007

Robert J. Lemons

Gary T. Holtzer

Attorneys for Westinghouse Electric Company LLC

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re	: Chapter 11
WESTINGHOUSE ELECTRIC	: Case No. 17-10751 (MEW)
COMPANY LLC, et al.,	: (Jointly Administered)
Debtors.¹	
-----X	

**ORDER ENFORCING PLAN INJUNCTION AND
CONFIRMATION ORDER AND GRANTING RELATED RELIEF**

Upon the *Motion of Reorganized Westinghouse Electric Company LLC for Order Enforcing Plan Injunction and Confirmation Order and for Related Relief* (ECF No. [____]) (the “**Motion**”), filed by reorganized Westinghouse Electric Company LLC (“**WEC**”) pursuant to sections 105(a), 503, 524(a)(2), 1141(b), (c) and (d)(1) and 1142(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 3020(d) of the Federal Rules of Bankruptcy Procedures (the “**Bankruptcy Rules**”), sections 1.64, 2.1, 5.1, 5.4, 7.1, 11.1, 11.3, 11.9 and 13 of the *Modified Second Amended Joint Chapter 11 Plan of Reorganization* [ECF No. 2986] (the “**Plan**”), and paragraphs KK, 7, 12, 14, 15, 34, 45 and 48 of this Court’s order confirming the Plan [ECF No. 2988] (the “**Confirmation Order**”); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334, the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.), section 13 of the Plan and paragraph 48 of the Confirmation Order; and consideration of the Objection and the relief

¹ On September 25, 2018, the Bankruptcy Court entered the *Order (I) Consolidating the Administration of Certain Remaining Matters at the Lead Case; (II) Entering a Final Decree Closing Certain Affiliate Cases; and (III) Granting Related Relief*, closing certain of the chapter 11 cases [ECF No. 3956]. The reorganized debtors in the remaining chapter 11 cases, along with the last four digits of each reorganized debtor’s federal tax identification number are: Westinghouse Electric Company LLC (0933), Stone & Webster Services LLC (5448), WEC Carolina Energy Solutions, Inc. (8735), WEC Carolina Energy Solutions, LLC (2002), WECTEC Global Project Services Inc. (8572), WECTEC LLC (6222), and WECTEC Staffing Services LLC (4135). The reorganized debtors’ principal offices are located at 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066.

requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with the *Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c) and 9007 Implementing Certain Notice and Case Management Procedures*; and a hearing having been held on December 11, 2019 at 11:00 a.m. (Eastern Time) to consider the relief requested in the Motion (the “**Hearing**”); and the Court having found and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. Ellis is hereby enjoined from seeking any relief against WEC based on any alleged conduct or claims that occurred or arose before the Effective Date of the Plan.
3. Ellis’s filing of the Complaint to initiate the action caption as *Timothy Ellis v. Westinghouse Electric Company LLC.*, Civil Action No. 2:18-cv-01442-MRH, in the United States District Court for the Western District of Pennsylvania (the “**Complaint**”), and Ellis’s continued prosecution of the Complaint, violate the discharge, release and injunctive provisions of the Plan and Confirmation Order.
4. Pursuant to Sections 5.1 and 11.9 of the Plan, Ellis is hereby enjoined from proceeding with the action commenced by the Complaint, and is directed to dismiss the Complaint with prejudice within seven days of entry of this Order.
5. The terms and conditions of this Order shall be immediately effective and enforceable upon entry of the Order.

6. WEC and the Clerk of this Court are authorized to take all actions necessary or appropriate to give effect to this Order.

7. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: _____, 2019
New York, New York

THE HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE