

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: Chapter 11  
WILLIAMS INDUSTRIAL Case No. 23-10961(BLS)  
SERVICES GROUP, INC.,  
et al, 824 Market Street  
Wilmington, Delaware 19801  
Debtors.  
Friday, August 18, 2023

TRANSCRIPT OF VIDEO HEARING RE:  
MOTION FOR ENTRY OF AN ORDER (I) APPROVING BIDDING PROCEDURES  
FOR THE SALE OF ASSETS, (II) SCHEDULING HEARINGS AND  
OBJECTION DEADLINES WITH RESPECT TO THE DEBTORS' AUTHORITY TO  
SELL, (III) SCHEDULING BID DEADLINES AND AN AUCTION, (IV)  
APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (V)  
APPROVING CONTRACT ASSUMPTION AND ASSIGNMENT PROCEDURES, AND  
(VI) GRANTING RELATED RELIEF  
BEFORE THE HONORABLE BRENDAN L. SHANNON  
UNITED STATES BANKRUPTCY JUDGE

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U.S. BANKRUPTCY COURT

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COURT DECISION

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1 (Proceedings commence at 9:35 p.m.)

2 THE COURT: -- parties can hear me?

3 MR. DESGROSSEILLIERS: Yes, Your Honor.

4 THE COURT: All right. I see --

5 MR. DESGROSSEILLIERS: Can you hear me okay?

6 THE COURT: I can hear you fine, Mr.

7 Desgrosseilliers. I'm advised we may be having some  
8 problems. I'm not sure if my camera is working.

9 THE ECRO: No, it is.

10 MR. DESGROSSEILLIERS: It is, Your Honor.

11 THE COURT: Oh, good.

12 MR. DESGROSSEILLIERS: I can see you.

13 THE COURT: Okay. Well, I'm sorry we had a little  
14 bit of a hiccup this morning.

15 This is a hearing --

16 MR. DESGROSSEILLIERS: (Indiscernible)

17 THE COURT: -- a continued hearing in the matter of  
18 Williams Industrial Services, Case Number 23-10961. It is a  
19 carryover from yesterday.

20 The item remaining on the agenda is the debtors'  
21 request for an order approving bidding procedures to get to  
22 an auction in early September. We had an extended hearing  
23 yesterday, and then the debtor requested an opportunity for  
24 an adjournment to this morning to see whether or not the  
25 issues that were sticking points with the Court and the U.S.

1 Trustee could be resolved.

2 And I will hear first from counsel for the debtor.

3 Mr. Desgrosseilliers, good morning --

4 MR. DESGROSSEILLIERS: Thank --

5 THE COURT: -- good to see you.

6 MR. DESGROSSEILLIERS: Sorry, Your Honor. Thank  
7 you, Your Honor. For the record, Mark Desgrosseilliers from  
8 Chipman, Brown, Cicero & Cole, proposed counsel for the  
9 debtors. With me, as yesterday, is Sean Gordon and Mr.  
10 Lepene from Thompson Hine.

11 Mr. Gordon intends to continue discussing the bid  
12 procedures as he did yesterday, so I would cede the podium to  
13 Mr. Gordon, Your Honor.

14 THE COURT: Very good.

15 Mr. Gordon.

16 MR. GORDON: Good morning, Your Honor. Thank you  
17 again for the quick continued setting today. I know  
18 yesterday was a long day in this case. And as you can  
19 imagine, there were various constituencies who have been  
20 having conversations late into the evening about this case.

21 What it boils down to, Judge, I'd like to just  
22 present the Court this morning with three potential options  
23 to go forward, based on what we think the evidence in this  
24 case compels, and also alternatives.

25 Option one for the Court, respectfully, would be to

1 approve the bid procedures as is, as they have been  
2 submitted. We are very mindful of the Court's concerns over  
3 that and we are aware of the Court's correspondence that was  
4 filed on the record yesterday. But we would respectfully  
5 submit that, in this particular case, the O'Brien standards  
6 are met --

7 THE COURT: What's --

8 MR. GORDON: -- for bid --

9 THE COURT: What's option two?

10 MR. GORDON: Okay, Judge. Option two is the term  
11 lender is proposing to backstop the bid protections, and they  
12 are agreeing to pay both the break fee and expense  
13 reimbursement, which would thereby address the Court's  
14 concern about the estate providing this particular  
15 protection.

