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UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

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

BEFORE THE HONORABLE

GREGORY F. KISHEL

United States Bankruptcy Judge

* * *

TRANSCRIPT OF PROCEEDINGS

4-14-09

* * *

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

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APPEARANCES

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MR. DARYLE UPHOFF and MR. GEORGE SINGER,
Attorneys at Law, Suite 4200, 80 South Eighth Street,
Minneapolis, Minnesota 55402 appeared on behalf of
Debtor.

MR. DENNIS RYAN, Attorney at Law,
Suite 2200, 90 South Seventh Street, Minneapolis,
Minnesota 55402 appeared on behalf of Official
Unsecured Creditors.

MR. CHRIS LENHART and MR. MARK KALLA,
Attorneys at Law, Suite 1500, 50 South Sixth Street,
Minneapolis, Minnesota 55402 appeared on behalf of
Hilco Gordon Brothers.

MR. ADAM MEIER, Attorney at Law,
Suite 2300, 150 South Fifth Street, Minneapolis,
Minnesota 55402 appeared on behalf of Patriarch.

APPEARANCES (Cont'd)

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MR. GREGORY GORDON, Attorney at Law, 2727 North Harwood Street, Dallas, Texas, 75201 appeared on behalf of Patriarch.

MR. STEVE MEYER and MR. TIMOTHY MCFADDEN, Attorneys at Law, 3300 Plaza VII Building, 45 South Seventh Street, Minneapolis, Minnesota 55402 appeared on behalf of Stylemark.

MR. DAVID RUNCK, Attorney at Law, Suite 400, 775 Prairie Center Drive, Eden Prairie, Minnesota 55344 appeared on behalf of Petters unsecured creditors.

MR. JAMES M. JORISSEN, Attorney at Law, Suite 2500, 100 South Fifth Street, Minneapolis, Minnesota 55402 appeared on behalf of Ritchie Capital.

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APPEARANCES (Cont'd)

MR. MICHAEL ROSOW, Attorney at Law,
Suite 3500, Sixth Street, Minneapolis, Minnesota 55402
appeared on behalf of Acorn Capital.

P R O C E E D I N G S

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3 THE COURT: This is in the matter of
4 the Polaroid Corporation, the group of related
5 cases in which that case is the lead case, File
6 08-46617.

7 The matter at bar is the status
8 conference related to the reopened procedures for
9 bidding as to a sale of the Debtor's assets.

10 This is before the Court pursuant to the
11 order that I entered last week after last
12 Thursday's hearing which I tried to set forth the
13 rules by which the bidding would be reopened.

14 Let's note appearances for the record
15 here, Counsel, for starters.

16 MR. SINGER: Good morning, Your
17 Honor. George Singer, Lindquist & Vennum, on
18 behalf of Polaroid and with me at counsel table is
19 Darlye Uphoff.

20 MR. RYAN: Dennis Ryan, Faegre &
21 Benson, on behalf of the Official Unsecured
22 Creditor's Committee.

23 MR. LENHART: Good morning, Your
24 Honor, Chris Lenhart and Mark Kalla, Dorsey &
25 Whitney, on behalf of the Hilco Gordon Brothers

1 Consortium.

2 MR. RUNCK: Good morning, Your Honor.
3 David Runck on behalf of the Petters Unsecured
4 Creditor's Committee.

5 MR. MEYER: Your Honor, Steve Meyer
6 for Stylemark, Inc. and related entities and with
7 me today is Timothy McFadden with the Locke Lord
8 Bissell & Liddell firm.

9 MR. MAIER: Good morning, Your
10 Honor, Adam Maier, Leonard Street & Dinard, on
11 behalf of Patriarch Partners with me is Greg
12 Gordon, Jones Day, also on behalf of Patriarch
13 Partners.

14 MR. GORDON: Good morning, Your
15 Honor.

16 MR. JORISSEN: Good morning, Your
17 Honor. James Jorissen on behalf of Ritchie Capital
18 Management, LLC and the affiliated entities.

