

EXHIBIT 4

1 UNITED STATES BANKRUPTCY COURT
2 DISTRICT OF MINNESOTA

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4 In Re:
5 Polaroid Corporation, BKY No: 08-46617
6 Debtor.

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10 BEFORE THE HONORABLE GREGORY F. KISHEL
11 United States Bankruptcy Judge

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15 * * *

16 TRANSCRIPT OF PROCEEDINGS

17 4-16-09

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20 Proceedings recorded by electronic sound
21 recording, transcript prepared by transcription
22 service.

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1 APPEARANCES

2
3 MR. DARYLE UPHOFF and MR. GEORGE
Page 1

22 Q So the variance is approximately 141 million?

23 A That's correct.

24 Q Given the substantial difference between the
25 projections and the actual performance, do you
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1 consider the Duff and Phelps valuation to be
2 relevant to the value of Polaroid today?

3 A I don't for two reasons. One, the actual
4 performance of the business was substantially
5 worse as we discussed. The second is we've
6 run an incredibly robust and incredibly
7 aggressive process. The only definitive means
8 of price determination that I know is a
9 willing seller and a willing buyer. I think
10 we've vetted that. We've established that.
11 we, through an exhaustive process, cleared the
12 market as it were. And for those two reasons,
13 I view the Duff and Phelps valuation as
14 largely irrelevant at this point.

15 Q Thank you. Now, Steve, we concluded the
16 auction process here about two hours ago. At
17 the end of the auction who did you declare to
18 have the highest and best bid?

19 A We declared Patriarch to have the highest and
20 best bid.

21 Q And why was that?

22 A It exceeded the Hilco Gordon Brothers bid by
23 approximately \$488,000.

24 Q And at this time do you believe their bid to
25 be the highest and best bid?

1 A At this time I believe their bid to be the
2 highest and best bid, yes.

3 Q Steve, I'm going to direct your attention to
4 Exhibit H.

5 Do you have that in front of you?

6 A I do, yes.

7 Q And can you identify that document for us?

8 A Yes. This is a bid comparison between the
9 Patriarch, their winning bid and the Hilco
10 Gordon Brothers backup bid in comparison to
11 our initial stalking horse bid from Genii.

12 Q Can you just briefly go through the exhibit
13 and describe for us how the two bids compare?

14 A Sure.

15 Q And when I say the two, I'm referring to the
16 Patriarch and the Hilco Gordon Brothers.

17 A Yes. We -- and the Court has had the benefit
18 this morning of some insight into how we've
19 run the auction. All the way along we were
20 evaluating bids which had three different key
21 elements, cash, equity and excluded assets.
22 We valued the excluded assets. There was a
23 limited universe of assets that various buyers
24 had contemplated leaving behind. For the
25 benefit of the bidding parties we valued those

1 so that they had an apples to apples basis on
2 which to compare the consideration for the

23 comparing the equity structures in the LLC
24 agreements between the two bidders, with
25 respect to the Patriarch LLC agreement, how is
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1 the creditor's committee or how is the
2 bankruptcy estate supposed to get its money
3 out, out of this equity investment?
4 A It's not entirely clear how we realize value.
5 As was represented in her presentation to the
6 creditors committee, Ms. Tilton indicates that
7 her interest is not in buying and holding on
8 to companies forever, that she would at some
9 point allow the equity interest to realize
10 value in connection with some future liquidity
11 event. That's all that I am aware.
12 Q In the Hilco agreement, isn't it true that
13 there is a provision for an actual waterfall
14 of net income to the various members in
15 accordance with their relative priorities and
16 pro rata shares?
17 A My recollection is that that is correct.
18 Q And that waterfall provision does not exist in
19 the Patriarch agreement to your recollection,
20 does it?
21 A I'll defer to Lindquist for the definitive LLC
22 side by side comparison.
23 Q If I told you that the Patriarch agreement
24 provides that all distributions to members in
25 the Patriarch new LLC shall be made in the

1 sole discretion of the manager, does that
2 sound correct to you?

3 A That does sound correct, yes.

4 Q In addition, in the Patriarch LLC agreement,
5 there's the potential for the issuance of new
6 membership interest.

7 Isn't that correct?

8 A That is correct.

9 Q And that is also in the sole discretion of the
10 manager.

11 Isn't that correct?

12 A My recollection is that that's correct, yes.

13 Q In light of -- well, does that provision
14 appear in the Hilco agreement?

15 A My recollection is that that explicit
16 provision does not.

17 Q If new membership interests were issued from
18 the Patriarch LLC, that could have the affect
19 of diluting the estate's membership share in
20 the new company.

21 Isn't that correct?

22 A Very clearly it would, yes.

23 Q And in fact, if the new membership interests
24 are issued at a value that is relatively
25 inexpensive, that would very greatly dilute

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1 the estate's membership interest.