16 THE COURT: Well, how does that work? Explain to  
17 me for a second -- because I understand -- and again, I'm not  
18 being critical. I appreciate the effort and the creativity.

19 But suppose -- let's just do simple round numbers.  
20 Let's assume that we've got a hundred-million-dollar  
21 transaction, a three-million-dollar breakup fee, and a one-  
22 million-dollar expense reimbursement, right?. In a typical  
23 exercise, then the initial overbid would be 105 million to  
24 capture the stalking horse bid of a hundred, to capture the  
25 three-million-dollar breakup fee and the one-million-dollar



1 expense reimbursement and then the million would be the  
2 increment above. Fine.

3 In this -- and in that instance, then, it would not  
4 make economic sense in a typical case for a debtor to take an  
5 offer of 101 million because the estate is actually under  
6 water on that transaction, compared to the stalking horse.  
7 Do you follow my math?

8 MR. GORDON: I do, Judge.

9 THE COURT: Yes.

10 MR. GORDON: I do.

11 THE COURT: But in the instance that you've  
12 described, the debtor, in fact, could accept a \$101 million  
13 and would be advantaged even if it had to pay the \$4 million  
14 over to the stalking horse because the estate is advantaged  
15 by a million dollars and that four-million-dollar expense is  
16 coming out of a third party. Is that how this would work?

17 MR. GORDON: I believe so, Your Honor. I think  
18 that the idea here is that there will be absolutely not hit  
19 to the estate for the break fee or the expense reimbursement,  
20 that it would be fully borne by the term lender.

21 And what it would do would address the Court's  
22 concern that the stalking horse is -- you know, is getting  
23 some bid protections without being a backup bid, but that is  
24 mitigated by this alternative solution.

25 THE COURT: Mr. Ward, was the Court's construction

1 consistent with your understanding?

2 MR. WARD: I understand the hypothetical, Your  
3 Honor. It -- as we envisioned it, if we are to backstop the  
4 breakup fee and expense reimbursement, we would be -- as a  
5 consultation party, would want rights with respect to what is  
6 to be a higher or otherwise better bid.

7 And how we envisioned it would be, yes, the estate  
8 is not paying the expense reimbursement or breakup fee to the  
9 extent that there is another transaction that we move forward  
10 with and, if we close, attempt to close with that  
11 transaction, we pay the breakup fee and expense  
12 reimbursement. The risk, of course, is if that transaction  
13 does not close.

14 But with respect to what is a higher or otherwise  
15 better bid -- so that was the risk. The risk is not that, if  
16 we get a higher bid that, in your hypothetical, is \$101  
17 million, we are left holding the bag. We would view that as  
18 no a higher or otherwise better bid.

19 THE COURT: So the --

20 MR. WARD: So, in that --

21 THE COURT: -- concern that --

22 MR. WARD: -- situation --

23 THE COURT: The concern that I have is -- and we're  
24 getting hypothetical and philosophical, but there are  
25 philosophical propositions that we are seeking to understand

1 and perhaps vindicate here.

2           The fact of the matter is Judge Gross noted in  
3 Fisker for a proposition that's not really -- that people  
4 don't really focus on, but the fact of the matter is that  
5 most bidding procedures and bid protections are, by  
6 definition, chilling. They reduce the ability, ease, and  
7 opportunity of competing bidders to come in because you can't  
8 come in for a dollar more, even though the estate would  
9 benefit from a dollar because we set up bid procedures that  
10 have initial increments. You can't necessarily have people  
11 come in that might be a little bit -- you know, a little bit  
12 of a reach because we've got qualified bid requirements.

13           You know, by definition, a breakup fee and an  
14 expense reimbursement create a functional hurdle for a  
15 competing bidder to come in. And what you've described is  
16 precisely the same chilling effect because a competing bidder  
17 here is going to come in and say I'll give a million dollars  
18 more, but I don't want to give you \$5 million more. And your  
19 point would be I'm going to be in the room and I'm going to  
20 tell the debtor that that's not a superior bid because your  
21 client is \$4 million under water. That's how that math works  
22 and it doesn't necessarily change.

