

JUDGE VICTORIA S. KAUFMAN'S PROCEDURES FOR AUCTION SALES

1. Approval Process: Parties seeking approval of auction procedures may elect to bring a separate motion for approval of such procedures in advance of the sale motion pursuant to LBR 6004-1(b) or to include a request for approval of the sale procedures in the sale motion itself. Parties should be aware that, if advance approval is not sought, it may be more difficult for the movant to persuade the Court to approve a break-up fee or expense reimbursement for a stalking horse or to preclude someone from bidding on the ground that they have not complied with the proposed sale procedures.
2. Auction Location/Identity of Auctioneer: If the parties so request, Judge Kaufman is generally willing to conduct an auction herself on the record at the time of the hearing on the sale motion or to permit the movant to conduct the sale in the courtroom, at another location and/or another time, if appropriate. If the sale is conducted outside of court, the movant need not provide the court with a transcript of the auction proceedings in order to obtain approval of the sale. A report from the movant as to the outcome of the auction may suffice.
3. Conduct of Bidding: Parties will be required to comply with any bidding procedures approved by the Court, including any overbid deposits, proof of bidder's financial ability to close, and any other requirements for a qualified bidder. Parties must also comply with any minimum overbid increments. (However, parties are always welcome to increase their bids by more than the minimum required overbid increment, should they so desire.) A bidder may elect to stop bidding at any time and then resume bidding later in the auction process, so long as the auction has not been concluded by that point.
4. Willingness to Make Exceptions: The movant may propose any auction procedures that the movant considers reasonable and appropriate under the circumstances for a given sale. Judge Kaufman will consider all requests for approval of proposed auction procedures on a case-by-case basis.
5. Break-up Fees and Expense Reimbursements:
 - a. As one of the justifications for approval of a breakup fee for a stalking horse is to reimburse the stalking horse for the costs that it has incurred in serving as a stalking horse, as a general rule, Judge Kaufman generally does not award both an expense reimbursement and a break-up fee.
 - b. In approving expense reimbursements, Judge Kaufman prefers to approve the reimbursement of the stalking horse's *actual* expenses up to a maximum amount or cap, rather than to approve a "flat fee" expense reimbursement that doesn't require a showing that any expenses have actually been incurred.

- c. Judge Kaufman is unlikely to approve a breakup fee of more than 1 to 4 percent.
 - d. Judge Kaufman may be willing to make an exception to any of these rules for cause shown in an appropriate case.
6. Backup Bidders: With the consent of the backup bidder, parties may include provisions in a sale order that *require* the backup bidder to perform in the event the successful bidder fails to close a transaction, but Judge Kaufman prefers to approve provisions in a sale order that create an option for a backup bidder to purchase at a set price if the successful bidder defaults. In such an instance, if the successful bidder fails to close in a timely manner, the movant notifies the backup bidder that it has a very short window of time within which to elect to perform, sign the asset sale agreement and return its deposit. Provided the backup bidder exercises this option, the parties need not return to court to obtain approval of a sale to the backup bidder. If the backup bidder and the movant agree to a sale of the assets on terms different from those contemplated by the existing sale order, the movant will need to seek approval of the new sale.
 7. Sale Free and Clear: If the movant proposes the sale to be free and clear of any interest in such property, the movant must identify which provision of section 363(f)(1)-(5) is satisfied.
 8. Distribution of Proceeds: Parties must identify whether proceeds are to be immediately distributed on the closing date. If so, parties must identify the priority scheme in which parties are to be paid, including payment of professional fees, break up fees, or payment of any specific secured claims. Otherwise, the movant may request that the proceeds be kept in an interest-bearing-account pending resolution of any issues preventing immediate distribution.
 9. Good Faith Findings: As a general rule, a declaration from the movant as to the manner in which the purchaser was located, whether the property was adequately marketed, and the arms-length nature of the negotiations will suffice to establish the showing necessary to obtain a good faith finding under section 363(m); however, if it appears that there may be connections or facts and circumstances of which the movant may not be aware, the Court may require live testimony at the auction hearing from the successful bidder and any other relevant party.
 10. Rule 6004(h): If no one has objected to the sale or any objections to the sale have been resolved consensually by the conclusion of the sale hearing, Judge Kaufman is generally willing to include a waiver of the 14-day stay of Fed. R. Bankr. Proc. 6004(h) in the sale order, provided that such relief was sought in the sale motion.