

JUDGE SANDRA KLEIN'S PROCEDURES FOR AUCTION SALES

1. Approval Process

Parties seeking approval of auction procedures may bring a separate motion for approval of such procedures before the sale motion pursuant to LBR 6004-1(b), or may include a request for approval of the sale procedures in the sale motion itself. Parties should be aware, however, that if advance approval is not sought, it may be more difficult for the movant to: a) persuade the Court to approve a break-up fee or expense reimbursement for a stalking horse; or 2) preclude someone from bidding because they have not complied with the proposed sale procedures.

2. Auction Location/Identity of Auctioneer

Generally, Judge Klein will not conduct an auction herself on the record. She permits the movant to conduct the sale outside the courtroom, at another location and/or at another time. The movant need not provide the Court with a transcript of the auction proceedings to obtain approval of the sale. A report from movant regarding the outcome of the auction will be sufficient.

3. Conduct of Bidding

Parties must comply with all Court approved bidding procedures, including any minimum overbid increments. Parties may escalate their bids and may increase their bids until the auction has concluded as long as they comply with minimum overbid increments and the Court approved bidding procedures.

4. Willingness to Make Exceptions

Movant may propose any auction procedures that movant believes are reasonable and appropriate under the circumstances. Judge Klein will consider all requests for approval of proposed auction procedures on a case-by-case basis.

5. Break-up Fees and Expense Reimbursements

a. Judge Klein is reluctant to approve both a breakup fee and expense reimbursement for a stalking horse because one of the justifications for approving a breakup fee is to reimburse the stalking horse for the costs it incurred in serving as a stalking horse.

b. Judge Klein prefers to approve reimbursement of the stalking horse's actual expenses up to a maximum amount, rather than a flat fee expense reimbursement that does not require evidence of actual expenses incurred.

c. Judge Klein considers the amount of or conditions concerning the payment of breakup fees and expense reimbursements on a case-by-case basis. She does not have any guidelines or rules of thumb regarding the amount of or conditions concerning the payment of breakup fees and/or expense reimbursements.

d. Depending on the facts of a particular case, Judge Klein may be willing to make an exception to these guidelines if there is cause to do so.

6. Backup Bidders:

If the successful bidder fails to close a transaction, the movant may require the backup bidder to perform. Judge Klein prefers to approve provisions that create an option for a backup bidder to purchase at a set price if the successful bidder defaults. If the backup bidder exercises this option, the parties need not return to court to obtain approval of the sale to the backup bidder. If, however, the backup bidder and the movant agree to a sale of the assets on different terms, the movant will need to seek approval of the new sale.

7. Good Faith Findings

Generally, declarations from the movant and the buyer regarding the manner in which the buyer was located, the arms-length nature of their negotiations, and any connections between the movant and the buyer are sufficient under section 363(m). Judge Klein is unlikely to require live testimony from the successful bidder unless the facts and circumstances suggest that collusion may have occurred.

8. Rule 6004(h)

If no oppositions are filed or if all oppositions have been consensually resolved, Judge Klein will generally waive the 14-day stay of Fed. R. Bankr. Proc. 6004(h). This will only occur if such relief was requested in the sale motion.