23           MR. WARD: Respectfully, Your Honor, what I would  
24 say in response is that the prohibition on chilling of  
25 bidding is to serve the purpose of maximizing value. And so,

1 if we don't go down this path, what's going to happen is this  
2 bidder, in its current form of its bid, will not be approved.  
3 And so --

4 THE COURT: What if --

5 MR. WARD: -- they'll show up -- they'll show up at  
6 a naked auction and bid half the price and value is going to  
7 go down precipitously.

8 THE COURT: What's an --

9 MR. WARD: So we're trying to --

10 THE COURT: No, I get it and I'm not being  
11 critical. I mean, I appreciate people are trying to be  
12 creative. I am, frankly, flummoxed. There are not -- it is  
13 rare in a typical case -- and this is a typical case -- that  
14 I am presented with an issue or a challenge that I have never  
15 encountered before. And so I don't necessarily understand  
16 why we've had five hours yesterday and a carryover to a  
17 Friday morning hearing on whether or not someone should take  
18 a typical and standard commitment that is accompanied by the  
19 request for approval of bid protections for a stalking horse  
20 in this jurisdiction.

21 MR. GORDON: Judge, if I --

22 THE COURT: I don't understand.

23 MR. GORDON: Judge, if I may be heard on that point  
24 --

25 THE COURT: Yeah.

1 MR. GORDON: -- quickly. There is precedent in  
2 Delaware for having bid procedures without a backup bidder.

3 THE COURT: I didn't say --

4 MR. GORDON: In fact, in --

5 THE COURT: I have never said that there wasn't. I  
6 have a high level of confidence that it was not the subject  
7 of a prosecuted or pressed objection. It may have been one  
8 of a number of issues raised by the U.S. Trustee or others.  
9 The fact that there's been an order that allows it, if the  
10 U.S. Trustee didn't object, I don't know that I would raise  
11 this issue.

12 THE COURT: But I don't understand --

13 MR. WARD: (Indiscernible)

14 THE COURT: -- what's going on here. And when I  
15 don't understand what's going on, I'm unlikely to provide for  
16 opportunities and commitments to third parties that, again, I  
17 cannot perceive what is -- what the ultimate game here is.  
18 And again --

19 MR. GORDON: Judge, our --

20 THE COURT: Yeah.

21 MR. GORDON: I'm sorry.

22 THE COURT: Go ahead.

23 MR. GORDON: No. I was going to say our concept of  
24 what's going on here is we have a buyer that is ready and  
25 prepared to close and pay \$60 million --

1 THE COURT: Fine.

2 MR. GORDON: -- for --

3 THE COURT: I'll approve --

4 MR. GORDON: -- for this --

5 THE COURT: I will approve bid procedures that  
6 schedule an auction that give you a hearing date.

7 MR. WARD: Your Honor, I will say, though, that if  
8 -- right now, we have the buyer bound and we have the buyer  
9 bound at that price. And if Your Honor lets that buyer out  
10 by virtue of not conceding their lack of desire to be a  
11 backup bidder, they will walk. And what will happen is we'll  
12 come to the auction, we know -- it's no secret, we know --

13 THE COURT: They will --

14 MR. WARD: -- right now --

15 THE COURT: -- struggle mightily to obtain a good  
16 faith finding, but go ahead.

17 MR. WARD: Okay. So we know right now -- have a  
18 robust auction and that -- certainly, everybody helps.

19 THE COURT: Mr. Ward, hang on. You cut out for  
20 just a second.

21 MR. WARD: And I'm sorry, Your Honor.

22 THE COURT: Can you repeat?

23 MR. WARD: I'm traveling, I'm traveling and I'm in  
24 a hotel. Can you hear me now?

25 THE COURT: I can, no worries. But I -- you cut

1 out at the beginning of your comments.

2 MR. WARD: The concern, of course, is we get to the  
3 auction and there's no other bidder. The buyer effectively  
4 has a redo and they'll come in and bid at a different price.

5 And so, while I appreciate the U.S. Trustee's  
6 concerns as the sole objecting party to this as the watchdog  
7 of the process, the fact of the matter is that there are only  
8 two parties with an economic stake in this, which is the term  
9 lenders in the fulcrum position, as well as the unsecured  
10 creditors, which includes as part of their constituents, not  
11 economically, but the employees that they represent.