2 Isn't that correct?

3 A Potentially it would, yes.

4 Q Thank you very much, Mr. Spencer. I
5 appreciate that.

6 THE COURT: All right. Other
7 questions?

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1 STATE OF MINNESOTA)
2 COUNTY OF WASHINGTON) ss.

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4 BE IT KNOWN, that I transcribed the
5 electronic recording relative to the matter
6 contained herein;

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Polaroid Corporation, BKY No. 08-46617
Debtor.

BEFORE THE HONORABLE
GREGORY F. KISHEL
United States Bankruptcy Judge

* * *

TRANSCRIPT OF PROCEEDINGS

4-16-09

(VOL. II)

* * *

Proceedings recorded by electronic sound recording,
transcript prepared by transcription service.

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10 from a commercial entity. Relief of
11 royalties is one valuation methodology, for
12 example.

13 Q. And you didn't go back to Duff and Phelps and
14 ask how that technological venture may have
15 affected their value, if at all, that's not
16 something you did?

17 A. We did not, no.

18 Q. Turning to the equity of Patriarch for a
19 second, Mr. Chesley asked you about the
20 preference that Hilco had in taking out the
21 interest component and you said the value of
22 that was around five million dollars a year?

23 A. We assessed it to be about five million, yes.

24 Q. As I was sitting here a couple -- an hour and
25 a half, I guess about two hours ago now, a

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1 little bit mystified how much -- given five
2 million dollars a year which sounds like one
3 heck of a lot of value? I didn't say the
4 other word.

5 THE COURT: I heard it. The heat
6 of the moment.

7 BY MR. KRAKAUER:

8 Q. How did you factor that increased value into
9 your analysis of deciding that the Patriarch
10 bid was so better?

11 A. As I mentioned, the LLC agreements are
12 structured such that there's no ability for

13 the creditors or Trustee of the creditors to
14 prohibit, for example, either Hilco or
15 Patriarch from layering on a \$75 million
16 dollar (Unintelligible), for example, so we
17 don't have control. We don't have negative
18 control. We don't have relevant consent
19 rights under these LLC agreements to
20 influence the post reorganization, post
21 ownership capitalization of these businesses
22 with respect to data or preferred stock, so
23 while we analyzed it, there's nothing to say
24 that we should penalize Hilco vis-a-vis the
25 Patriarch bid or penalize Patriarch vis-a-vis
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1 Hilco.

2 Q. I am not quite sure I follow that.

3 If there were an effort post -- post
4 consummation date to put new money in, which
5 is what you're talking about, presumably you
6 have to put new money in, right?

7 A. That's right.

8 Q. Here we're talking about -- if you put new
9 money in there are at least some terms that
10 take care of what happens with that new money
11 and Hilco, one of the things they said I
12 think, was that they were agreeing to term
13 that if they put new equity in they would get
14 the new equity back, but it's -- but they are
15 agreeing not to dilute existing equity,
16 correct?

20 We'll get to that later.

21 MR. MEYER: Yes, I understand

22 that. All right.

23 BY MR. MEYER:

24 Q. You did not analyze -- spend any time

25 analyzing whether -- the amount of the claim

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1 that Stylemark might have, I take it.

2 Is that correct?

3 A. To the contrary, we looked at it in some

4 detail.

5 Q. Okay. Tell me about that. What do you think

6 it might be?

7 A. We believe it to be a potentially substantial

8 claim.

9 Q. And how much? What range?

10 A. I am not prepared to posit a range. We

11 believe it to be a substantial claim.

12 Q. Substantial claim in this case?

13 A. In this case, yes.

14 MR. MEYER: That's all I have,

15 Your Honor. Thank you.

16 THE COURT: All right.

17

18 EXAMINATION

19

20 BY MR. GORDON:

21 Q. Mr. Spencer, Greg Gordon on behalf of

22 Patriarch.

23 MR. CHESLEY: Your Honor, before

24 this begins, I would object to any bidder
25 questioning the witness. This is an issue

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1 now -- the Debtor's have postured what they
2 believe is the highest and best. The
3 creditors are now taking their position.

4 To turn this into now the bidder's
5 basically selling their wears using this
6 witness, I don't think, A, there is any basis
7 for it. I don't think it's appropriate at
8 this point. If there are questions that the
9 Debtor's have to support their bid,
10 Mr. Uphoff is more than welcome to ask
11 whatever he would like to in response to what
12 the creditors have posited, but I don't think
13 this is certainly appropriate at this point.

14 THE COURT: I mean are you
15 basically raising the question as to whether
16 the bidders even have standing?

17 MR. CHESLEY: I don't believe they
18 do, Your Honor.

19 THE COURT: Yes. I mean how do
20 you have standing at this point?

21 MR. GORDON: Because, Your Honor,
22 we were selected as the prevailing bidder
23 here and much of the cross examination was
24 directed at an attack on our LLC agreement
25 that's been accepted as part of the highest

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1 and best bid.

