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APPEARANCES

MR. JAMES A. LODOEN, MR. DARYL UPHOFF  
and MR. GEORGE SINGER, Attorneys at Law, Suite  
4200, 80 South Eighth Street, Minneapolis,  
Minnesota 55402, appeared on behalf of Debtors.

MR. DENNIS RYAN, Attorney at Law,  
Suite 2200, 90 South Seventh Street, Minneapolis,  
Minnesota 55402-3901, appeared on behalf of  
unsecured creditors committee.

MR. RICHARD CHESLEY and MR. GREGORY  
OTSUKA, Attorneys at Law, 13th Floor, 191 North  
Wacker Drive, Chicago, Illinois 60606, appeared on  
behalf of unsecured creditors committee.

MS. ALEXANDRA BARRAGE, Attorney at Law,  
Suite 6000, 2000 Pennsylvania Avenue NW  
Washington, DC 20006-71888, appeared on behalf of  
Nikon.

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APPEARANCES (Cont'd)

MR. MARK KALLA, Attorney at Law,  
Dorsey & Whitney, Suite 1500, 50 South Sixth  
Street, Minneapolis, Minnesota 55402-1498,  
appeared on behalf of Hilco Gordon Brothers.

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

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

MR. STEVE MEYER, Attorney at Law,  
3300 Plaza VII Building, 45 South Seventh Street,  
Minneapolis, Minnesota 55402, appeared on behalf  
of Nikon.

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APPEARANCES (Cont'd)

MR. DAVID RUNCK AND MS. CONNIE LAHN,  
Attorneys at Law, Suite 400, 775 Prairie Center  
Drive, Eden Prairie, Minnesota 55344, appeared on  
behalf of Petters unsecured creditors.

MR. BRYAN KRAKAUER, Attorney at Law,  
One South Dearborn, Chicago, Illinois 60603,  
appeared on behalf of Ritchie Capital.

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

MR. MICHAEL E. RIDGWAY, Attorney at  
Law, 1015 U.S. Courthouse, 300 South Fourth Street  
Minneapolis, Minnesota 55415, appeared on behalf  
of Trustee.

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APPEARANCES (Cont'd)

MS. AMY SWEDBERG, Attorney at Law,  
Suite 3300, 90 South Seventh Street, Minneapolis,  
Minnesota 55402-4140, appeared on behalf of  
Flextronics.

MR. MICHAEL ROSOW, Attorney at Law,  
Winthrop & Weinstine, Suite 3500, 225 South Sixth  
Street, Minneapolis, Minnesota 55402-4629,  
appeared on behalf of Acorn Capital.

MR. MICHAEL DOVE, Attorney at Law,  
P.O. Box 458, 2700 South Broadway, New Ulm,  
Minnesota 56073-0458, appeared on behalf of  
Lancelot.

MR. RONALD R. PETERSON, Attorney at  
Law, 330 North Wabash Avenue Chicago, Illinois  
60611-7603, appeared on behalf of Lancelot.

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APPEARANCES (Cont'd)

MR. VAN C. DURRER, Attorney at Law, 300 Suite 3400, 300 South Grand Avenue, Los Angeles, California 90071, appeared on behalf of Harmer.

MR. MICHAEL J. IANNACONE, Attorney at Law, 8687 Eagle Point Boulevard, Lake Elmo, Minnesota 55042, appeared on behalf of Oracle.

MR. LARRY B. RICKE, Attorney at Law, Suite 600, 325 Cedar Street, St. Paul, Minnesota 55101, appeared on behalf of Mr. O'Shaunnesy.

MR. ROBERT B. LAMB, Attorney at Law, P.O. Box 45120, Salt Lake City, Utah, 84145-0120, appeared on behalf of Flextronics.

MR. JEFFREY KLOBUCAR, Attorney at Law, Suite 1200, 250 Marquette Avenue, Minneapolis, Minnesota 55401, appeared on behalf of ArcSoft.

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P R O C E E D I N G S

THE COURT: We are on the record and the matter at bar is, in the main, a motion in the Chapter 11 case of the Polaroid Corporation and various related companies for authority to sell certain assets. That's under file 08-46617.

Additionally, there's a motion in the group of related Chapter 11 cases under the lead case of Petters Company, Inc., file 08-45257 for authority to sell certain assets free and clear of liens.

