

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:	Jointly Administered under Case No. 08-46617
Polaroid Corporation, et al.,	Court Files No.'s:
Debtors.	08-46617 (GFK)
(includes:	
Polaroid Holding Company;	08-46621 (GFK)
Polaroid Consumer Electronics, LLC;	08-46620 (GFK)
Polaroid Capital, LLC;	08-46623 (GFK)
Polaroid Latin America I Corporation;	08-46624 (GFK)
Polaroid Asia Pacific LLC;	08-46625 (GFK)
Polaroid International Holding LLC;	08-46626 (GFK)
Polaroid New Bedford Real Estate, LLC;	08-46627 (GFK)
Polaroid Norwood Real Estate, LLC;	08-46628 (GFK)
Polaroid Waltham Real Estate, LLC)	08-46629 (GFK)
	Chapter 11 Cases Judge Gregory F. Kishel

**DEBTORS' OBJECTION TO EMERGENCY MOTION OF
LITHOGRAPH LEGENDS, LLC ("PATRIARCH")
FOR A STAY PENDING APPEAL**

Polaroid Holding Company, Polaroid Corporation, Polaroid Consumer Electronics, LLC, Polaroid Capital, LLC, Polaroid Latin America I Corporation, Polaroid Asia Pacific, LLC, Polaroid International Holding, LLC, Polaroid New Bedford Real Estate, LLC, Polaroid Norwood Real Estate, LLC and Polaroid Waltham Real Estate, LLC (collectively "Debtors" or "Polaroid"), through their undersigned attorneys, file this Objection to the Emergency Motion of Lithograph Legends, LLC ("Patriarch") for an Emergency Motion for a Stay Pending Appeal sought by Patriarch pursuant to Rules 8005 and 8011 of the Federal Rules of Bankruptcy Procedure (the "Motion"). Pursuant to the Motion, Patriarch seeks an emergency order staying

this Court's April 17, 2009 Order Authorizing: (I) Sale of Certain of the Debtors' Assets, Free and Clear of Liens, Claims, Encumbrances, and Interests; and (II) the Granting of Related Relief (the "Sale Order") until a final determination of Patriarch's appeal from that Sale Order or for sufficient time to permit the United States District Court a full opportunity to address the propriety of a further stay pending determination of the appeal.

INTRODUCTION

On December 18, 2008, each of the above-captioned Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code. The Debtors continue to operate and manage their properties as debtors in possession. Since the commencement of the bankruptcy cases, the Debtors have been utilizing unencumbered cash to fund operating expenses that are necessary to continue normal business operations and preserve the value of the bankruptcy estates. The unencumbered funds utilized by the Debtors to date to fund the administration of the bankruptcy cases and the sale process consist of approximately \$20.75 million of proceeds received by the Debtors prior to the bankruptcy filings in connection with the settlement of a commercial tort claim (the "Commercial Tort Claim Proceeds"). The Debtors anticipate that the Commercial Tort Claim Proceeds will be completely exhausted within the next 45 days or so in the event that a sale transaction is not promptly consummated. *See generally*, Sale Hearing, Debtors' Exhibit Q [Cash Flow Forecast]. Indeed, the Debtors' cash flows reflect a substantial existing cash burn rate in excess of \$3,000,000 per month. *See* Affidavit of Stephen Spencer, Director, Houlihan Lokey Howard & Zukin Capital, Inc., attached hereto as Exhibit A.

The lack of funds availability and deteriorating financial condition of these Debtors make an immediate consummation of the contemplated Sale and the pending Motion paramount. *See*

generally, Sale Hearing, Debtors’ Exhibit Q [Cash Flow Forecast]; Sale Hearing, Debtors’ Exhibit D [Historical Financial Performance]; Transcript of Sale Hearing, Testimony of Stephen Spencer, Houlihan Lokey, at pp. 81-83, 87-91. The imposition of a stay of the Court’s Sale Order pending a potentially protracted appellate process creates substantial uncertainty and risk for these bankruptcy estates and threatens to jeopardize anticipated recoveries associated with the sale transaction approved by the Court—particularly in the absence of a substantial bond and current funding required to maintain the status quo and the substantial burn rate experienced from current operations.

FACTUAL BACKGROUND

On January 28, 2009, Polaroid filed a verified motion with the Court requesting, among other things, approval of certain auction and bidding procedures and the approval of the sale of its assets outside the ordinary course of business in accordance with § 363 of the Bankruptcy Code (“Sale Motion”). *See* Court Docket No. 71. As set forth in the Sale Motion, “the circumstances surrounding these bankruptcy cases, the current economic environment, the cash needs of the business and the unavailability of substantial capital necessary for the Debtors to pursue their business plans” were factors that led the Debtors and their professionals to the firm conclusion that a “prompt” sale of assets was in the best interests of creditors and other stakeholders. *See* Sale Motion ¶¶ 25 and 27, at 10.