19 MR. ROSOW: Morning. Michael Rosow
20 from Winthrop & Weinstein on behalf of Acorn
21 Capital.

22 THE COURT: Okay. All right. All
23 appearances are in then.

24 Well, this was to be set on, as was my
25 understanding, basically for the purpose of airing

1 any issues that may have arisen over the Creditor's
2 Committee's review of an LLC agreement for one of
3 the bidders. I know there was sort of a
4 reservation to raise any other issues that might be
5 forthcoming. All right.

6 Mr. Ryan, maybe you want to take the lead
7 on this.

8 MR. RYAN: Thank you, Your Honor.
9 We are prepared, at least briefly, to address the
10 LLC issue, but I think it would be helpful,
11 frankly, if the two proponents of the sale, sale
12 motion, the Debtor and the Committee, could have a
13 brief chambers conference to update the Court on
14 the -- we're frankly, of course, in the midst of
15 some fairly dynamic negotiations with each of the
16 bidders and we think that it would facilitate
17 progress today and Thursday if we could have a
18 brief chambers conference.

19 THE COURT: All right. Again, you
20 know, as I stated last Thursday, I am a little
21 leery about doing anything in chambers.

22 I am just going to ask, is there any
23 objections to my doing that? All right. Okay, if
24 there aren't any objections.

25 MR. RYAN: I promise we'll be brief.

1 THE COURT: All right. Very good.
2 Why don't we just go back and use the jury room.
3 It's the most convenient then. We'll go off the
4 record momentarily here.

5

6 (A recess was had in the proceedings)

7

8 THE COURT: All right. Back on the
9 record in the Polaroid Corporation. We just had a
10 chamber's conference with Counsel for the Debtor
11 and for the Creditor's Committee during which we
12 discussed certain complications to the bidding
13 process that have emerged and the consequence of
14 the rather late filing, I believe just this
15 morning, of an objection to the sale of assets and
16 discussed certain ways to handle this procedurally
17 so as to put the issues before the Court, so I am
18 going to turn the floor back over to Mr. Ryan for a
19 summary of what is proposed to happen going
20 forward.

21 MR. RYAN: Thank you, Your Honor.

22 As the Court indicated -- and we
23 appreciate you giving us the time to talk about the
24 procedure and how we hope we'll be able to move
25 things expeditiously through the sale process on

1 Thursday.

2 There are concerns though about certain
3 of the licenses and executory contracts and some
4 ongoing negotiations with each of the bidders as to
5 how that might be treated and handled, so we are
6 going to be -- the Debtor and/or the committee
7 jointly filing a motion by the end of the day today
8 to place under seal certain aspects of the
9 prevailing bid on Thursday that deal with the
10 assumption or rejection of certain executory
11 contracts and licenses because we feel this will
12 help maximize value to the estate and we also
13 believe that it will be without any prejudice to
14 those parties.

15 We understand certainly in the concerns
16 expressed and the objection filed last night or
17 this morning that the counter parties to various
18 agreements would dearly love to know how they might
19 be assumed or rejected sooner rather than later and
20 we certainly acknowledge that they have a right
21 to -- a hearing to notice the terms of an
22 assumption or rejection and the opportunity to
23 argue the issues that that raises under Sections
24 365 and 363, so we would not be asking as part of
25 the sale approval on Thursday that those licenses

1 or contracts be approved for either assumption or
2 rejection, but we will -- whichever bid is the
3 prevailing bid, while we will be filing that then
4 with the Court at the conclusion of the auction and
5 the sale hearing, be filing portions of it under
6 seal and which will eventually result in further
7 hearings on assumption or rejection relating to
8 those licenses or contracts.

9 Because of the importance of that motion,
10 we have asked that this current schedule, as we
11 understand it, would be for the auction to commence
12 at 9:30 and for the sale hearing to commence once
13 the auction is concluded.

14 We have asked that the motion to file
15 portions under seal be heard immediately at 9:30
16 and then once the Court has ruled on that we can
17 adjourn and conduct the auction and then once the
18 auction is over recommence with the sale hearing
19 itself.

20 With respect to the status as was
21 scheduled for today, I am pleased to report that
22 the bidder, Patriarch, has provided their LLC
23 agreement and the Committee and the Debtors have
24 reviewed it. We have had some concerns and some
25 comments. We have communicated those jointly to

1 Patriarch. We have had a response from Patriarch,
2 some obviously have been favorable and some have
3 not and we expect those negotiations to continue.