12 And so, when you look at the three stakeholders  
13 here -- which is term, committee, and 800 employees -- and I  
14 do think there's the distinct possibility that, without this  
15 buyer moving forward under this, people -- I have heard words  
16 like "conversion" and other things thrown out over the last  
17 day. And I'm not saying that as a threat, I'm just telling  
18 Your Honor that all bets are off at that point and who knows  
19 where the case goes. Those are the people with the economic  
20 stake.

21 And we've tried to come up with the most creative  
22 solution to hold this buyer to the table because they are the  
23 only game in town. And it's our risk to do that, it does not  
24 cost the estate anything, and all parties win. And you would  
25 say that the process doesn't win, but I think the process

1 does win because they have come in --

2 THE COURT: Explain to --

3 MR. WARD: -- they have --

4 THE COURT: -- me for a --

5 MR. WARD: -- made the bid --

6 THE COURT: -- moment --

7 MR. WARD: -- (indiscernible)

8 THE COURT: Mr. Ward, explain to me for a moment  
9 why I won't have this hearing next week, why I won't have --

10 MR. WARD: I think --

11 THE COURT: -- this hearing -- why I don't have  
12 precisely this issue next week and why don't I have a five  
13 percent breakup fee and why don't I have a hearing in two  
14 week.

15 MR. WARD: I think you won't have this hearing in  
16 two weeks because you don't have term lenders that are  
17 willing to do this and/or you won't have a situation where  
18 it's pretty clear that there is not going to be other bids.  
19 This has been -- this has been marketed ad nauseum.

20 THE COURT: Well, that -- oh, okay.

21 MR. KHEZRI: Your Honor, can I just jump in and  
22 maybe propose a solution. If --

23 THE COURT: Sure.

24 MR. KHEZRI: If there were no bid protections  
25 required on top of any opening bid, would that make Your



1 Honor comfortable, if it was just a 250,000 topping bid?

2 THE COURT: You mean, if the Court -- look, part of  
3 the deal for getting bid protections, primarily characterized  
4 by a breakup fee and an expense reimbursement, is that you  
5 need to sign up to be a backup bidder. Mr. Gordon, I'm sure,  
6 is right, I may have even signed orders that didn't  
7 necessarily require someone to be one. I've also signed  
8 orders that specifically required that, even if you were the  
9 third or fourth bidder at the auction, that you still needed  
10 to stay with your final bid. So it goes in different  
11 directions.

12 This issue is front and center. If you want a --  
13 the Court to schedule an order -- to schedule a hearing and  
14 set an auction and a bid deadline, et cetera, without approval  
15 of the bid protections that are built in, then that's  
16 something that I would likely entertain because it doesn't  
17 implicate the structural concerns that I'm identifying.

18 MR. GORDON: Judge, if I can be heard again  
19 quickly.

20 THE COURT: Yeah.

21 MR. GORDON: You know, base -- just from an  
22 evidentiary standpoint in this case, the UST hasn't provided  
23 any --

24 THE COURT: Mr. Gordon --

25 MR. GORDON: -- contrary --

1 THE COURT: -- I'm going to ask politely. We spent  
2 five hours yesterday. We've now been at this with you folks  
3 -- there is not a single person in four hours yesterday or  
4 today that has told me something that I do not know.

5 MR. GORDON: Understood, Your Honor.

6 THE COURT: And again, when a party comes into this  
7 court and declines to participate in standard and rudimentary  
8 practices established over decades in this court, I got a  
9 problem with that, both going forward and -- and I don't see  
10 anything special about this case. And the more significant  
11 concern that I have is I don't see anything that would not be  
12 thrown back at me and my colleagues to jam this process  
13 further.

14 We do a lot of sales. And I don't think that this  
15 is much of an ask. We talked yesterday, either on the record  
16 or in chambers, about a request that a party agree to be a  
17 backup bidder for a period literally of 24, 48, or 72 hours.  
18 At this point, again, I have asked -- I'm not getting -- I'm  
19 getting an answer, but it is not a convincing or an  
20 acceptable answer.