By order dated February 18, 2009, the Court approved auction and bidding procedures for Polaroid to sell certain of its assets outside the ordinary course of business (“Bidding Procedures Order”). *See* Court Docket No. 119. The Bidding Procedures developed by the Debtors with the participation of case constituencies provided, among other things, that “[t]he Debtors’ presentation of a particular Successful Bid and Back-Up Bid to the Bankruptcy Court

for approval does not constitute the Debtors' acceptance of the bid. The Debtors will be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing." *See* Court Docket No.119, at Exhibit A, page 7. In connection with the Bidding Procedures Order, the Debtors entered into an asset purchase agreement with PHC Acquisitions, LLC, a Delaware limited liability company and wholly-owned subsidiary of Genii Capital S.A. (the "Stalking Horse"), under which the Stalking Horse offered to purchase substantially all of Polaroid's assets for \$42,000,000 in cash (subject to certain adjustments) plus the assumption of specified assumed liabilities.

On March 30, 2009 and March 31, 2009, the Debtors conducted an auction for the sale of Polaroid's assets (the "Auction") based upon bids that were received and pursuant to bidding procedures approved by the Court (the "Bidding Procedures"). Two bidders emerged during the Auction—Patriarch and a joint venture between Hilco Consumer Capital Corp. and Gordon Brothers Brands, LLC currently known as PLR Acquisition, LLC ("Hilco/Gordon Brothers")—each aggressively making a number of irrevocable bids that offered substantial value to the bankruptcy estates. Indeed, the consideration offered by these bidders was substantially in excess of the initial bid represented by the Stalking Horse purchase agreement. The Auction process was ultimately continued for further bidding and the Court entered supplemental orders in furtherance thereof. *See* Court Docket Nos. 266 and 302.

On April 16, 2009, the Debtors continued the Auction process in which Patriarch and Hilco/Gordon Brothers were permitted to submit additional irrevocable bids. The Debtors, after the conclusion of 27 rounds of additional bidding and after consultation with its financial advisors, determined that the final bid submitted by Patriarch was the highest and best bid. The Debtor's business judgment was made in good faith and was based upon the belief that the

Patriarch bid objectively provided the highest economic consideration and a more substantial component of cash. *See generally*, Sale Hearing, Debtors' Exhibit H [Bid Comparison]. In addition, the Patriarch bid was believed by the Debtors to contemplate the preservation of jobs for a number of employees.

Upon the conclusion of the Auction, the Debtors sought the Court's approval of the Patriarch bid as the highest and best bid. With testimony of Stephen Spencer from Houlihan Lokey that the Patriarch's bid was highest in value, provided more cash to the creditors and was the highest and best bid, creditor constituencies in the case, including the Official Committee of Unsecured Creditors in the Polaroid bankruptcy cases and the Official Committee of Unsecured Creditors in the PGW/PCI bankruptcy cases, objected to the Debtor's determination with respect to which bid represented the highest and best bid. The creditor constituencies contended that the Hilco/Gordon Brothers bid represented the superior bid. The Court, after hearing argument and considering the evidence and reviewing the bids, found that the reasonable wishes of the creditor constituencies in this case should be accorded substantial deference particularly in light of the equity component of the consideration being offered by the bidders as currency. The Court concluded that the highest and best offer was made by Hilco/Gordon Brothers in light of non-monetary, qualitative aspects associated with the bids. In light of the Court's ruling, the Debtors promptly moved the Court for the approval of the Hilco/Gordon Brothers bid. That bid was approved by the Court. On April 17, 2009, the Debtors filed a "Revised Notice of Prevailing Bidder" with the Court that identified the bid Hilco/Gordon Brothers as the Successful Bidder in the Auction. *See* Court Docket No. 333. The final form of asset purchase agreement and other transaction documents as executed by the Debtors and Hilco/Gordon Brothers were also filed

with the Court in connection with that notice. The Sale Order approving the sale transaction was entered by the Court on April 17, 2009.