4 Obviously we expect as things have
5 evolved with the Patriarch LLC agreement to have
6 further discussions with Hilco regarding their LLC
7 agreement with the goal of the process to be a
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1 MR. RYAN: We will endeavor to do so.

2 THE COURT: All right. I will turn
3 the floor over to anybody else who cares to comment
4 here.

5 Before I hear you, Mr. Lenhart,
6 Mr. Singer did you have anything else you wanted to
7 round out from the Debtor's perspective?

8 MR. SINGER: No.

9 THE COURT: Okay. All right. Very
10 good. Mr. Lenhart.

11 MR. LENHART: Thank you, Your Honor.

12 Your Honor, we have no objection to
13 anything that was related to the sealed portion of
14 what was discussed.

15 We were here hoping that we were going to
16 understand what a final LLC agreement would look
17 like. That was our understanding of what the
18 purpose of today was. We now understand there is
19 no final LLC agreement, at least nothing that's
20 been agreed to by the Committee and if Your Honor
21 is not inclined to indicate today that the LLC
22 agreement should be as it is -- as it sits today,
23 we would at least like to know that there will be a
24 time certain tomorrow when we will be given a final
25 LLC agreement and know what that is so that we know

1 what we're bidding against when we get here on
2 Thursday.

3 I think Your Honor's order was intended
4 to make Thursday's bidding short and sweet and we
5 think that setting that kind of deadline, if it's
6 not today, which we thought it was, would be
7 helpful.

8 THE COURT: Okay. Mr. Meyer.

9 MR. MEYER: Thank you, Your Honor.
10 As I mentioned, I am here on behalf of Stylemark,
11 Inc. and related entities.

12 We filed two pleadings and first I want
13 to apologize if we created some confusion in the
14 way we did it. I spoke to Anita this morning. We
15 had filed a motion to allow for a late filed
16 objection and then we also filed the objection. I
17 think we kind of thought if one is good two are
18 better, but I think that's not necessarily the case
19 here, but we just wanted -- more interested in
20 getting as quickly as possible our concerns
21 regarding the sale and the assumption or rejection
22 of our license agreement to the parties as quickly
23 as possible and I appreciate that there will not be
24 a determination of assumption or rejection on
25 Thursday.

1 We believe we still have objections that
2 are important for Thursday related to the sale of
3 the assets and particularly the trademarks. The
4 marks are free and clear of interest.

5 We have got -- we believe that there's
6 a basis for arguing that the license cannot be
7 rejected and shouldn't be and if that were to
8 prevail, we would want to ensure that the sale is
9 not free and clear of our rights under that license
10 agreement that would not be rejected, whether or
11 not it's actually assumed or assigned -- whether or
12 not it's assigned I should say.

13 Also we believe that the subsidiaries,
14 the European subsidiaries, of Stylemark acquired
15 ownership rights to the Polaroid name in effect in
16 accordance with European intellectual property law
17 and that would survive irrespective of the
18 assumption rejection of the license agreement and
19 we would be arguing that the sale free and clear
20 should not be free and clear of those rights as
21 well.

22 And other than that, I wanted to be here
23 to respond to any questions the Court might have
24 regarding recently filed objection.

25 THE COURT: Okay. I will have to

1 tell you, I haven't even crossed my eyes at the
2 objection. I was out of town all day yesterday. I
3 didn't get home until midnight and I haven't had a
4 chance to look at any of it.

5 MR. MEYER: Understood. I will just
6 say that we tried to explain the motion, why it was
7 filed late at this point and the basic reason is
8 that until last Thursday the license agreement had
9 been identified, at least in my client's
10 understanding, had been identified as one that
11 would be assumed and assigned and now we have
12 learned at least one of the bidders that they
13 intend to include it on the excluded asset and it's
14 only then that the client believed there was a
15 concern that needed to be protected.