21 And the second question is, indeed, if someone is  
22 not willing to remain for that narrow period following the  
23 auction, in the event they don't win, I have my questions  
24 about whether or not they are, in fact, a committed and  
25 serious purchaser.

1 MR. GALARDI: Your Honor, it's Gregg Galardi. May  
2 I address the Court?

3 THE COURT: Yes.

4 MR. GALARDI: Your Honor, first, I'm filling in for  
5 Mr. Egan. He, unfortunately, had to attend a wake today, so  
6 that's my reason for being here.

7 THE COURT: Sure.

8 MR. GALARDI: Second, Your Honor, as you know, I'm  
9 a member of good standing in the Delaware Bar and I can't be  
10 *pro hac*'ed in, so I'd ask permission to address the Court.

11 (Laughter)

12 THE COURT: Of course.

13 MR. GALARDI: I -- well, listen, I --

14 THE COURT: You got to --

15 MR. GALARDI: -- (indiscernible)

16 THE COURT: You got to ask.

17 MR. GALARDI: You got to ask, and you can laugh at  
18 me every time I do, so I understand.

19 Your Honor, one, I guess there's probably two  
20 people on this call that have been doing this as long, you  
21 and me. I'm just simply going to say that we've done it  
22 (indiscernible) without backup bidders and I've done it in  
23 more jurisdictions, so I don't think it's absolutely a  
24 standard Delaware.

25 That said, on behalf of the bidder, we obviously

1 understand Your Honor's view and Your Honor moving quite  
2 quickly past option one. We understand the U.S. Trustee.  
3 Again, what's been extremely concerning of allegations of not  
4 good faith. We happen to disagree with those, but  
5 understand. We also don't want to take any risk with the  
6 U.S. Trustee, which I think now is likely to take appeals of  
7 any such ruling where -- if you don't have a backup bidder.  
8 And that appeal -- as you know, bid procedures are  
9 interlocutory -- can come much later.

10 So I just wanted to advise Your Honor, though, we  
11 disagree. We are not prepared to stay as the backup bidder  
12 and understand that that will mean that Your Honor will not  
13 approve us as the stalking horse. And I just wanted to  
14 explain that. We happen to disagree with the historical, but  
15 that's simply -- I understand the precedent that you do want  
16 to set now --

17 THE COURT: So, Mr. Galardi --

18 MR. GALARDI: -- as that would --

19 THE COURT: -- how do I --

20 MR. GALARDI: -- be precedent going forward.

21 THE COURT: How do I accept that -- look, the  
22 question of a backup bidder is not often the subject of  
23 extended colloquy and discussion. But when it becomes  
24 central -- and it is here -- I am -- I remain flummoxed. And  
25 I don't know whether or not -- I don't -- I can't fathom why

1 your client --

2 MR. GALARDI: Sure.

3 THE COURT: -- is prepared to close rapidly by --  
4 this hearing is on the 7th. Your client has made a verbal  
5 commitment that they would close by 5 p.m. on Friday, the  
6 8th, but they refuse to commit to close at 5:15 or on  
7 Saturday. I don't --

8 MR. GALARDI: And --

9 THE COURT: -- get that.

10 MR. GALARDI: -- Your Honor, I don't think that's  
11 exactly the position. And while Your Honor doesn't have  
12 these discussions in front of the Court, again, I'm going to  
13 give experience. I have been a debtors' lawyer, as you know,  
14 asked people to do this. I've been a committee -- not a  
15 committee lawyer, but arguing against it. All clients have  
16 concerns.

17 Sitting around as a backup bidder to secure value  
18 and wait for another party to close is something that many  
19 bidders do not want to do because they don't understand the  
20 timing, they don't understand what may happen to the  
21 business. And so there are business reasons why people don't  
22 want to be a backup bidder --

23 THE COURT: But Mr. Galardi --

24 MR. GALARDI: -- and wait for closing.

25 THE COURT: Mr. Galardi, I totally get that. I

1 don't disagree with that at all. And it is, again, not an  
2 unusual dynamic for a bidder to say I don't want my -- I  
3 don't want my deposit locked up for 14 or 30 days, I don't  
4 want to have to keep my financing committed because I'm  
5 paying on a daily rate for that commitment, I don't want to  
6 be hanging in limbo. What has been proposed by the debtor or  
7 at least kicked around is an idea that we're talking a matter  
8 of hours.