2 We have standing directly on the issues
3 that have been raised by the parties.

4 MR. CHESLEY: Your Honor, they
5 don't have standing until the deal closes.

6 MR. GORDON: But we are not a
7 disgruntled bidder here at this point, Your
8 Honor. We have been accepted as the highest
9 bid. We have signed agreements with the
10 parties and the cross examination has been
11 taking things out of context from our LLC
12 agreement in an effort to convince you that
13 our LLC agreement is somehow deficient and I
14 think I am entitled to explore that. I think
15 I clearly have standing to do that.

16 MR. CHESLEY: If the Debtor wants
17 to do that to support the bid they chose,
18 Your Honor, they have that right. A bidder
19 does not. Neither bidder has that right.

20 MR. GORDON: I mean, Your Honor,
21 what's happening here my feeling is through
22 these questions it's almost like we're trying
23 to negotiate this in LLC agreement through
24 this hearing which I think is very
25 unfortunate.

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1 As I indicated earlier, we have not had
2 one conversation with any of the creditors

3 about the terms of the agreement. I am
4 hearing for the first time through questions
5 to this witness what some of the issues are
6 and I think I am entitled to at least clarify
7 some of the points for Your Honor if
8 ultimately if these counts are going to come
9 back and argue based on this cross
10 examination that some somehow our LLC
11 agreement is deficient and therefore our bid
12 is not the highest and best bid.

13 MR. CHESLEY: Your Honor, if I
14 may, the issue here is not as granular as
15 Counsel would like it to be. It is which is
16 highest and otherwise best.

17 You have heard from the Debtors through
18 Mr. Spencer, the banker, why he believes it
19 is highest and otherwise best. We have asked
20 questions based upon issues that have been
21 raised as to the creditor's -- this is their
22 money, Your Honor. This is their equity as
23 to which they believe is the highest and
24 otherwise best and to allow bidders to now
25 try and renegotiate this through the witness,

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1 which is exactly what's being done, it is not
2 only improper, but they have -- neither
3 bidder has standing to do so.

4 THE COURT: I am going to sustain
5 the objection and neither bidder is going to

6 be cross examining. All right. This is not
7 really a question ultimately that's affected
8 by the testimony of this witness.

9 I will vet these documents, I guess. When
10 the time comes I will have to, but we're not
11 going to renegotiate anything here as has
12 been sort of put in a rather colored
13 characterization of what this would all be
14 about.

15 There are other ways to get into this
16 issue, but you don't have standing to
17 participate in the evidentiary development
18 here. Your client's bid was recognized as
19 being the highest as it came out in dollar
20 value out of the auction, but I conclude that
21 that's only a part of the considerations when
22 it comes to determining the quote, highest
23 and best offer, unquote, so that's my ruling.

24 MR. GORDON: And again, Your
25 Honor, I'd obviously just note our exception

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1 to that on the record. I understand Your
2 Honor's --

3 THE COURT: You don't have to do
4 that to preserve your record, but I wouldn't
5 expect you to agree with me.

6 All right. Who's next? Nobody else? All
7 right. Mr. Uphoff, it's back to you, and I
8 think I do agree with Mr. Chesley given the
9 Debtor's position and it's proffer of the

10 Patriarch bid as the, quote, highest and best
11 offer, unquote, it's really ultimately up to
12 the Debtor to be the proponent here.

13 MR. UPHOFF: Thank you, Your
14 Honor.

15

16 EXAMINATION

17

18 BY MR. UPHOFF:

19 Q. Steve, I want to direct my examination to the
20 issue raised by a couple of the cross
21 examiners and that is the issue related to
22 the valuation of the equity.

23 At the time that Houlihan Lokey valued the
24 equity, did you consult with the Creditor's
25 Committee of Polaroid, the Creditor's

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1 Committee of PCI and PGW and their
2 consultants?

3 A. We did.

4 Q. And was an agreement reached on the valuation
5 to be placed on this equity?

6 A. I think minor differences with the financial
7 professionals for PGW and PCI. I think we
8 were very close, however, to recognizing that
9 it was essentially the same value. I believe
10 then that they value both -- the equity in
11 both cases is slightly less. We compared
12 notes, compared analyses, and we were in

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13 agreement broadly.

14 THE COURT: And ultimately if it
15 came down to both sides bidding the same
16 equity percentage, the value really doesn't
17 matter in terms of the component of a
18 prevailing bid in raw value, right?

19 THE WITNESS: Which is why we set
20 them equivalent to one other.

21 THE COURT: Right. I am talking
22 about the per unit though.

23 THE WITNESS: Yes, yes.

24 BY MR. UPHOFF:

25 Q. There was testimony about the change made to
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1 the Hilco LLC in part of your.

2 Examination?

3 Do you recall that?

4 A. Yes.

5 Q. Okay. And that testimony you indicated, I
6 believe, or perhaps the examiner indicated
7 was worth five million dollars a year,
8 something to that affect?

9 A. He was merely taking the ten percent interest
10 rate on approximately 50 million dollars of
11 preferred equity.

12 Q. Okay. Now, there is no such provision in the
13 Patriarch LLC, is there?

14 A. No, there's not.

15 Q. Okay. In regard to the Stylemark agreement,
16 Patriarch has the right to assume that

17 agreement, do they not?