There are various objections to both motions and a couple of ancillary motions. There's been augmentation of various parts of the record preliminary to an evidentiary hearing pursuant to an order that I entered last week after a request for a continuance of the hearing. I am operating under the understanding that the proceeds are set to proceed.

It was communicated to me right about the time that the hearing was supposed to start that there had been a request for a

1 conference in chambers before we were going to  
2 commence. We were just double-checking and I  
3 think if, indeed, that is still a request,  
4 we'll use the jury conference room here off  
5 the courtroom.

6 I want to start here, however, since  
7 we've got a packed courtroom by asking  
8 everybody to note appearances for the record  
9 here.

10 MR. LODOEN: Good morning,  
11 Your Honor. James Lodoen, Daryl Uphoff, and  
12 George Singer on behalf of the Debtors,  
13 Polaroid, et al.

14 MR. RUBENSTEIN: Good morning,  
15 Your Honor. James Rubenstein as special  
16 counsel for the Debtor.

17 MR. RYAN: Good morning, Your  
18 Honor. Dennis Ryan of Faegre & Benson on  
19 behalf of the unsecured creditors committee  
20 together with Rick Chesley and Greg Otsuka of  
21 Paul, Hastings on behalf of the Committee.

22 MR. RUNCK: Your Honor, David  
23 Runck and Connie Lahn on behalf of the Petters  
24 unsecured creditors committee.

25 MR. PETERSON: Good morning,

1 Your Honor. Ronald R. Peterson and my local  
2 counsel, Michael Dove, on behalf of the  
3 Lancelot and RWB Estates in Chicago.

4 MR. JORISSEN: Good morning,  
5 Your Honor. James Jorissen and Brian Krakauer  
6 of Sidley, Austin on behalf of Ritchie Capital  
7 Management, LLC and the affiliated companies.

8 MR. ROSOW: Michael Rosow of  
9 Winthrop & Weinstine on behalf of Acorn  
10 Capital Group, LLC.

11 MR. RIDGWAY: Good morning,  
12 Your Honor. Michael Ridgway on behalf of the  
13 United States Trustee.

14 MR. KALLA: Good morning, Your  
15 Honor. Mark Kalla, Dorsey & Whitney, on  
16 behalf of PLR Holdings, a joint venture  
17 consisting of Gordon Brothers Brands and Hilco  
18 Consumer Capital.

19 MR. MAIER: Good morning, Your  
20 Honor. Adam Maier, Leonard, street & Deinard,  
21 on behalf of Patriarch Partners. And with me  
22 is Greg Gordon, Jones, day, also on behalf of  
23 Patriarch Partners.

24 MR. MEYER: Your Honor, Steve  
25 Meyer here on behalf of Nikon. And with me is

1 Alexandra Barrage also -- of Morrison &  
2 Foerster, also Nikon.

3 THE COURT: Okay.

4 MR. IANNAZONE: Michael  
5 Iannacone behalf of Oracle USA, Inc.

6 MR. DURRER: Your Honor, Van  
7 Durrer, Skadden, Arps, Slate, Meagher & Flom,  
8 on behalf of Global Industrial Services  
9 Limited and Harmer Holdings, LLC and Lorence  
10 Harmer.

11 MR. RICKE: Good morning, Your  
12 Honor. Larry Ricke on behalf of creditor  
13 Michael O'Shaunessy.

14 MS. SWEDBERG: Amy Swedberg on  
15 behalf of Harmer as just mentioned. Also here  
16 with Robert Lamb on behalf of Summit  
17 Technology and Flextronics.

18 THE COURT: Anybody else? All  
19 right. Okay. I was advised that the request  
20 for a conference preliminary to convening  
21 formally came in through Mr. Uphoff. Do you  
22 want to --

23 MR. LODOEN: Yes, Your Honor.

24 THE COURT: Yeah, I'll ask you  
25 just to take the podium, Mr. Lodoen.

1 MR. LODOEN: Good morning,  
2 Your Honor.

3 THE COURT: Maybe you want to  
4 raise that up, the podium. There's a button  
5 in the middle.

6 MR. LODOEN: How's that?

7 THE COURT: Well, it's  
8 whatever's comfortable for you. I've got a  
9 feeling it's going to be a long haul. And  
10 we'll try to achieve a midpoint so nobody's  
11 lumbar spine is strained.