16 Thank you, Your Honor.

17 THE COURT: Okay. All right.

18 Mr. Gordon.

19 MR. GORDON: Greg Gordon on behalf of
20 Patriarch.

21 I just wanted to comment with respect to
22 the LLC issue as well, Your Honor, just to give you
23 a little context.

24 This is a document that was actually
25 presented to the Debtors and negotiated -- all the

1 days are running together now, but I think it was
2 last weekend and I think you may recall that
3 Mr. Lodoen had indicated to Your Honor at the
4 hearing last Thursday that -- actually the weekend
5 before last that the -- the form of that document
6 was, in fact -- it had been negotiated with the
7 Debtors and it was acceptable to them and then
8 Counsel for the Committee stood up and indicated
9 that they were reserving their rights on that, that
10 they had not had an opportunity to weigh in.

11 We did receive comments from the
12 Committee actually through the Debtors yesterday
13 around 4:30 or so and we endeavored to address
14 those yesterday afternoon. We talked to the client
15 yesterday afternoon and then sent an email back to
16 the debtors relatively late last night. I think it
17 was around 10:00 or 10:30 last night.

18 Mr. Singer then, as I understand it,
19 forwarded that email to the Committee this morning.
20 From our perspective -- and I will say, as Mr. Ryan
21 indicated, we have tried to -- we have tried to
22 make changes to deal with a number of the issues
23 that were raised by the Committee.

24 There were others that we felt -- you
25 know, we explained why we thought we couldn't move

1 on those, but I did come today with the
2 understanding -- I thought we were going to try to
3 have a final LLC agreement this morning as well.

4 I am not necessarily opposed to what
5 Mr. Ryan said if he needs more time to respond, but
6 Patriarch, I think, is of the same view as Hilco on
7 this point. We want to get this LLC agreement done
8 as soon as we can so that we don't have any
9 distractions with respect to this item at the -- at
10 the hearing on Thursday.

11 If we are not going to resolve the issues
12 today, I just wanted to indicate on the record it
13 would certainly be our preference to get these
14 issues resolved as soon as we can.

15 From our perspective none of these is an
16 economic type issue. These are all -- go to some
17 not even really governance issues, some issues that
18 to our mind are fairly cosmetic and we think they
19 can be resolved very quickly if we can just have a
20 conversation with the Committee and we're happy to
21 do that as soon as possible.

22 THE COURT: All right. Thank you.
23 Anybody else? Well, let's set a time tomorrow and
24 try and get this salted away.

25 MR. RYAN: Your Honor, I think we're

1 all of the -- in agreement that we don't want this
2 issue in play on Thursday. It would be just
3 distracting, but on the other hand we have received
4 comments and need to consult further with the
5 Committee today so that we can respond to
6 Patriarch.

7 I think it's at least fair to give
8 Patriarch one more opportunity to hear the
9 Committee's concerns and tell us either that they
10 can't accommodate them or they can and similarly I
11 don't think it's fair to leave Hilco cast in stone.
12 I think we share with them the same concerns that
13 we have shared with Patriarch and give them the
14 same message that if you can accommodate them,
15 please do. If you can't, tell us so, so I'm
16 perfectly happy to set a deadline whereby tomorrow
17 having heard the Committee's concerns each of them
18 will submit what they put forth as their final and
19 last and none -- not to be negotiated form of LLC
20 agreement. I would propose 4:00 tomorrow, is that
21 sufficient.

22 MR. RYAN: That's fine.

23 THE COURT: Mr. Gordon, is 4:00
24 tomorrow okay then?

25 MR. GORDON: Yes, Your Honor.

1 THE COURT: Okay. Mr. Lenhart. If
2 you'd answer verbally please.

3 MR. LENHART: The answer is yes.

4 THE COURT: Everybody is tired still.
5 I was hoping maybe the weekend would let people
6 sleep a little bit. All right, so 4:00 tomorrow.
7 The Committee then will communicate --

8 MR. RYAN: The Committee will
9 communicate its concerns to each of them and
10 respond to any questions that they have and then
11 they can submit them by 4:00 and I think the
12 understanding here on the record with everyone is
13 that the LLC agreements are done and will not be in
14 play on Thursday.

