

Exhibit 251

Seth A. Rosenthal
T: 202.344.4741
F: 202.344.8300
sarosenthal@venable.com

August 26, 2019

BY EMAIL

Steve Bunnell, Esq.
David Leviss, Esq.
O'Melveny & Myers LLP
1625 Eye Street, NW
Washington, DC 20006
sbunnell@omm.com
dleviss@omm.com

Re: August 15, 2017 subpoena to Richard Cohen

Dear Steve and Dave:

As you know, Willco has fully cooperated with the investigation that O'Melveny is conducting on behalf of the D.C. Council pursuant to its authority under Section 3 of the Council Period 23 Rules and Investigation Authority Amendment Resolution of 2019. To date, Willco has produced hundreds of pages of documents responsive to O'Melveny's subpoena—the first tranche within four days of receiving the subpoena, the second and final tranche within eleven days.

Willco and its principal owner, Richard Cohen, wish to continue to cooperate with your investigation. At this time, however, Mr. Cohen, on the advice of counsel, must decline to appear for deposition or interview pursuant to your subpoena of August 15. He does so with regret. But as you are well aware, there remains an open, active investigation by the U.S. Attorney's Office of the same matters you are investigating on behalf of the Council. As Mr. Cohen's counsel, we have advised him that he should not subject himself to a deposition or interview in the midst of that criminal investigation. We understand that you would like to move forward with and complete your investigation as quickly as possible, as the Council has demanded, but we are reluctant to allow for the accelerated timing of your investigation to compromise our client's interests in an ongoing criminal probe. If you continue to

Steve Bunnell, Esq.

David Leviss, Esq.

August 26, 2019

Page 2

wish to talk to Mr. Cohen after the criminal investigation concludes, Mr. Cohen will voluntarily agree to be interviewed at that time.

Although Mr. Cohen cannot presently sit for an interview, Willco, in the spirit of cooperation, would like to furnish additional information that appears to be of interest to you. Among a number of broad, generalized requests in your July 29 document subpoena to Willco, there is one, and only one, specific matter that is identified: the “Relieve High Unemployment Tax Incentives Act of 2017” (“2017 Tax Incentives Bill”). Given that request, one of the issues you appear to be examining is whether Councilmember Evans, in exchange for Willco’s engagement with his consulting firm, NSE, attempted to benefit a Willco mixed use development proposal—albeit one that a District agency rejected—by inserting into the 2017 Tax Incentives Bill a provision to incentivize the construction of sound studios in the District.

As explained in detail below, the answer is no: Willco’s consulting agreement with NSE, entered into in November 2016, had no bearing on the introduction or advancement of the 2017 Tax Incentives Bill. While the NSE agreement was in place at the time the bill was introduced, the facts demonstrate the absence of any causal relationship between the two.

For one thing, the historical record is replete with hard evidence that Councilmember Evans, as well as other District officials, had actively supported legislation that provides incentives to develop film and television production studios in the District for many years prior to the introduction of the 2017 Tax Incentives Bill, and also for many years before Willco’s engagement with NSE. The sound studio provision in the 2017 bill was simply the latest iteration of that legislation. Councilmember Evans’ long-time support for incentives to build film and television production facilities, *not* Willco’s agreement with NSE, is why he introduced it.

Further, Willco knew full well that, under the plain language of the consulting agreement with NSE (which you have), Councilmember Evans was prohibited from taking action on Willco’s behalf in his capacity as a councilmember. Willco never would have asked for or expected anything like that from NSE or Councilmember

Steve Bunnell, Esq.
David Leviss, Esq.
August 26, 2019
Page 3

Evans, and there is no evidence that Willco ever made such a request or had such an expectation.

The Genesis of Legislation to Incentivize Development of Production Studios

For many years, District officials have taken an interest in the potential for economic growth and job creation that film and television production studios could bring to the District. They have lamented the fact that, while so many major films and television shows are based here, none are produced here. The paradigmatic example District officials have given in recent years is the popular Netflix series *House of Cards*. The show was based in the District, but filmed and produced at studios in Maryland.

