

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

JORDAN HEALTH PRODUCTS I, INC., *et al.*¹

Debtor.

Chapter 11

Case No. 24-12271 (TMH)

Hearing Date:

October 22, 2024 at 1:00 p.m.

Objection Deadline:

October 18, 2024

Re: Docket No. 14

**UNITED STATES TRUSTEE’S OBJECTION TO DEBTORS’ MOTION FOR ENTRY
OF AN ORDER (A) APPROVING BID PROCEDURES IN CONNECTION WITH THE
POTENTIAL SALE OF THE DEBTORS’ ASSETS, (B) SCHEDULING AN AUCTION
AND A SALE HEARING, (C) APPROVING THE FORM AND MANNER OF NOTICE
THEREOF, (D) AUTHORIZING THE DEBTORS TO ENTER INTO STALKING
HORSE AGREEMENT, (E) APPROVING BID PROTECTIONS, (F) APPROVING
PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND
LEASES, AND (G) GRANTING RELATED RELIEF**

Andrew R. Vara, United States Trustee for Regions Three and Nine (the “U.S. Trustee”), through his undersigned counsel, files this Objection (the “Objection”) to *Debtors’ Motion for Entry of (I) An Order (A) Approving Bid Procedures in Connection With the Potential Sale of the Debtors’ Assets, (B) Scheduling an Auction and a Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Authorizing the Debtors to Enter Into Stalking Horse Agreement, (E) Approving Bid Protections, (F) Approving Procedures for the Assumption and Assignment of*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Jordan Health Products I, Inc. (9981); Global Medical Imaging, LLC (8828); D.R.E. Medical Group, Inc. (2356); Technical Options of Georgia, Inc. (5488); Jordan Health Products III, Inc. (9350); Transtate Equipment Company, Inc. (4201); Equipment Maintenance Solutions, Inc. (7216); Ultra Solutions Holdings, Inc. (2305); Ultra Solutions, LLC (3425); Pacific Medical Group, Inc. (4339); and Pacific Medical Holdings, Inc. (2135). The Debtors’ service address is 8700 W Bryn Mawr Ave., Suite 720S, Chicago, IL 60631. Debtor Jordan Health Products I, Inc. is doing business as Avante Health Solutions.

Contracts and Leases, and (G) Granting Related Relief (Dkt. No. 14)(the “Bid Procedures Motion”).

Introduction

1. The Bid Procedures Motion seeks approval of a sale of substantially all of the Debtors’ assets to proposed stalking horse bidder, AHS Acquisition, LLC (an affiliate of Staple Street Capital). AHS purchased the Debtors’ pre-petition first lien debt two weeks before the Debtors filed their bankruptcy cases. AHS proposes a \$72 million credit bid, assumption of cure costs and certain operational expenses, and no other cash component. Under the proposed bid procedures, AHS will receive expense reimbursement of up to \$750,000 if it is outbid, and if there is an auction, AHS will also be able to credit bid its expense reimbursement for subsequent rounds of bidding after any initial overbid.

2. Expense reimbursement is intended to be an incentive for a party to invest time and money to do the due diligence necessary to make a stalking horse bid, knowing it might be outbid at the auction and therefore out-of-pocket for its expenses. As set forth in the First Day Declaration and the Bid Procedures Motion, AHS purchased the Debtors’ first lien pre-petition debt for the express purpose of purchasing the Debtors’ assets in a 363 sale. *See* First Day Declaration of Rob Hubbard (Dkt. No. 10)(the “Hubbard Dec.”), ¶ 69.

3. Because AHS did not need any incentive to make the stalking horse bid, the expense reimbursement is not “actually necessary to preserve the value of the estate,” as required under Third Circuit law. *See Calpine Corp. v. O’Brien Env’t Energy, Inc. (In re O’Brien Env’t Energy, Inc.)*, 181 F.3d 527, 535 (3d Cir. 1999), discussed below.

4. For these reasons, set forth in more detail below, the U.S. Trustee respectfully requests that this Court deny the Bid Procedures Motion.