9           And again, I put this into my letter yesterday,  
10 that parties have spoken with immense confidence that there  
11 are no other bidders, that there will not be an auction, and  
12 that the company is on death's door. And I put into my  
13 letter yesterday that I understand all of those  
14 considerations and those actually kind of implicate that a  
15 stalking horse or a backup bidder is necessary because, if  
16 something goes askew at or after an auction, from Mr.  
17 Gordon's representations and the undisputed record before me,  
18 this company is in great trouble.

19           So, you know, I'm looking at this and I don't  
20 understand the process. But I am not prepared to enter an  
21 order providing the bid protections that, again, are  
22 customary and standard without requiring that there either be  
23 a backup bidder or that, to the extent there is a commitment  
24 from a third party to pay, that that is a real commitment  
25 that will not have any economic effect on the evaluation of

1 bids and the decision to accept a bid or not.

2 MR. GALARDI: Your Honor, first, with respect to  
3 your first point, we're willing to accept your ruling.

4 With respect to the lender proposal, I -- you've  
5 raised issues that I hadn't thought about. But also, we  
6 would still require -- I don't want to take the lenders at  
7 their word for funding. And so we think it creates all --  
8 you have mentioned good faith findings. I think it puts us  
9 in a terrible position, as well, to accept the lenders'  
10 proposal, so -- and we would still ask for a superpriority  
11 claim and they would then have to waive that superpriority  
12 claim. It just has --

13 THE COURT: There are --

14 MR. GALARDI: -- too much --

15 THE COURT: -- a lot --

16 MR. GALARDI: -- hair. There were --

17 THE COURT: Yeah, we talked about this yesterday,  
18 and I realize that you weren't here, and we talked about it  
19 in chambers and otherwise, that there are a lot of extremely  
20 complicated Rube Goldberg exercises that we are trying to go  
21 through. And I -- again, I'm not faulting anyone. The  
22 United States Trustee has raised an issue. I can't -- I  
23 don't think I could be more clear with the parties.

24 Let me ask a question, though. Mr. Gordon, you  
25 started by saying that there were three proposals. One and

1 two haven't gone that strongly. But what's three?

2 MR. GORDON: The third proposal was we just set  
3 dates and deadlines, as Your Honor is suggesting, and move  
4 forward with an auction process without stalking horse  
5 approval or bid protections. This is, in the debtors'  
6 position, the worst option.

7 I think what we're hearing from Mr. Galardi, at  
8 least reading between the tea leaves and looking at this  
9 forest through the trees, is that the stalking horse bidder,  
10 who is right now committed to pay -- to potentially pay \$60  
11 million for these assets that all fiduciaries in this estate  
12 agree is the absolute best result that could happen here, is  
13 trying to re-trade this deal.

14 And what we're suggesting with at least option two  
15 is that the term lender be put in place to pay the break fee  
16 to address the process concerns that Your Honor has raised  
17 and keep this stalking horse committed to what they signed up  
18 for, and which was negotiated at arm's length by many, many  
19 constituencies through this process. This -- there have been  
20 many professionals working long hours and hard for six  
21 months.

22 And I know it's cliché, Judge, and I know everybody  
23 says it in every single case. But we do care about the  
24 declining value, we do care about preservation of jobs, we do  
25 care about all these things from the debtors' perspective.



1 And it would be unfair and unjust to allow this stalking  
2 horse bidder to re-trade this deal over a small term that is  
3 hypothetically, most likely not even going to come into play.  
4 And that's the factual record that we're dealing with.

5 And as I suggested earlier, Judge, the U.S. Trustee  
6 has argued that it's illogical. There is no case law in his  
7 brief. There is no contrary evidence put before this Court  
8 that these bid procedures are not reasonable under these  
9 circumstances, in this particular case. And for that reason,  
10 Judge, we would respectfully request, if the Court can't  
11 legitimately get behind option one, option two keeps the  
12 stalking horse bidder bound to what it agreed to do and the  
13 price it agreed to pay. It's a workaround that works and  
14 it's completely permitted under the O'Brien standards.