Interest in legislation to incentivize media producers to ply their trade in the District dates back almost 15 years. In October 2006, at the request of then Mayor Anthony Williams, Council Chair Linda Cropp introduced B16-395, the “Film DC Economic Incentive Tax Credit and Reimbursement Act of 2006.” The purpose of the legislation was to create a non-lapsing grant fund to provide incentives to bring film, television and multimedia business to the District. The original bill gave the Office of Motion Picture and Television Development the authority to make discretionary grants for nationally distributed film and television projects that spent at least \$500,000 in qualified expenses for production activities in the District, in an amount not to exceed the lesser of 10% of qualified expenses or 100% of the taxes paid to the District on qualified expenses.

At the hearing on B16-395, held in November 2006 before the Council’s Finance and Revenue Committee, numerous witnesses testified about how the District was missing out on significant opportunities—opportunities seized by other states, including Maryland and Virginia—to attract film, television and multimedia business that would generate revenue, stimulate economic growth, and create jobs. See Committee Report on B16-395 (Nov. 30, 2006) (Councilmember Evans), at 2-4 (at <http://lims.dccouncil.us/Legislation/B16-0935>). This was the same justification that Mayor Williams offered in his letter asking Chairwoman Cropp to introduce the bill. *Id.*, Attachment A. Mayor Williams attached to his letter a detailed analysis of the

Steve Bunnell, Esq.

David Leviss, Esq.

August 26, 2019

Page 4

aggressive incentives that other jurisdictions (including Maryland and Virginia) offered to film and television industry producers and that the District did not. *Id.*

Notably, Councilmember Evans, who chaired the November 2006 committee hearing and was the only member to appear, presented an opening statement in support of the legislation. Like the hearing witnesses and the Mayor, he, too, observed that film and television producers were “passing over the District to film in Maryland, Virginia, and other jurisdictions that have provided tax incentives to attract projects.” *Id.* at 2. Councilmember Evans was, therefore, an early supporter of financial incentives for film, television and multimedia production in the District.

The Council passed B16-395 in December 2006, with all members present, including Councilmember Evans, voting in favor. The bill became D.C. Law 16-290 in May 2007.

Now codified at D.C. Code § 2-1204.11 *et seq.*, the original law underwent certain significant changes designed to make the District even more competitive with other jurisdictions. The first was B17-0477 (“The Film DC Economic Incentives Act of 2008”), which became D.C. Law 17-0187 in August 2008. Councilmember Evans was one of two co-sponsors of that bill. The second—the most extensive—was included in B18-0203, the Fiscal Year 2010 Budget Support Act of 2009 (Title II, Subtitle K, “Financial Incentives for Motion Picture and Television Productions”), which became Section 2071(a) of D.C. Law 18-111 in March 2010. Councilmember Evans supported and voted in favor of that legislation, too. There were additional, relatively minor amendments in 2015 and 2016, but the current statute closely resembles the 2010 version from D.C. Law 18-111. It establishes a fund to provide a number of different financial incentives to qualified film, television and multimedia producers and to qualified developers of production and postproduction facilities. The incentives include payments to qualified producers for production, personnel, job training and base infrastructure expenditures, as well as payments to qualified developers of production and postproduction facilities for base infrastructure expenditures. *See* D.C. Code § 2-1204.11.

Steve Bunnell, Esq.

David Leviss, Esq.

August 26, 2019

Page 5

B20-564

By 2013, notwithstanding the existence of the rebate fund, District officials remained concerned that the District was still losing out on opportunities to attract business from film and television producers. As a result, the Mayor's Office of Motion Picture and Television Development commissioned two different studies to explore the wisdom and feasibility of adopting a new incentives program for building production studios in the District.

The first study, published by ECONorthwest on July 8, 2013 and titled "An Analysis of the Entertainment and Media Industry in Washington, DC" ("ECONorthwest Study"), found that the District will "always have a strong base of [film] Industry activity, as "[f]ilm, video, and other media with storylines set in [the District] will likely arrive to do some shooting in the District." See ECONorthwest Study (attached as **Exhibit 1**), at 27. The study concluded that incentives would draw media industry business, and recommended that the District adopt an incentives program designed to target productions with storylines set in the District. *Id.* at 27-29.