Jurisdiction

5. Under (i) 28 U.S.C. § 1334, (ii) applicable order(s) of the United States District Court for the District of Delaware issued under to 28 U.S.C. § 157(a), and (iii) 28 U.S.C. § 157(b)(2), this Court has jurisdiction to hear and determine the Bid Procedures Motion and this Objection.

6. Under to 28 U.S.C. § 586(a)(3), the U.S. Trustee is charged with administrative oversight of the bankruptcy system in this District. Such oversight is part of the U. S. Trustee's overarching responsibility to enforce the laws as written by Congress and interpreted by the courts. *See Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U. S. Trustee as a "watchdog").

7. Under 11 U.S.C. § 307, the U. S. Trustee has standing to be heard on the issues raised by this Objection. *See United States Trustee v. Columbia Gas Systems, Inc. (In re Columbia Gas Systems, Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that the U. S. Trustee has "public interest standing" under 11 U.S.C. § 307 which goes beyond mere pecuniary interest).

Relevant Factual Background

8. On September 24, 2024, the Debtors received notice that their prior first lien lenders' agent had resigned and AHS Acquisition Holdings, LLC ("AHS"), the new agent, had acquired their debt. *See* Hubbard Decl., ¶40. According to the Debtors, when they thought "all hope was lost after having exhausted all of [their] options to find financing or viable bidders," AHS emerged to purchase the Debtors' first lien debt and act as the stalking horse bidder for a sale of the Debtors' assets. *Id.*, ¶69.

9. On October 8, 2024 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses as debtors-in-possession under 11 U.S.C. §§ 1107 and 1108.

10. Also on the Petition Date, AHS signed the Asset Purchase Agreement (“APA”), and entered into a debtor in possession financing agreement with the Debtors. *See* Bid Procedures Mot., Dkt. 14, Ex. A, Interim DIP Order, Dkt. 53, Ex. A.

11. At that same time, the Debtors filed the Bid Procedures Motion, which, among other things, seeks approval of certain bid procedures for the sale of substantially all of the Debtors’ assets through a bidding and auction process. *See* Dkt. No. 14.

12. The Bid Procedures Motion identifies AHS as the stalking horse bidder. AHS’s bid consists of a credit bid of \$72 million, assumption of cure claims and post-petition accounts payable, and all product liability actions arising after the sale closes. It has no cash component.

13. The Bid Procedures Motion seeks a bid deadline of November 15, 2024, an auction date of November 19, 2024, and a sale hearing on November 22, 2024, roughly 45 days after the Petition Date. The deadline to object to the Bid Procedures Motion is October 18, 2024, and the related hearing is October 22, 2024 at 1:00 p.m.

14. By the Bid Procedures Motion, the Debtor seeks approval of certain bid protections in favor of AHS, including expense reimbursement of up to \$750,000, payable to AHS in the event it is outbid at the auction for the Debtors’ assets.

15. The Bid Procedures require that each bidder, other than AHS, submit a bid that exceeds AHS’s bid by the amount of the expense reimbursement, plus an additional \$750,000, for a total overbid of \$1,500,000. *See* Bid Procedures Motion, p. 21, third paragraph.

16. The U.S. Trustee appointed an official committee of unsecured creditors in these cases at approximately 5:15 p.m. on October 17, 2024.

Legal Argument

A. AHS Is Not Entitled to Expense Reimbursement

17. The U.S. Trustee objects to the Bid Procedures Motion because expense reimbursement is not reasonable or appropriate under relevant Third Circuit law where, as here, the stalking horse bidder purchased the Debtors' first lien debt immediately before the bankruptcy filing for the express purpose of buying the Debtors' assets in a bankruptcy sale.

18. To award expense reimbursement to a potential bidder, the Court must determine that the reimbursement was an actual and necessary cost and expense of preserving the estate. In *O'Brien*, the Third Circuit Court of Appeals held that "the allowability of break-up fees, like that of other administrative expenses, depends upon the requesting party's ability to show that the fees were actually necessary to preserve the value of the estate." *O'Brien*, 181 F.3d at 535.