12 MR. LODOEN: Well, Your Honor,  
13 we've had probably I would characterize as  
14 ongoing discussions from the auction forward  
15 including late evening, early morning, and  
16 discussions prior to the hearing this morning.  
17 And the -- we had a significant discussion  
18 this morning with many of the constituent  
19 parties exclusive of the bidders and we think  
20 it would be productive if we had an  
21 in-chambers conference with the Court. And  
22 that would be comprised of the creditors'  
23 counsel, the parties' in interest counsel but  
24 not the bidders' counsel to advise the Court  
25 where we are and what we believe is a

1 consensual approach that we have all reached  
2 as to how to proceed with the hearing and with  
3 the two main bidders that are still presently  
4 in consideration.

5 THE COURT: All right. Okay.  
6 Thank you. I'll take any input from anybody  
7 on that, although I don't really need to. I  
8 think it's within my discretion. But,  
9 Mr. Chesley, you look like you're straining at  
10 the bit.

11 MR. CHESLEY: Actually not,  
12 Your Honor.

13 THE COURT: Okay.

14 MR. CHESLEY: Richard Chesley  
15 on behalf of the official committee of  
16 unsecured creditors. We were somewhat the  
17 architect of asking to see chambers today with  
18 Debtor's counsel, counsel to the PGW  
19 committee, Mr. Peterson and we've also had  
20 discussions with Ritchie and Acorn. And the  
21 purpose of this, Your Honor, we think will be  
22 very brief as to simply apprise the Court of  
23 status and propose some suggestions that we  
24 have that may greatly expedite this process  
25 before you here today. That's the only reason

1 for doing it and we think doing it in chambers  
2 is the best way to do it.

3 THE COURT: Okay.

4 MR. CHESLEY: Thank you.

5 THE COURT: All right.

6 Anybody else want to chime in on that? Okay.

7 Very good. All right.

8 Before we go ahead with that because I  
9 will grant that request and we'll repair back  
10 to the jury room, I'm advised that there are  
11 14 seats back there. So this lack of seating  
12 may make this go even more quickly if we have  
13 enough people uncomfortable.

14 Mr. Iannacone, I know you had indicated  
15 I believe to my judicial assistant last week  
16 that you might have something you want to say  
17 with a request for leave to be excused if  
18 that's still applicable with what's been going  
19 on here.

20 MR. IANNACONE: Thank you,  
21 Your Honor. Oracle submitted an objection to  
22 the proposed sale and assignment based upon  
23 provisions of the Oracle licensing agreements  
24 for its software. It's my understanding that  
25 the Oracle objections have been resolved and

1 there will be certain language incorporated in  
2 the order approving any sale or assignment  
3 which would resolve those objections. I do  
4 have multiple copies of the language which we  
5 believe resolves that objection.

6 That being the case, Your Honor, and  
7 subject to the agreement with Debtor's  
8 counsel, we would then withdraw our objection  
9 and I would request to be excused from the  
10 Court since the purpose of our objection has  
11 been resolved and one less body in the  
12 courtroom would probably be beneficial.

13 THE COURT: Well, if it gets  
14 long, it will at least keep the temperature a  
15 fraction of a degree cooler. Okay. Let's  
16 see.

17 Mr. Singer, did you want to speak to  
18 that?

19 MR. SINGER: Yes. I just  
20 wanted to concur. I've been working with them  
21 and we believe that we'll adequately address  
22 their objection in an eventual proposed order,  
23 Your Honor.

24 THE COURT: Okay. All right.  
25 I'm going to ask you to come up to the podium

1 because I really don't know how good the  
2 pick-up is from way back in the public  
3 seating.

4 All right. Again, counsel, if you want  
5 to give your name again, please, just so I can  
6 make sure I've got this straight.

7 MS. BARRAGE: Thank you, Your  
8 Honor. Alexandra Barrage from Morrison &  
9 Foerster here with local counsel, Steve Meyer,  
10 of Oppenheimer on behalf of Nikon Corporation.

11 THE COURT: Okay. Go ahead.

12 MS. BARRAGE: Your Honor, in  
13 the effort to streamline the process as much  
14 as possible, on behalf of Nikon, we'd just  
15 like to report that based on ongoing  
16 conversations with Mr. Singer, Debtors'  
17 counsel, we believe our objection too has been  
18 resolved and we would be willing to withdraw  
19 our objection based on the proposed language  
20 to be included in the sale order provided by  
21 Mr. Singer. We have some minor comments to  
22 that order but we believe in good faith that  
23 we'll be able to work those issues out with  
24 Debtors' counsel.