The second study, published by Metropolitan Research and Economics ("MR&E") on September 26, 2013, was titled "Feasibility Study of Locating a Multimedia Soundstage in DC" ("MR&E Study") (attached as **Exhibit 2**). It found that, although the District has been a consistent performer in the film and television industry, it needed to "improve its portfolio of offerings" if it wanted to remain competitive, and was "missing out on competitive opportunities for a variety of reasons," including strong incentives offered in neighboring states and the free flow of labor and production inputs across the region. See MR&E Study, at I-1. The study further stressed that filming activity in the District generated both economic development and job growth and that soundstages "can effectively serve as the driver of additional filming activity." *Id.* at I-1 – I-2. Based on these findings, the study recommended construction of two soundstages "aimed at capturing a larger share of the regional business volumes" in order to "meet the market opportunity and drive economic development . . ." *Id.* at I-2. The study concluded that, to effectively promote filming activity and make it "economically feasible," the District had to offer a "subsidy to reduce the cost of capital for the project." *Id.*

Steve Bunnell, Esq.
David Leviss, Esq.
August 26, 2019
Page 6

Taken together, these two studies provided powerful support for those who wanted the District to become a bigger player in the film and television production industry and who believed incentives were needed to attract more industry business.

On November 5, 2013, on the strength of the studies, Councilmember Vincent Orange introduced a tax incentives bill, B20-564, which sought to promote development along the New York Avenue corridor. See <http://lims.dccouncil.us/Download/30699/B20-0564-Introduction.pdf> (“2013 Incentives Bill”). Among other development incentives, the bill, “the New York Avenue Gateway Hotel Development and Financial Incentives Act of 2013,” included a provision that offered incentives for the construction of three soundstages. Specifically, it made such construction eligible for all incentives provided in the Film DC Economic Incentive Act of 2006, see 2013 Incentives Bill, Section 6, at 6, which included payments of up to 25% of base infrastructure investment and up to 50% of qualified job training expenditures. See D.C. Code § 2-1204.11. The prefatory “findings” section of B20-564 included a string of references to the MR&E Study:

The Council of the District of Columbia finds that:

- (7) According to study done by Metropolitan Research & Economics (“MR+E”), for every dollar spent on output from filming activity an additional \$.345 of economic output is created across all sectors of the Washington, D.C. economy. Furthermore, every dollar spent creates \$.13 in earnings by households in Washington, D.C. across all sectors of the economy.
- (8) Each \$1 million in direct expenditures by motion picture producers supports 3.27 full-time equivalent employment positions across all sectors.
- (9) Every dollar the District spends on a film production, it generates \$2.64 in revenue.
- (10) The direct impact of motion picture productions includes the employment of a local workforce, the need for local materials and

Steve Bunnell, Esq.

David Leviss, Esq.

August 26, 2019

Page 7

supplies, the generation of occupancy at area hotels, and increased restaurant and retail revenues.

- (11) The most notable indirect impact of film production is increased tourism.
- (12) Three new soundstage facilities in Washington, D.C. would extend the stay of a feature film, accommodate episodic television, and accommodate business services which would all create a major positive economic impact for the City.
- (13) According to MR+E, one of the most ideal locations for the construction of a soundstage in the District is the New York Avenue Corridor. The area has the advantage of having a supply industrial zoned property and is accessible by a regional highway network and the Baltimore-Washington Parkway.

See 2013 Incentives Bill, Section 2, at 2-3.

While Councilmember Orange was the lead sponsor of B20-564, the bill had five other co-sponsors, including Councilmember Evans, as well Councilmembers Alexander, Barry, Bonds, and Graham. The bill was referred to the Committee on Transportation and the Environment and the Committee on Finance and Revenue.

Councilmember Evans took a special interest in the legislation. Just as he had supported the bills now codified at D.C. Code § 2-1204.11 *et seq.*, he threw his weight behind B20-564. In fact, in December 2013, the month after the bill's introduction, a neighborhood newspaper, *The Foggy Bottom Current*, featured an article on Evans' support for attracting the film industry to the District. See "Evans Calls for Efforts to Entice Filmmakers," *The Foggy Bottom Current*, December 18, 2013 (at <http://209.160.1.24/admin/uploadfiles/FB%2012-18-2013.pdf>). At the time, Evans was running for mayor. The article began by saying that Evans found "the whole 'House of Cards' situation deeply frustrating." It proceeded to explain how the District-based show, shot in Maryland, already had generated \$140 million and 2,200 jobs for Maryland's economy. "It is an outrage, in my view, that the District is so

Steve Bunnell, Esq.

David Leviss, Esq.