Since the entry of the Sale Order, the Debtors and their professionals have been committed to working diligently with Hilco/Gordon Brothers and their legal counsel in good faith toward a prompt closing of the sale transaction. Legal counsel for the parties have been finalizing assignments and other closing documents and representatives of the parties have been meeting to discuss business transition issues. The parties expect to be in a position to possibly close the sale transaction as early as next week. In furtherance of the Sale Motion, the Bidding Procedures Order, the Sale Order and the contemplated closing, the Debtors presently intend to serve supplemental notices to counterparties to executory contracts on or about Wednesday, April 22, 2009 identifying Hilco/Gordon Brothers as the Successful Bidder and providing additional notices regarding the assumption and assignment of various contracts (the "Supplemental Notice"). The Debtors anticipate scheduling a hearing before the Court the week of April 27, 2009, in order to address objections, if any, to the Supplemental Notice.

ARGUMENT

A. Patriarch Must Satisfy Standards for Imposition of Stay Pending Appeal

A stay pending appeal is in the nature of a preliminary injunction. In order to obtain a stay of the Court's Sale Order pending appeal, the burden of proof is on Patriarch to demonstrate each of the following elements: (1) that it is likely to prevail on the merits of any such appeal, (2) that irreparable injury cognizable under the law will result if the stay is denied, (3) that the Debtors and the bankruptcy estates will not be substantially harmed by the imposition of a stay, and (4) that the public interest will be furthered by the granting a stay. *In re Wire Rope Corp. of Am., Inc.*, 302 B.R. 646, 648 (Bankr. W.D. Mo. 2003); *Hutchins v. Fordyce Bank & Trust Co.*

(In re Hutchins), 216 B.R. 1, 4 (Bankr. E.D. Ark. 1997); *In re Howley*, 38 B.R. 314, 315 (Bankr. D. Minn. 1984). A failure to satisfactorily address any one of the elements necessary for a stay is sufficient reason to deny the relief. *PAS, Inc. v. PRN Pharmacy Systems, Inc. (In re PRN Pharmacy Systems, Inc.)*, 150 B.R. 441, 444 (Bankr. E.D. Ark. 1993). Patriarch has failed to satisfy any of the four required prerequisites for the imposition of a stay pending appeal.

B. The Debtors and the Bankruptcy Estates Will Be Substantially Harmed by Imposition of a Stay Pending Appeal: Time Is Money.

One of main purposes of a stay pending appeal is to maintain the status quo and to prevent harm to the parties between the time the original order was entered and the decision on appeal. Indeed, Rule 8005 of the Federal Rules of Bankruptcy Procedure provides that a stay pending appeal should be granted only to “protect the rights of all parties in interest.” Fed. R. Bankr. P. 8005. A stay of the Sale Order pending appellate review of the issues raised in the Motion threatens to create indeterminate delay that will be detrimental to the Debtors and the bankruptcy estates.¹ As set forth above and further outlined in the affidavit of the Debtors’ financial advisors attached to this Objection, the Debtors simply do not have the financial resources to risk delaying (much less jeopardizing) the pending transactions contemplated by the Sale Order. The Debtors’ burn rate is substantial and time is of the essence. The unencumbered Commercial Tort Claim Proceeds, which have been historically used by the Debtors to preserve the value of the estates and fund operations, will be exhausted in the very near future. The ability to utilize remaining funds subject to alleged security interests is undetermined and would likely be strenuously opposed by such alleged secured creditors. Any uncompensated costs and

¹ While Patriarch contends that a stay pending appeal “will not occasion significant delay because Patriarch intends to seek an accelerated schedule for the disposition of its appeal” (*see* Patriarch Memorandum, at 17), the timing associated with any appellate review is not under its control and no assurances can be provided that an additional level of appeal would not ultimately (and naturally) follow. Certainly the administrative expenses that will be necessarily borne by the bankruptcy estates and attendant to any appellate process will diminish the value of any bid.

losses attendant to the delay occasioned by a stay pending appeal and attributable to the existing burn rate will necessarily be borne, ultimately, by the creditors and other stakeholders in these bankruptcy cases. *See generally, In re Adelfia Communications Corp.*, 333 B.R. 649, 666 (S.D.N.Y. 2005) (recognizing that a stay of a pending sale transaction was not in the public interest as it would undermine the debtor's ability to fulfill one of its main functions under the Bankruptcy Code, namely, the obligation to achieve a maximum distribution to creditors in a minimum amount of time).

Any material delay attendant to a stay pending appeal also undermines the finality of the sale process for all constituencies impacted by these bankruptcy cases. Indeed, any such delay further strains and creates additional uncertainty with respect to the Debtors' ability to manage relationships that are material to the administration of the bankruptcy estates and preservation of brand value, including relationships with employees, customers, suppliers and counterparties to executory contracts. Similarly, the ability of the Debtors to execute on strategies for promptly monetizing assets that have been excluded from the Hilco/Gordon Brothers bid and to transition the business contemplated by the existing sale transaction becomes seriously impaired in the event of a delay occasioned by a protracted (and stayed) appellate process.² *See generally*, Affidavit of Stephen Spencer, Director, Houlihan Lokey Howard & Zukin Capital, Inc., attached hereto as Exhibit A.