19. The burden is on a debtor to prove the necessity of, and benefit to the estate from, any proposed break-up fee or expense reimbursement. In addition, although "the considerations that underlie the Debtor's judgment may be relevant to the bankruptcy court's determination on a request for break-up fees and expenses," "the business judgment rule should not be applied as such in the bankruptcy context." *Id.*

20. Moreover, as recognized by the Third Circuit in *O'Brien*:

[E]ven if the purpose for the break-up fee is not impermissible, the break-up fee may not be needed to effectuate that purpose. For example, in some cases a potential purchaser *will bid whether or not break-up fees are offered* In such cases, the award of a break-up fee cannot be characterized as necessary to preserve the value of the estate.

181 F.3d at 535 (emphasis added).²

21. That is the situation presented here. AHS bought the Debtors' first lien debt for the express purpose of buying the Debtors' assets free and clear of other liens and encumbrances under §363. AHS would thus have bid regardless of whether the Debtors offered expense reimbursement. AHS did not need any additional incentive to provide the stalking horse bid. The proposed expense reimbursement is thus not "actually necessary to preserve the value of the estate" as required under *O'Brien*.

22. The added cost of not only the proposed \$750,000 expense reimbursement, but the additional required overbid of another \$750,000 (for a total of \$1.5 million), makes it more difficult for other bidders to propose a qualified bid in the first instance, let alone to become the winning bidder. AHS is also allowed to credit bid the proposed expense reimbursement as an overbid in subsequent bidding rounds, extending that difficulty into the entire auction process. The expense reimbursement is not a true bid protection, but rather a blocking device to ensure that AHS is the winning bidder for the Debtors' assets. This makes the expense reimbursement, regardless of amount, impermissible under the *O'Brien* standard. It should not be approved.

B. The Deadline for Parties to Object to the Bid Procedures Motion Should be Extended

23. The Committee was formed late yesterday afternoon. The objection deadline with respect to the Bid Procedures Motion is today, October 18, 2024, less than 24 hours after the Committee's formation and certainly before the Committee has had the opportunity to obtain counsel. Under these circumstances, the deadline to object to the Bid Procedures Motion should be extended, and the hearing to consider the Bid Procedures Motion, currently scheduled for

² See also *In re Reliant Energy Channelview LP*, 200 F.3d 594 (3d Cir. 2010) (affirming disallowance of retroactive grant of break-up fee that was sought after the stalking horse bidder had already bid for the assets).

October 22, 2024 at 1:00 p.m., should be adjourned to permit parties additional time to evaluate the proposed procedures.

24. Given the abbreviated time provided for parties, including the just-formed unsecured creditors' committee, to object to the Debtors' proposed bid procedures, the U.S. Trustee hereby also objects generally to the bid procedures as a whole in addition to the specific objections set forth above.

25. The U.S. Trustee leaves the Debtors to their burden and reserves any and all rights, remedies and obligations to, *inter alia*, complement, supplement, augment, alter and/or modify this objection, file an appropriate Motion and/or conduct any and all discovery as may be deemed necessary or as may be required and to assert such other grounds as may become apparent upon further factual discovery.

Conclusion

26. The proposed expense reimbursement for AHS contained in the bid procedures does not appear to provide any benefit to the Debtors' estates. It does not serve as incentive for AHS to bid. While the sale timeline itself may be permissible under the circumstances, there is no articulable reason that the hearing to consider the proposed bid procedures has to take place just two weeks after the Debtors filed these cases. Unless the objectionable reimbursement provision is removed, the Bid Procedures Motion does not comply with Third Circuit law and should be denied.

WHEREFORE, the United States Trustee respectfully requests that this Court deny the portion of the Bid Procedures Motion that provides AHS expense reimbursement in connection with its stalking horse bid for substantially all of the Debtors' assets, extend the objection

deadline and adjourn the hearing to consider the Bid Procedures Motion, and award such other relief as this Court deems appropriate under the circumstances.

Dated: October 18, 2024
Wilmington, Delaware

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE FOR
REGIONS 3 AND 9

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