August 26, 2019

Page 8

inhospitable to filming,” Evans told the paper. The article reported that Evans supported various measures to make the District more hospitable to film production, including offering “its own film incentives.” Evans lamented how *The West Wing* had to be shot in California “because they didn’t have a big set here,” and consistent with his sponsorship of B20-564, asserted that “[t]hey need a big building where they can set up a stage.”

The Committee on Transportation and the Environment held its public hearing on B20-564 on February 7, 2014. The Committee on Finance and Revenue, then chaired by Councilmember Evans, held its hearing seven months later, on September 18, 2014. That hearing lasted over three hours. *See* Public Hearing on B20-0564, at <http://lims.dccouncil.us/Legislation/B20-0564>. A portion of the hearing addressed the provision regarding the incentives for building sound studios. The councilmembers who made statements and engaged with witnesses regarding that provision were Councilmembers Evans and Orange.

Councilmember Evans continued to advocate vigorously in support of the bill. Similar to what he told *The Foggy Bottom Current* nine months earlier, he said he and Councilmember Orange were committed to bringing the movie and television industry to the District and “will do whatever it takes to make it happen.” *See* Public Hearing on B20-0564 at 43:20 – 43:40. He touted the economic advantages of attracting the film and television industry to the District and emphasized that expanding the industry’s presence in the District would spur economic growth and create jobs for District residents. *See, e.g., id.* at 44:00 – 45:00; 1:18:50 – 1:22:15; 1:53:00 – 1:56:30.

Councilmember Orange echoed Councilmember Evans’ statements. He discussed the feasibility studies that he felt justified the sound studios provision, recounted lost opportunities to produce movies and television shows, identified the various businesses and professions that would benefit from the provision, and touted the jobs and job training opportunities that soundstages could generate. *See, e.g., id.* at 31:00 – 36:45; 1:10:15 – 1:12:45; 1:44:20 – 1:52:45. Confirming the persistent interest of District officials in attracting film industry business, Councilmember Orange also mentioned a trip that he and Mayor Gray had taken to Hollywood several years earlier to explore expanding the industry’s presence in the District. He reported

Steve Bunnell, Esq.
David Leviss, Esq.
August 26, 2019
Page 9

that he and the Mayor were informed that the District would need to do several things to successfully capture business opportunities in the industry. Construction of adequate sound stages was the first among them. *See id.* at 1:44:20 – 1:45:50.

A number of witnesses testified at the September 2014 hearing. Mr. Cohen was among them. Incentivized by the inclusion of the sound studios provision in B20-564, Willco had assembled conceptual plans for a mixed use residential-retail development that included a sound studio. The development would have been on a New York Avenue property that a Willco-affiliated entity and other investors had recently purchased through a single purpose entity, CLH New York Avenue LLC, in 2012.

It was the introduction of B20-564 that prompted Willco, as early as 2014, to pursue the idea of building a sound studio. Willco had never thought about building a sound studio before then. It adopted the concept as a means of capitalizing on B20-564, given its 2012 purchase of property along New York Avenue.

Ultimately, B20-564 did not make it out of committee before the 20th Council session concluded. This was not unexpected. At the hearing on B20-564, Councilmember Evans noted that the session was coming to an end, and advocated putting a new bill in place in the next legislative session. *See Public Hearing on B20-0564 at 1:21:15 – 1:21:30.* Moreover, support for the particular incentives B20-564 included for developing the New York Avenue corridor (particularly the trolley) was not universal: Ward 5 Councilmember McDuffie was not a strong advocate; Eric Goulet, the budget director in the Executive Office of the Mayor, testified that the bill was ambitious in scope and that development of the New York Avenue corridor should be studied more closely during the next Council session before moving forward; and John Ross from the Office of Chief Financial Officer testified that the bill, as drafted, would have a significant budgetary impact and indicated his office would be available to discuss changes in the proposed tax incentives that would make the fiscal impact more quantifiable. *See Public Hearing on B20-0564.*

Nonetheless, the fact that B20-564 was not enacted in the 20th Council session did not mean that District officials like Councilmember Evans gave up on the long-pursued concept of providing financial incentives for the development of production studios. To the contrary.