15 The O'Brien standards, you've got significant  
16 expenditure of time, energy, and resources that went into  
17 preparing the stalking horse bid. That's the checkboxes  
18 there. We've put in proffered evidence that is uncontested  
19 and not cross-examined.

20 We also have the second prong, which is aggregate  
21 amount of the bid protections is reasonable. It's  
22 reasonable, Judge. We've got a three percent break fee.  
23 We've got another party that's stepping in saying they're  
24 going to pay for it. We also have provisions that we've put  
25 in the bid procedures order, as we mentioned yesterday, that

1 said, if there is an alternate transaction that doesn't close  
2 or whatever, they don't even get the break fee.

3 So we've put in all the bells and whistles and  
4 protections that we can to address the Court's process  
5 concern. It would be unjust and unfair to let this stalking  
6 horse bidder walk away right now from its commitment to pay -  
7 - to potentially pay \$60 million in a few weeks for these  
8 assets. And for that reason, we would ask that the Court --  
9 if it's not going to grant option, we go with option two.

10 MR. WARD: Your Honor, if I may at some point be  
11 heard?

12 THE COURT: Sure.

13 MR. WARD: It -- I really -- I would hate to get  
14 into a theoretical debate with Your Honor about whether the  
15 process is to serve the result or the result is to serve the  
16 process. But I would just respectfully request Your Honor to  
17 consider, as this plays out -- and I understand you would  
18 want a backup bidder at the auction and see the need for the  
19 backup bidder at an auction. Candidly, I see the need for a  
20 backup bidder at the auction, too. That's very important and  
21 it's always important.

22 But more important is to have a lead bidder. And  
23 if this lead bidder walks, we don't have that. And what will  
24 happen is we will have a naked auction at which this buyer  
25 can come in at any price and there's nothing to drive up

1 value. And when you couple that with the fact that the  
2 creditors' committee supports this as the only other economic  
3 stakeholder -- I know you had comments about orchestration  
4 yesterday, and I understand that, but nothing was  
5 orchestrated by the creditors' committee. You know, they're  
6 the involuntary creditors of this mess. And they're on  
7 board.

8 And when you consider the predicament that we are  
9 in for the process to drive down value so precipitously with  
10 the result that I'm gravely concerned that Your Honor is  
11 proceeding, I would just respectfully urge Your Honor to look  
12 at yes, we want a backup bidder, but we want this bidder the  
13 most.

14 THE COURT: Okay. Anyone else?

15 (No verbal response)

16 THE COURT: All right. Here's what we're going to  
17 do.

18 There has been a request for what's been described  
19 as "option two," which is a commitment by the term lenders to  
20 pay. I will go with that option.

21 I'm going with that option, and I want to be clear  
22 I'm going with that option because, as a practical matter,  
23 the stalking horse has been accused, without rebuttal by the  
24 debtor, of seeking to trigger some sort of technical or non-  
25 typical default to give it an opportunity to walk from its

1 commitment and re-trade its deal. I don't want that to happen  
2 and I think that that would be troublesome and problematic.

3 But as a practical matter, I have dealt with this  
4 issue before and I have dealt with unwilling and  
5 unenthusiastic stalking horses. And it goes to the tension  
6 that the Court described yesterday in how we manage the  
7 process. And we when you talked, Mr. Ward, a moment ago,  
8 about whether it's the process yields the result or the  
9 result yields the process, the Court's focus is largely on  
10 the process.

11 And I am, again, deeply troubled by totally  
12 unsatisfactory explanations for a refusal to commit to what  
13 would be standard, typical, normal, and an expectation.

14 The Court's concerns with respect to the impact on  
15 the process are not resolved, but at least partially  
16 addressed by the commitment by the term lenders to make the  
17 payments that are necessary. And again, it is the debtors'  
18 plaintive request to ensure that a process remains, so that a  
19 stalking horse and a sale process can go forward.

20 With that, the Court would entertain the order.  
21 And I will look for that to be submitted under certification.

22 We are adjourned.

23 COUNSEL: Thank you, Your Honor. Thank you, Your  
24 Honor.

25 (Proceedings concluded at 10:04 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

  
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August 18, 2023

Coleen Rand, AAERT Cert. No. 341  
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