18 A. They do.

19 Q. There's nothing that precludes them from
20 doing that?

21 A. That's correct.

22 Q. Okay.

23 Did you meet with any experts from the
24 Ritchie Group during the sales process?

25 A. We did.

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1 Q. Did those experts dispute Houlihan Lokey's
2 conclusion that a sale was appropriate for
3 Polaroid at this time?

4 A. In our last in person meeting with
5 Mr. Krakauer, the various other
6 professionals, they had an expert with them
7 who rendered the opinion that a sale was, in
8 deed, necessary.

9 Q. Okay. In regard to the excluded assets of --
10 in the bid procedures or in the bids that
11 have been submitted, to your knowledge, has
12 Patriarch put in all of the excluded assets
13 into an LLC?

14 A. No, they are not.

15 Q. That's staying with the company?

16 A. No, they are not. It says -- as was
17 mentioned previously, one of the material
18 differences is that they are acquiring the
19 art valued at approximately 6.5 million

20 dollars.

21 Q. Okay. And that is the primary difference?

22 A. That is the principle different difference,
23 yes.

24 MR. UPHOFF: Nothing further, Your
25 Honor.

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1 THE COURT: All right. Anything
2 else?

3 MR. CHESLEY: Very quick
4 follow-ups, Your Honor.

5 THE COURT: Go ahead.

6

7 EXAMINATION

8

9 BY MR. CHESLEY:

10 Q. Mr. Spencer, with respect to the \$650,000.00
11 that was agreed to as the valuation of equity
12 at the first auction, your recollection that
13 the committee and the other professionals
14 agreed so that everyone was getting apples to
15 apples?

16 A. Yes, that's correct.

17 Q. And at the time that those numbers were
18 created, in fact, Patriarch had not even
19 provided a form of an LLC agreement to either
20 the Debtors or the creditors, had they?

21 A. My memory fails me, but I believe that that's
22 correct, that we received their LLC after
23 that.

1 Q. As written, as the document is written, it is
2 a five million dollar difference based on
3 your calculations?

4 A. That's correct, yes.

5 MR. CHESLEY: Thank you. Nothing
6 further, Your Honor.

7 THE COURT: Anybody else? All
8 right. Thank you, Sir. You may step down.
9 Next witness.

10

11 LYNN TILTON

12

13 A witness in the above-entitled action,
14 after having been first duly sworn, testifies
15 and says as follows:

16

17 EXAMINATION

18

19 BY MR. UPHOFF:

20 Q. Could you please state your name and address
21 for the record, please?

22 A. My name is Lynn Tilton and my home address is
23 3575 South Ocean Boulevard, Highland Beach,
24 Florida.

25 Q. Ms. Tilton, are you either a director or
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1 officer of the Debtor here?

2 A. I am not.

3 Q. And do you have any controlling or ownership
4 interest in any of the Debtors, any stock or
5 bonds or anything?

6 A. No, I do not.

7 Q. And have you made any commitments to any of
8 the executives of the Debtors for employment?

9 A. I have not.

10 Q. Okay. And is it your present intention to
11 continue in some fashion or form the
12 operations of the Debtor at their Minnesota
13 location?

14 A. Yes, it is.

15 Q. Okay. And can you just elaborate on that a
16 bit?

17 A. Well, we are picking up the lease in
18 Minnetonka and we plan on working with
19 certain of the management team that would
20 like to sign on. We have not negotiated any
21 agreements, but we certainly talked during
22 our due diligence with certain people who
23 would like to continue on if we were to
24 purchase the company and we plan to hire back
25 a number, if not all of the employees. We

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1 need to go through that with the management
2 team and the business plan when we finally
3 have time to really roll up our sleeves.

4 MR. UPHOFF: All right. Thank you
5 very much.

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THE WITNESS: Thank you.

THE COURT: All right.

Mr. Chesley.

MR. CHESLEY: Just one question,
Your Honor.

THE COURT: Sure.

EXAMINATION

BY MR. CHESLEY:

Q. Ms. Tilton, is there anything in your asset
purchase agreement that requires you or binds
you to hire any Polaroid employees?

A. There's nothing in the asset purchase
agreement that does.

MR. CHESLEY: Thank you. Nothing
further, Your Honor.

THE COURT: All right. Anybody
else? Okay. Thank you, Ma'am. You may step
down.

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MR. UPHOFF: Your Honor, this
concludes the Debtor's case in chief. We
reserve the right to recall a rebuttal
witness if there is no further witnesses
being offered by either of the Committee's.

THE COURT: All right.

MR. CHESLEY: Your Honor, we will
rest on the testimony of Mr. Spencer.

