

JUDGE MUND'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.
2. Auction Location/Identity of Auctioneer: If the parties so request, Judge Mund 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 at another location and/or time. 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 movant as to the outcome of the auction will generally suffice.
3. Conduct of Bidding: Parties will be required to comply with any bidding procedures approved by the Court, including 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: Movant may propose any auction procedures that movant considers reasonable and appropriate under the circumstances for a given sale. Judge Mund 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 Mund is reluctant to approve both an expense reimbursement and a bust-up fee.
 - b. In approving expense reimbursements, Judge Mund 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. In larger cases, Judge Mund rarely approves a breakup fee of more than 1 to 4 percent. In smaller cases, she may approve a larger percentage in order to provide sufficient incentive for someone to serve as the stalking horse.
 - d. Judge Mund 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 Mund 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. Good Faith Findings: As a general rule, a declaration from the movant as to the manner in which the purchaser was located 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 movant may not be aware, the Court may require a declaration from the purchaser as well. The Court is unlikely to require live testimony from the successful bidder unless the facts and circumstances suggest that collusion, either among bidders or as between the successful bidder and the debtor or its insiders, may have occurred.
8. 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 Mund 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.