In light of the foregoing, the result of a stay could, depending upon the length of the delay associated with the appellate process, be devastating to these bankruptcy estates.

² For example, the Debtors expend substantial resources in connection with the preservation and storage of the substantial art collection assets.

C. Any Stay Pending Appeal, to the Extent Granted by this Court, Should Be Accompanied by an Appropriate Bond/Letter of Credit and Other Security to Preserve the Status Quo and Provide an Adequate Remedy.

In the event that the Court determines for some reason that a stay pending appeal is appropriate, it is imperative that any such relief be conditioned upon the imposition of certain requirements, including the posting of a substantial bond/letter of credit, provisions for ongoing funding needs and other requirements that will need to be adequately tailored to ensure that the status quo is adequately preserved. Rule 8005 of the Federal Rules of Bankruptcy Procedure enables the Court to fashion any “appropriate order during the pendency of the appeal on such terms as will protect the rights of all parties in interest.” Fed. R. Bankr. P. 8005. As such, the bankruptcy court may condition any stay upon the posting of an adequate bond or other security in order to secure any loss or damage that may be ultimately sustained as a result of the stay pending an appeal. The bankruptcy court has substantial discretion in determining whether the form, amount and sufficiency of any bond or other relief proposed is sufficient to support a stay. *Monzack v. ADB Investors (In re Max Sugarman Funeral Home, Inc.)*, 94 B.R. 16, 17 (Bankr. D.R.I. 1988). The purpose of requiring a bond and imposing other relief is to indemnify the party against damages that are the natural and proximate result of the stay pending appeal. *In re Theatre Holding Corp.*, 22 B.R. 884, 885-86 (Bankr. S.D.N.Y. 1982); *In re Miraj & Sons, Inc.*, 201 B.R. 23, 27-28 (Bankr. D. Mass. 1996).

In this case, a bond/irrevocable letter of credit, while a significant component of security that should be required as a condition of any stay pending appeal will not, alone, be sufficient to preserve the status quo. Indeed, the form and amount of security required should be sufficient to adequately compensate the Debtors and the bankruptcy estates from all damages attendant any delay. This would include the value of the Hilco/Gordon Brothers bid that could be placed in

jeopardy with any protracted delay, the costs attendant to any appeal, interest and, notably, committed funds necessary to preserve the estates and fund operations during the pendency of the appeal (i.e. the burn rate). The Debtors believe that the constituent elements of security in connection with any stay pending appeal should include the actual costs incurred by the estates in connection with any appeal and at least the following additional items:

Bond/LC Amount:	\$87,612,000 (Value of Hilco/Gordon Bros. Bid)
Interest:	\$275,000 per month ³
Burn Rate:	\$3,000,000 per month ⁴

It is important to recognize that, in addition to the substantial quantifiable costs set forth above and attributable to preserving the status quo during the pendency of a stay, there are a number of additional implicit costs associated with a delay that are not readily quantifiable. For example, the costs associated with the attendant impact on the estate's portion of the equity in the newly formed enterprise, the potential reduction in values and uncertainties associated with excluded assets and the opportunities lost with contracting counterparties and vendors and substantial professional fees born by the estate are not susceptible to mathematical calculation but are nevertheless very real.

WHEREFORE, Polaroid respectfully requests the Court enter an order (1) denying Patriarch's Motion or, in the alternative, requiring the imposition of an appropriate bond and other security and requirements designed to compensate the Debtors for the damages, costs and losses sustained during the course of any period occasioned by a stay pending appeal; and (2) granting such other, further or additional relief as the Court may deem just and equitable.

³ Assumes a 6% annual percentage rate of interest calculated with reference to \$55,000,000 cash portion of the purchase price associated with the Hilco/Gordon Brothers bid.

⁴ The Debtors would expect that the funding requirements represented by the burn rate that would be necessary to preserve the status quo would be paid by Patriarch on a current basis as a condition for maintaining any stay pending appeal.

DATED: April 22, 2009

LINDQUIST & VENNUM P.L.L.P.

By: /e/ George H. Singer
Daryle L. Uphoff (#111831)
James A. Lodoen (#173605)
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**ATTORNEYS FOR
POLAROID CORPORATION**

Exhibit A

AFFIDAVIT OF STEPHEN SPENCER

I, Stephen Spencer, being first duly sworn, depose and say as follows:

1. I am the Director of Houlihan Lokey Howard & Zukin Capital, Inc. ("Houlihan Lokey"), whose business address is 225 South Sixth Street, Suite 4950, Minneapolis, Minnesota 55402.