THE COURT: All right. May I ask
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1 UNITED STATES BANKRUPTCY COURT
2 DISTRICT OF MINNESOTA

3 -----

4 In Re:
5 Polaroid Corporation, BKY No: 08-46617
6 Debtor.

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9 BEFORE THE HONORABLE GREGORY F. KISHEL
10 United States Bankruptcy Judge

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14 TRANSCRIPT OF PROCEEDINGS

15 4-16-09

16 VOLUME III

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1 APPEARANCES

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3 MR. DARYLE UPHOFF and MR. GEORGE
Page 1

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9 rules, was higher. In fact, based upon

10 Mr. Spencer's testimony, Your Honor, we
11 actually take exception to that as well based
12 upon the calculation of the change made to the
13 LLC agreement and the reduction of the
14 preferred return of a \$5 million a year
15 difference. These are substantial amounts.

16 And with all due respect to the
17 Debtor's counsel, Your Honor, this is return
18 to the estate. The estate is the creditors in
19 this case and we cannot lose sight of the fact
20 that at the end of the day, as Mr. Spencer
21 testified and everyone knows, this return goes
22 to the creditors.

23 So let me talk briefly, Your Honor,
24 because the creditors did consider all of
25 these factors despite counsel's statement that
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1 apparently we did not. We considered these
2 issues with a very sophisticated creditors
3 committee and with the insight of Mr. Spencer
4 because, as the Court knows, we chose not to
5 retain a separate financial advisor to
6 preserve the estate's resources. So we're
7 relying upon Mr. Spencer and talking to our
8 committee and all of the other significant
9 stakeholders who you have heard from today and
10 potential stakeholders because that's an issue
11 that will have to be resolved. All of those
12 believe that the Hilco Gordon Brothers bid is

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13 highest now and otherwise best.

14 Let me talk for a minute, Your Honor,
15 about why we believe that based upon the
16 evidence. First of all, the cash difference
17 is not as enormous as counsel indicates. The
18 cash difference with cash and cash equivalents
19 is \$488,000. We heard argument about
20 execution risk with respect to the lone
21 excluded asset, the art. But Mr. Spencer
22 didn't testify about execution risk. To the
23 contrary. While Houlihan Lokey used a base of
24 \$6.5 million for every bidder on that asset,
25 he testified that the Sotheby's valuation puts
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1 that art at the between 7.3 and \$11.3 million.
2 The creditors committee did consider that
3 value in making its qualitative determinations
4 that this is the highest and otherwise best
5 bid.

6 A number of other factors lead to this,
7 Your Honor. The subjective or the qualitative
8 differences in the LLC, these are not of the
9 Committee's imagination. This is of
10 Mr. Spencer's testimony as a very experienced
11 financial advisor who has done deal after deal
12 in this space. While the debtors may believe
13 and Patriarch may believe that these are
14 comparable provisions or comparable documents,
15 the evidence doesn't support that and at the
16 end of the day, Your Honor, that is of no

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17 moment here. This is, as Mr. Spencer
18 acknowledged and the Court is well aware, the
19 creditors' equity. And the creditors have, as
20 they have stated today, a strong preference
21 for all of the reasons we have articulated for
22 the Hilco Gordon Brothers equity.

23 We've already talked about the
24 elimination of the 10 percent preferred stake
25 and the true monetary value that likely will
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1 bring to the estate.

2 Also, there was undisputed evidence
3 about Hilco's track record in this space.
4 Sharper Image, Linens & Things, Bombay, large
5 cases where they have done this. Their
6 experience, their track record in identical
7 deals was a significant issue that the
8 Committee relied upon in making this
9 determination that on an equity basis if cash
10 got close, which it did today, the Hilco
11 Gordon Brothers' equity was preferred.

12 And finally, Your Honor -- before I do
13 that, there was another factor the debtors
14 talked about and that is employees. We are a
15 big proponent and we actually think there is
16 economic value if employees are hired. The
17 problem is Patriarch had every opportunity to
18 make that abundantly clear in their document
19 time and time again and it is not there. So
20 statements that decide the Debtor's position

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21 on that recognize cannot be quantified we
22 believe again is not supported by anything
23 before the Court.

24 The last issue, Your Honor, is, at
25 least for the creditors committee and some of
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1 the other stakeholders of the creditors,
2 perhaps the 800-pound gorilla in this room.
3 The Court is well aware that this estate and
4 these creditors, there may be a long road
5 before we can distribute what has been reaped
6 from the sale by virtue of litigation that may
7 exist, claims that may exist and the process
8 to get those resolved. We understand it will
9 be contentious. We understand it will be
10 costly. We understand it will be time
11 consuming. Obviously, Your Honor, one of the
12 factors that our committee did consider is the
13 currency that would be available to deal with
14 these various claims and these various pieces
15 of litigation. Our committee deliberated on
16 this long and hard and determined that the
17 currency that they wanted to use based upon
18 the stated preferences of those we have to
19 deal with in the coming weeks and months and
20 hopefully not years is the Hilco Gordon
21 Brothers equity.