15 Obviously we expect as there are and will
16 be differences between them and those differences
17 will weigh in the Committee's and the Debtors's
18 determination as to which is the highest and best
19 offer in the context of the auction and in
20 consultation with the other interested parties.

21 THE COURT: There will be some rough
22 quantification at least as to the comparative
23 advantages by the Committee.

24 MR. RYAN: Right. I think at that
25 point quantification is probably a difficult word

1 because I think Mr. Gordon is correct, we are
2 largely out of the strictly economic realm and into
3 more of issues of the rights of a minority
4 shareholder.

5 THE COURT: General weighing of risks
6 attended to that?

7 MR. RYAN: Attractiveness of being a
8 member of one LLC versus another LLC given the
9 risks and benefits, so less quantitative and
10 probably more qualitative at that point, but we
11 will certainly indicate once -- make our decision
12 which one we think qualitatively is superior to the
13 Committee.

14 THE COURT: Okay. So we have set a
15 deadline then for each party, sort of the tail end
16 of the process, each of the bidders to submit their
17 final agreements, but the Committee will be getting
18 back to them with the final word?

19 MR. RYAN: No, I think the Committee
20 would -- it's not the Committee's call obviously in
21 the end. We're going to need in the context of the
22 auction, I think, to consult with the Debtor and
23 since we share the professionals, Houlihan Lokey,
24 with the Debtor, I think that will be part at the
25 end of the auction the decision process that the

1 Debtor in consultation with the Committee and other
2 parties makes to decide which of the final two
3 bids --

4 THE COURT: Well, to be sure, but
5 what's going to be happening today so you get final
6 word back to them of the points that you want them
7 to sharpen their pencils on?

8 MR. RYAN: Today -- yes. Today we
9 will respond by the end of the day to the comments
10 we received from Patriarch and we will also by the
11 end of the day let Hilco know if there are any
12 portions of their's that we continue to have
13 concerns about.

14 THE COURT: Okay. And by the end of
15 the day let's make it --

16 MR. RYAN: 5:00.

17 THE COURT: 5:00. Okay. All right.
18 So everybody knows exactly when it's all in all in.
19 Okay. All right.

20 Do you have enough of an operating
21 understanding then relating to LLC agreements?

22 MR. GORDON: I had a question, Your
23 Honor.

24 THE COURT: Sure.

25 MR. GORDON: I am just wondering what

1 the mechanic is tomorrow. As indicated, we need to
2 submit by 4:00 p.m. tomorrow what we view as the
3 final LLC agreement, to whom do we submit it?

4 MR. RYAN: You can send it to the
5 Debtor, that's fine.

6 MR. GORDON: Thanks.

7 THE COURT: All right. And then I
8 think we are all clear then as to the other issue
9 that was discussed in chambers and summarized on
10 the record then so the Debtor will be filing it's
11 motion for a sealing of certain aspects of the bid
12 by 5:00 today and I will hear that then first on
13 Thursday and then we will go from there.

14 All right. Thank you, Mr. Ryan.

15 MR. RYAN: Thank you.

16 THE COURT: Does anybody have
17 anything else they want to note for the record here
18 about what's going on? What's going on sort of
19 keeps constantly changing, but all right.

20 I think we have accomplished what this
21 conference was setup for and then covered in
22 additional detail and since nobody else thinks
23 anything else need be put up on the flag pole, I
24 guess what we'll do then is reconvene at 9:30. I
25 will take the bench and hear the motion and then we

1 will go from there.

2 All right. Well, keep at it and we'll
3 see what happens on Thursday then. Good enough.
4 We stand adjourned.

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1 STATE OF MINNESOTA)
2 COUNTY OF DAKOTA) ss.
3)

4 BE IT KNOWN, that I transcribed the
5 tape-recorded proceedings held at the time and place
6 set forth herein above;

7
8 That the proceedings were recorded
9 electronically and stenographically transcribed into
10 typewriting, that the transcript is a true record of
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13 That I am not related to any of the
14 parties hereto nor interested in the outcome of the
15 action;

16
17 WITNESS MY HAND AND SEAL:

18
19
20 S/ LESLIE PINGLEY

21 _____
22 Leslie Pingley
23 Notary Public
24
25