2. This Affidavit is being provided in support of the objection of the debtors in the jointly administered bankruptcy cases of In re Polaroid, et al., BKY Case No. 08-46617 (collectively "Polaroid") to a request for a stay pending appeal of the Court's Order entered on April 17, 2009 approving a sale transaction (the "Sale Transaction") between Polaroid and PLR Acquisition, LLC, a joint venture comprised of Hilco Consumer Capital, L.P. and Gordon Brothers Brands, LLC (the "Buyer").

3. In connection with any delay of the contemplated Sale Transaction the Polaroid bankruptcy estates will incur various explicit (readily quantifiable) and implicit (more difficult to quantify with specificity but no less real) costs. The major factors influencing the costs attendant a delay are described in the following paragraphs:

A. Substantial Existing Cash Burn. Polaroid is currently generating significant ongoing cash losses. The rate of cash consumption is in excess of \$3,000,000 per month. The cash losses are a result of compromised cash collections due to business deterioration coupled with significant cash disbursements to fund operations which have continued effectively unabated. The business is also currently funding large monthly administrative expenses associated with the engagement of various bankruptcy professionals. Under these circumstances, an expedited sale transaction minimizing further cash diminution will unequivocally enhance recoveries to the bankruptcy estates. Further, it is anticipated that Polaroid will deplete remaining commercial tort claim proceeds within the next forty-five days, necessitating the use of cash collateral to operate and administer the estates.

B. Expediting Time to Close Sale Transaction Is Critical. To the extent that any stay pending appeal results in a substantial delay in closing of the contemplated Sale Transaction, the bankruptcy estates would not only be required to bear the additional explicit cash costs associated with the cash burn previously identified, it would also be required to bear the implicit elevation in risk to transaction execution, potential further diminution in ongoing business performance, and further damage to the Polaroid brand.

C. Uncertainty with Respect to Employees, Customers and Suppliers Enhances Execution Risk. Delayed transaction execution also creates higher risk of employee flight, further strains Polaroid's relationships with its customers and suppliers and increases execution risk due to uncertainty. Polaroid's customers and vendors are also seeking long overdue resolution to the company's tenuous

financial and operational circumstances. The Polaroid brand has been materially reduced in the channel today and risks further channel loss through delay that may impact an acquiror's business plan if an expedited resolution is not reached.

- D. Delay of Excluded Asset Monetization Creates Uncertainty, Enhances Execution Risk and Negatively Impacts Recoveries.** Delaying the Sale Transaction explicitly impacts Polaroid's ability to realize value through divestiture, liquidation or collection (i.e. the forgone interest on proceeds realized) of excluded assets. Implicit costs of delay include heightened uncertainty regarding the estate's ability to realize the estimated proceeds. Among other execution risks the estate has already commenced the sale of various excluded assets, which involves communications with transaction counterparties. Continued delay may result in diminished interest from counterparties or doom efforts to consummate monetization transactions.
- E. Significant Bonding and Other Requirements Would Need to be Satisfied in Order to Avoid Irreparable Harm.** I have reviewed the bonding and other requirements set forth in the Polaroid Objection and believe that the relief requested by the debtors in its pleadings in the event that a stay pending appeal should be granted by the Court would be necessary to avoid irreparable harm. It is important to recognize that the many implicit costs, including reduced value of excluded assets, missed opportunities with customers, employees and trade, and the attendant impact on the estate's portion of equity, are only a few of the more salient implicit costs that have not been factored into the bond calculation due to the difficulty in ascribing a specific monetary impact.

FURTHER AFFIANT SAYETH NOT.

Dated this 22nd day of April, 2009

/e/ Stephen Spencer
Stephen Spencer

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re

**JOINTLY ADMINISTERED UNDER
CASE NO. 08-46617:**

POLAROID CORPORATION, ET AL., 08-46617 (GFK)

Debtors.

(includes:
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Chapter 11 Cases
Judge Gregory F. Kishel

CERTIFICATE OF SERVICE

Gretchen Luessenheide of the City of New Hope, County of Hennepin, State of Minnesota, being first duly sworn on oath, states that on April 22, 2009 she served the following document:

Debtors' Objection to Emergency Motion of Lithograph Legends, LLC ("Patriarch") for a Stay Pending Appeal

electronically by Notice of Electronic Filing upon all parties who have requested electronic service in these cases by filing the same via ECF with the Bankruptcy Court in the District of Minnesota.

/e/Gretchen Luessenheide
Gretchen Luessenheide