22 I asked Mr. Spencer, Your Honor, has he
23 ever seen a case similar to this where the
24 wishes of the creditors committee whose assets

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25 these are was not respected by the debtors in
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1 a sale process like this. He's not aware of
2 it, Your Honor. We're not aware of it. And
3 we believe, based upon the enormous stake that
4 these creditors have and all creditors have in
5 this process, that the Court should deny the
6 motion to approve the Patriarch deal and
7 approve Hilco Gordon Brothers as the winning
8 bidder.

9 Thank you, Your Honor.

10 THE COURT: All right.

11 Mr. Runck?

12 MR. RUNCK: Thank you, Your
13 Honor. Your Honor, as Mr. Chesley stated, in
14 the creditors' view, Your Honor, the creditors
15 are the entities that make up the estate in
16 this case. This, the sale proceeds and all
17 the components thereof, Your Honor, are the
18 consideration for the benefit of the
19 creditors, Your Honor. This is, in short, our
20 money and we feel this should be our choice.
21 And for the first time, Your Honor, in these
22 cases the creditors have spoken and are
23 speaking in a uniform voice. And to my
24 knowledge, that's the first time this has
25 happened in this case. I haven't seen the

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1 creditors agreeing on anything, but today we

2 agree that we prefer the Hilco bid over the
3 Patriarch bid. The Polaroid committee feels
4 that way. My committee feels that way.

5 Your Honor, we agree that valuing
6 equity is a highly uncertain process. There's
7 a lot of factors to be considered, both
8 quantitative and qualitative. There's a lot
9 of risks involved. There are substantial
10 risks involved. And as a result of those
11 risks, you have to take into account the form
12 of the LLC agreement, the risks that may be
13 involved and may be incumbent in being a
14 minority holder in the new company.

15 And, Your Honor, you heard Mr. Spencer
16 testify that he, too, like us, he prefers the
17 qualitative factors in the LLC agreement
18 provided by Hilco. The testimony is in the
19 record that supports our judgment on this
20 point, Your Honor.

21 The issues that were brought out during
22 the testimony, Your Honor, is that in the
23 Patriarch LLC agreement there's a higher risk
24 of dilution in reduction of the minority
25 interest.

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1 Your Honor, in the Hilco agreement
2 there's greater transparency. We get invited
3 to meetings. We get to know what's going on.
4 We receive audited financials. Your Honor,
5 there was testimony that showed that Hilco has

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14 now Your Honor's being asked to change all the
15 rules of the game after the fact. There's no
16 question that we have standing.

17 I would cite to Your Honor the In Re:
18 Hat case where the Court made very clear if a
19 bidder has issues with the way the auction is
20 handled, which is what this directly goes to
21 now, that we have a right to be heard on that
22 issue. And I'd ask to be heard on that basis,
23 Your Honor.

24 I will tell Your Honor as well that
25 statements are being made about the LLC
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1 agreements. They are simply not true and
2 you're not being walked through the
3 agreements. And I'm very concerned that --
4 and I know Your Honor's very careful but I
5 think you're being put in a very difficult
6 position of generalized statements are being
7 made about documents but nobody's actually
8 comparing them and giving you the fact that
9 you can say one thing about the Patriarch
10 document but it's in the Hilco document too
11 where this \$5 million thing, that's all a red
12 herring. We never had the \$5 million item to
13 begin with. So all that did was bring that
14 agreement back closer to our agreement.
15 They're making it sound like it's a big sea
16 change that should affect valuations. But
17 fundamentally this now goes to the integrity

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18 of the process. It's, frankly, in my view,
19 making a mockery out of the auction process we
20 just spent the last several hours going
21 through.

22 THE COURT: All right. That's
23 all the more I'm going to hear from you right
24 now. Okay? I'll ask you to take a seat
25 before I determine whether I'm going to hear
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1 you on anything else. Okay? All right.

2 Mr. Chesley, was there something you
3 wanted to --

4 MR. CHESLEY: Well, I was
5 going to respond to that but I don't believe
6 it's probably necessary.

7 THE COURT: Mr. Uphoff?

8 MR. UPHOFF: Do I get an
9 opportunity to come back to the podium?

10 THE COURT: Yeah, one more.
11 Should have my head examined but I'm going to
12 allow you to do that. And it has nothing to
13 do with you personally. It just has to do --

14 MR. UPHOFF: I get tired of
15 myself.

16 THE COURT: -- the amount of
17 input at this hour.

18 MR. UPHOFF: I feel compelled
19 to respond to a number of remarks that were
20 made here today, Your Honor.

21 One, which troubles me greatly, is the

1 issues. And for the Debtors to say that
2 they're right because they're right and the
3 creditors are off on their own because they
4 don't agree with the debtors, Your Honor,
5 simply ignores what this is about. The
6 creditors have made a decision and they stand
7 in unison before the Court.

8 This is not an issue, Your Honor, of
9 looking at a provision to a provision. It is
10 the totality of the experience and the
11 deliberation of everybody from Mr. Peterson to
12 our committee to the Petters committee to
13 Ritchie as to which we believe is the highest
14 and otherwise best.