Steve Bunnell, Esq.
David Leviss, Esq.
August 26, 2019
Page 10

B22-218 and the Ongoing Effort to Incentivize Development of Production Studios

Enthusiasm for the concept of promoting economic and job growth through the development of sound studios endured following the end of the 20th Council session. As NBC4 reported in February 2015, Councilmembers Orange and Evans continued to push to have movies and television shows made in the District by clearing away regulatory impediments and by “offer[ing] studios tax incentives to film in D.C.” “Councilmembers Want to Bring Movie Production to D.C.,” NBC 4, February 1, 2015 (at <https://www.google.com/amp/s/www.nbcwashington.com/news/local/Jack-Evans-Wants-to-Bring-Movie-Production-to-DC-290275931.html%3famp=y>).

New legislation, picking up where B20-564 left off, came on March 31, 2017, when Councilmember Evans introduced B22-218, the 2017 Tax Incentives Bill. (Councilmember Orange had lost his re-election primary in June 2016 and left his Council seat early.) The 2017 Tax Incentives Bill provided incentives for commercial development in “high unemployment wards or areas” (e.g., Wards 7 and 8) and, similar to B20-564, for construction of up to three “film, television and digital media production facilities” with minimum square footage requirements. The latter provision made a film, television or media production facility eligible for: (1) certain real property and personal tax abatements and local employment tax credits if the facility would have a substantial impact in reducing high unemployment; (2) a 10% tax credit on eligible production costs for feature length films, television pilots and television series if 75% of the total stage work occurred at the facility; and (3) as with B20-564, all incentives in the Film DC Economic Incentives Act of 2006. *See* 2017 Tax Incentives Bill, Section 8, at 5-6.

By the time Councilmember Evans introduced the 2017 Tax Incentives Bill in March 2017, Willco was several months into its initial agreement with NSE. The agreement was a one-year retainer for \$50,000 for consulting services focused on trends and policy initiatives relevant to the local business community. The retainer was to be paid bi-annually in two equal installments of \$25,000, the first upon the agreement’s execution (on or about November 18, 2016), the second after six months (on or about May 18, 2017). There was no connection between Willco’s agreement with NSE and the introduction of the 2017 Tax Incentives Bill. That legislation was simply

Steve Bunnell, Esq.
David Leviss, Esq.
August 26, 2019
Page 11

the natural, anticipated extension of Councilmember Evans' long-running effort to incentivize film and television producers to do business in the District. He introduced the legislation not because Willco engaged NSE, but rather because he had been committed for years to providing incentives for the construction of soundstages. Willco neither asked nor expected him to introduce the legislation because of its consulting agreement with NSE.

The 2017 Tax Incentives Bill was referred to the Finance and Revenue Committee. The Committee held a hearing on the bill on May 8, 2017. Mr. Cohen testified in support of the legislation—just as he had testified in support of B20-564 nearly three years before. Mr. Cohen's testimony, too, was unrelated to Willco's agreement with NSE. He sought to testify because, as in 2014, Willco had assembled a proposal for a development that included a sound studio, and it otherwise supported incentives for development in underserved, high unemployment areas in the District. Further, Mr. Cohen's testimony had no relationship to the timing of the payment Willco made to NSE in May 2017. As noted, that payment had been scheduled six months earlier, upon execution of the Willco-NSE agreement.

The 2017 Tax Incentives Bill was marked up in late November 2017 and passed with widespread support by a 13-1 vote in January 2018. The bill became law on May 4, 2018.

Willco has not benefited from the 2017 Tax Incentives Bill. The proposal Willco submitted with its partners to the Office of Public-Private Partnerships was preliminarily evaluated unfavorably—effectively rejected—in March 2017, shortly before the 2017 Tax Incentives Bill was introduced. The proposal has not moved forward in the two and a half years since then.

* * * *

To the extent your investigation is examining whether Willco's agreement with NSE led to the insertion of the sound studio provision in the 2017 Tax Incentives Bill, the evidence proves it did not. As shown here, both the Council and the Mayor's office have a long history of interest in incentivizing film and television production in the

Steve Bunnell, Esq.
David Leviss, Esq.
August 26, 2019
Page 12

District. Councilmember Evans' history on the issue is especially pronounced. His extensive track record of advocacy for those incentives—not NSE's engagement with Willco—explains why he introduced the sound studio provision in the 2017 Tax Incentives Bill.

Sincerely,

A solid black rectangular redaction box covering the signature of Seth Rosenthal.

Seth Rosenthal