WRITERS GUILD OF AMERICA WEST

The Risks of Investing in Endeavor

Conflicts of Interest Threaten Business Based on Representing Clients

With Endeavor Group Holdings, Inc. (Endeavor or EDR), a Los Angeles-based talent agency with media and sports segments, set for an initial public offering (IPO) on September 27, 2019, potential investors and interested parties should be aware of serious conflicts of interest inherent in Endeavor's key operations, which have caused substantial client loss and put the company's representation revenues at risk.

Endeavor's Business Depends on Representing Clients

Client representation, through the wholly-owned subsidiary William Morris Endeavor Entertainment, LLC, is a core component of Endeavor's operations, an untested business model for a public company. The company began in 1898 as the William Morris Agency and has grown through mergers and acquisitions of other agencies including the original Endeavor talent agency (2009), IMG (2014), and Rabineau Wachter Sanford & Gillett Literary Agency (2016). Endeavor purports to represent over 6,000 clients, and its "Representation" segment accounts for 36% of company revenues.

Endeavor's Current Practices Threaten Its Representation Business

Endeavor is engaged in several conflicted business practices—namely the negotiation of direct payments from clients' employers in the form of "packaging fees" and its expansion into content production and the direct employment of clients—which have led 1,400 television and film writer clients to leave the agency since April and prompted the filing of a lawsuit alleging violations of fiduciary duty, antitrust law, and civil racketeering.

- "Packaging fees" are payments Endeavor's talent agency negotiates for itself directly from the studios employing its clients. Endeavor leverages representation of its clients—primarily writers—to negotiate its own compensation, which includes upfront fees, paid out of the production budget of each episode, and a percentage of the TV series' profits, rather than the traditional 10% commission on clients' earnings. In violation of its fiduciary duty, Endeavor competes with its clients for payment from the budget and the profits of TV series. Because Endeavor's compensation comes directly from the studio rather than as a percent of its client's compensation, the agency's incentive to increase its client's pay is significantly reduced, or even eliminated.
- The creation of Endeavor Content, which produces film and television projects, is a conflict of interest because it combines a talent agency with an employer of the talent agency's clients within the same corporation. Acting as an employer and representing a client in salary negotiations are fundamentally at odds: an employer's incentive is to maximize its profits and keep labor costs low, while the agency is duty-bound to get the best deal it can for its clients. The last time a major talent agency crossed the line into production was in the early 1960s, when the U.S. Department of Justice filed an antitrust lawsuit that forced the company, MCA-Universal, to exit the agency business.

Endeavor has Lost 1,400 Television and Film Writer Clients Since April 13, 2019

Professional writers in the entertainment industry are represented by the Writers Guild of America West and Writers Guild of America East (jointly, WGA), labor unions with the exclusive right to delegate representation of writers to talent agencies. On April 13, 2019, after a 95.3% vote of its members, the WGA implemented a Code of Conduct that agencies must sign in order to represent WGA members. The Code of Conduct prohibits packaging fees and agency affiliated production entities. As Endeavor has not signed the Code, it is not able to represent WGA members. To date, approximately 1,400 writers have terminated representation with the agency.

Endeavor Faces Lawsuit Over Packaging Fees, Price-Fixing, Racketeering

In August, the WGA filed claims against Endeavor and two other major talent agencies in United States District Court. The lawsuit alleges that packaging fees violate California's fiduciary duty law because they create conflicts of interest between writers and agencies. The suit also alleges that Endeavor has engaged in collusive behavior with competitor talent agencies to set prices for packaging fees and blacklist those agents who have agreed to the Guild's Code of Conduct--*per se* violations of antitrust laws. In addition, the lawsuit alleges that packaging fees constitute illegal kickbacks from an employer to an employee representative as prohibited by Section 302 of the federal Labor-Management Relations Act, 29 U.S.C. §186, and therefore packaging fees constitute illegal racketeering under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962 *et seq.* The lawsuit seeks declaratory and injunctive relief prohibiting packaging, as well as damages for past violations.

Endeavor's Failure to Address Conflicts Will Have a Material Impact on Operations

Endeavor's S-1 discloses its dependence on clients and exposure to disruption if it is unable to manage conflicts of interest, but the recent loss of 1,400 clients makes clear that these risks are real and are already actively disrupting company operations.

- Endeavor acknowledges the presence of "actual and potential internal conflicts of interest" in their business, noting that "any failure to adequately address or manage internal conflicts of interest could adversely affect our reputation and the willingness of clients and third parties to work with us may be affected if we fail, or appear to fail, to deal appropriately with actual or perceived internal conflicts of interest."[1]
- Endeavor states that the WGA dispute could alter the commercial landscape of agent representation of writers and their ability to collect packaging fees or produce content in the future, and that any such change could have "an adverse effect on our business."[2]
- Endeavor acknowledges its dependence on its clients, and the risk from client departures. "We depend on identifying, signing and retaining as clients those artists, athletes, models and key brands whose identities or brands are in high demand by the public…Our failure to attract and retain these clients…or an untimely loss or retirement of these clients could adversely affect our financial results and growth prospects."[3]

Most of Endeavor's clients and agents are not bound by fixed-term contracts and can terminate their relationships with the agency at any time. The agency's conflicted practices have already alienated a significant portion of its client base and could jeopardize future representation revenues.

Additional Information

- For more information on packaging fees and producing at Endeavor and other agencies, please see Writers Guild of America West's report "No Conflict, No Interest."

If you have questions or would like to discuss these issues further, please contact the Writers Guild of America West's Research Director, Laura Blum-Smith at (323) 782-4688 or lblum-smith@wga.org.

[1] Endeavor Group Holdings, Inc. Prospectus on Form S-1, filed with the SEC on May 23, 2019, at 29.
[2] *Id.* at 39-40.
[3] *Id.* at 28.

Please note that this communication is for informational purposes only, and is not intended to provide, and should not be relied on for investment, legal, tax, or accounting advice. Investors should consult their own advisors and investment professionals to evaluate the merits and risks of any investment.

Writers Guild of America West is currently involved in a dispute with Endeavor over practices in its talent representation segment.