15 Let me just make a final comment with
16 respect to the art. I didn't bring the art
17 up. Counsel brought the art up when they
18 raised the issue of execution risk. There was
19 no testimony of execution risk. The only
20 testimony was Mr. Spencer. He was the
21 witness, Your Honor. He was the witness who
22 talked about qualitative differences,
23 differences that are in two bids that are
24 very, very close on a dollars to dollars
25 basis. If this is an issue where the LLC

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1 didn't matter as counsel seems to allude, then
2 why did everybody spend so much time working

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3 through it, negotiating it and trying to reach
4 a conclusion? The answer is everybody thought
5 it was important because, as counsel
6 indicated, Mr. Terrien said this is
7 \$16 million. This is real consideration, real
8 currency of the stakeholders. We take it very
9 seriously. We resent any aspersions that we
10 have not and it is the reasoned decision of
11 the creditors committee whose equity this will
12 be perhaps to be shared with others, that is
13 the highest and otherwise best bid. Thank
14 you, Your Honor.

15 THE COURT: All right.
16 Anybody else want to be heard on a second
17 round? All right. I'm not going to hear
18 either of the two bidders out as to the
19 incidence of their bid here and as to the
20 legal incidence of the LLC agreements going
21 forward.

22 In considering this I am, first of all,
23 mindful of the fact that the creditors'
24 interests are in the driver's seat here.
25 There's no question about it. The debtor, as
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1 debtor in possession vested with the powers of
2 a trustee and the fiduciary obligations of a
3 trustee, brought the process forward and it
4 ended up in the last instance leading to a
5 rather powerful engine for the augmentation of
6 value recovery for the estate. As measured

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7 against the original stalking horse bid, the
8 amount of dollar value to be attributed to
9 either these bids is very close to or slightly
10 more than on a net basis the original -- twice
11 the original amount of the original stalking
12 horse bid. So the process was definitely
13 worth it going through.

14 Now, the real question here that's put
15 at bar, and this is the issue I'm addressing
16 here, is what is to be considered as the
17 highest and best offer. The case law makes
18 that sort of the driving consideration here.
19 What gives the most bang for the buck.

20 Now, when you're talking about a pure
21 liquidation, reduction solely to cash or even
22 reduction to cash equivalence that can be
23 objectively quantified as to value, that's
24 relatively easy. I'm going to hold that
25 that's not the sole consideration here in the
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1 calculus as to highest and best offer. The
2 reason being, of course, because of the
3 structure of the bids that have been made by
4 both sides and really brought up to the
5 designated maximum in terms of significance in
6 the structure of the bids by both sides, we're
7 talking about the equity.

8 The successor to these debtors going
9 forward after confirmation of a plan, whatever
10 that successor is going to be under a plan,

11 some kind of post-confirmation trust,
12 liquidating agent or whatever, this is
13 generally done where a debtor in possession
14 going through Chapter 11 does not carry
15 forward on an operating basis and does a
16 liquidation of its operating assets but then
17 has additional legal business to be done or
18 additional financial business to be done,
19 collection, realization on future revenue
20 streams and the like or has to go through
21 litigation to collect on intangible assets in
22 the form of causes of action. That all ends
23 up being vested in an independent third party
24 that in some respects functions as a successor
25 to an unsecured creditors committee, in some

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1 respects as analogized to a trustee in
2 bankruptcy, has some kind of independent
3 specific duty to maximize realization, to
4 vigorously reduce everything down to cash, and
5 eventually to make a distribution to those who
6 are entitled to it by way of creditors claims
7 and then down to equity in the debtor if there
8 is any surplus.

9 Now, that entity going forward under
10 both of these offers is going to have a piece
11 of the rock in the successor entity. It's
12 going to have, at the outset, a 25 percent
13 minority equity share, shareholding of some
14 sort in the entity that would buy these assets

1 are hard headed. They're all sophisticated
2 parties, the membership of the creditors
3 committee, as well as an experienced trustee
4 in bankruptcy who I believe is chair of the
5 committee in the Petters group case at least,
6 and they all have arrayed out as to one
7 position on this question of which is the
8 highest and best offer.

9 Now, the question that's presented to
10 me here is in the first instance am I to
11 consider only the quantified dollar value of
12 the bidding going into the question of what's
13 the highest and best offer or should I be
14 considering those alternate separate
15 attributes going to one component of the
16 consideration. And it's my conclusion that I
17 can't ignore them. I can't ignore the fact
18 that this is I'm going to be a minority
19 shareholding in a privately-held company.
20 It's not going to be readily fungible, salable
21 on an open market. So the attributes, the
22 protections to that minority shareholding have
23 to be a very powerful factor for consideration
24 here.

25 I am going to conclude that it's not
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1 necessary for me to do a point by point, blow
2 by blow, provision by provision review of the
3 two LLC agreements. This is not really

4 completely an issue of law. I am content with
5 deferring to the judgment of all of these
6 creditor constituencies that the equivalent
7 25 percent at the outset shareholding to be
8 given in the successor entity to be formed by
9 Hilco Gordon has more attractiveness from the
10 standpoint of the protections to be given to a
11 minority shareholder up front legally speaking
12 as set forth in the form of the LLC agreement.
13 And I am content with giving deference to the
14 ones whose money it is after all that we're
15 dealing with here.

16 This is not going to be the Debtor's
17 money. I am not going to impugn in any way
18 what the Debtor has done going through the
19 process here. The Debtor has dealt with an
20 extremely fluid situation in very trying
21 economic times. I've already made my remarks
22 about what happened at the auction and how I
23 am not faulting the Debtor for the fact that
24 the auction conducted at the Lindquist &
25 Venum offices was rather tumultuous. I think
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1 there were reasons why more hard and fast
2 rules weren't established in the first
3 instance, and as it came out, there weren't
4 going to be all cash offers which I suspect is
5 what the debtor was really trying to ferret in
6 the first instance and to channel the bidding
7 that way was going to end up involving equity

8 which, yes, does end up involving a risk. But
9 there's already been testimony here from
10 Mr. Spencer and as well as representations by
11 lawyers that that is the way it's going
12 nowadays. Cash is more scarce than it was a
13 few years ago in part because that cash wasn't
14 really quite real to very many people as real
15 as it is right now. So equity stakes are
16 coming forward and that's the way it came
17 forward here.

18 And over the course of long hard
19 bidding today, both of those equity stakes
20 bumped their way up to the maximum and they
21 sort of locked out there and I don't blame at
22 all the Debtor or the Committee for wanting to
23 put that kind of cap on it at this point in an
24 effort to ferret out as much of a cash
25 component of as high a value as possible.

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1 But so you came forward with this kind
2 of equity stake proffered. So the real
3 question is, then, what is the future value,
4 the future attractiveness of that equity
5 stake. And it follows as sure as the sun
6 comes up in the morning that if there are more
7 protections afforded up front to that equity
8 stake, that it's going to be more attractive
9 to a future purchaser if the successor on
10 behalf of the creditors decides to sell that
11 in the future. And on an ongoing basis

12 there's more protection by way of guaranteed
13 access to relevant information, guaranteed
14 access at least by way of observation to
15 decision making processes, and what has been
16 identified, I believe, as the waterfall, if
17 I'm remembering the metaphor correctly, the
18 identified and specified future, contemplated
19 future distributions out of future revenues.

20 I can only take the way that this has
21 been structured completely outside my purview
22 and necessarily so. I could have no part in
23 demanding of anybody that these LLC agreements
24 be structured in a specific way and I
25 certainly couldn't demand of anybody that they
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1 be negotiated out to be identical.

2 MR. GORDON: Your Honor, I'm
3 sorry to interrupt. To make it easier for
4 you, Patriarch will accept the Hilco LLC
5 agreement. We'll just accept it because we
6 don't see them as materially different. We'll
7 sign it.

8 THE COURT: I'm making my
9 decision. It's a little late to be
10 forthcoming with that. I closed my record.

11 So the upshot of all of this, what we
12 have here is bids that vary by \$488,000 in
13 terms of raw cash value but we have all of
14 these other attributes that are at issue here.
15 The constituencies that really are far more in

16 the driver's seat in terms of protecting their
17 own interests and protecting their own future
18 interests attach significantly more value to
19 the structure of attributes that was
20 forthcoming from Hilco and Gordon. And under
21 the circumstances, they opine and argue that
22 that outweighs the raw dollar value there even
23 if without consideration of the several other
24 factors.

25 And you've got the factor of the
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1 concession that was late coming, yes, going to
2 the distribution rights on account of any
3 preferred equity generating potentially
4 \$5 million toward the bottom line in the
5 successor entity in the first year as well as
6 the various other factors that have been
7 quantified in here, the estate's reservation
8 of the art collection. And I full well, you
9 know, see that this one cuts both ways. We're
10 at a low ebb in terms, I'm sure, of
11 marketability of art, but on the other hand,
12 the attribution of value to it is something
13 that's been done already.

14 All factors considered here, I am going
15 to hold that as presented, when I closed the
16 record and heard all argument here, taking
17 into consideration the reasonable wishes of
18 the creditors under the circumstances and
19 quantifying everything tangible, the tangible

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1 STATE OF MINNESOTA)
) ss.
2 COUNTY OF WASHINGTON)

3

4 BE IT KNOWN, that I transcribed the
5 electronic recording relative to the matter
6 contained herein;

7

8

9 That the proceedings were recorded
10 electronically and stenographically transcribed
11 into typewriting, that the transcript is a true
12 record of the proceedings, to the best of my
13 ability;

14

15

16 That I am not related to any of the
17 parties hereto nor interested in the outcome of
18 the action;

19

20

21 IN EVIDENCE HEREOF, WITNESS MY HAND.

22

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23

s:/ Lisa M.Thorsgaard

24

25

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