25 THE COURT: Okay. Okay.

1 Thank you.

2 MS. BARRAGE: Thank you, Your  
3 Honor.

4 THE COURT: All right. Let's  
5 see. Somebody from the Debtor want to speak  
6 from there? Mr. Singer?

7 MR. SINGER: Yes, Your Honor.  
8 I concur wholeheartedly. I believe that we  
9 will have language in the order that will  
10 resolve Nikon's objection as well.

11 THE COURT: All right. Okay.  
12 All right. Mr. Rubenstein, I think you  
13 were -- you jumped up first. Why don't you  
14 come on up again to the podium just to make  
15 sure.

16 MR. RUBENSTEIN: Good morning,  
17 Your Honor. I'm appearing on behalf of the  
18 Debtors as special counsel. Our application  
19 is pending. We were retained as conflict  
20 counsel to deal in this matter, the matter  
21 before the Court this morning with the  
22 objection of Michael L. O'Shaunnesy, a  
23 creditor and former executive of Polaroid. I  
24 believe we've resolved our objection quite  
25 simply by agreeing to acknowledge on the

1 record that the agreement attached to  
2 Mr. O'Shaunnesy's objection which is entitled  
3 a earn-out agreement is not to be assumed by  
4 the buyer or assigned to it and both parties  
5 to the agreement and their various  
6 representatives retain all positions,  
7 remedies, and this is totally without  
8 prejudice to any disputes that may arise  
9 concerning that agreement. I believe  
10 Mr. Ritchie is in agreement with that and we  
11 would like to --

12 THE COURT: Mr. O'Shaunnesy?

13 MR. RUBENSTEIN: Pardon me.

14 Mr. O'Shaunnesy's counsel is in agreement with  
15 that.

16 THE COURT: All right. So  
17 Mr. O'Shaunnesy's claim, such as it may be, if  
18 it does have secured status, would attach to  
19 proceeds and then obviously there would be  
20 some sort of claim objection process at some  
21 point along the way to determine that?

22 MR. RUBENSTEIN: That's  
23 correct, Your Honor. Mr. Ricke is here  
24 representing Mr. O'Shaunnesy.

25 THE COURT: Okay.

1 MR. RICKE: What

2 Mr. Rubenstein just represented to the Court  
3 is correct. That would be acceptable. We  
4 would just request that there be a short  
5 statement to that effect in the order.

6 THE COURT: Okay.

7 MR. RICKE: Otherwise, it's  
8 resolved.

9 THE COURT: Okay. Very good.  
10 All right. Thank you. Mr. Kalla?

11 MR. KALLA: Thank you, Your  
12 Honor. Just briefly. I represent PLR  
13 Holdings. I believe they're the highest and  
14 best bid to date and we hope to be the  
15 prevailing bidder. Several people have come  
16 up here and suggested they've negotiated  
17 changes in the sale order. We haven't seen  
18 those. So obviously we're just reserving our  
19 rights to the extent that there is another  
20 bidding process or further discussion and  
21 negotiation of the bids.

22 THE COURT: All right. So  
23 noted. All right. Anybody else have anything  
24 going to whether we reduce the population of  
25 participants going forward? Okay. Good

1 enough.

2 Well, all right. We've had recitation,  
3 then, of resolutions for the Oracle, Nikon,  
4 and O'Shaunnesy objections. And I'm certainly  
5 not going to stand in the way of taking those  
6 objections out of the controversies that might  
7 ultimately be presented to me. So we'll leave  
8 those memorializations for the record and they  
9 can be -- the resolutions can be incorporated  
10 into the final form of order that should  
11 result from the hearing. And I certainly will  
12 grant leave to all of those lawyers involved  
13 there to be excused from further participation  
14 in the hearing. There's been a reservation of  
15 rights by the at least one of the prospective  
16 bidders and we'll just leave all of that to  
17 get resolved as this goes forward.

18 So very good. All right. I think what  
19 we'll do then is go off the record and I will  
20 ask, then, pursuant to the remarks noted here,  
21 specifically by Mr. Lodoen and Mr. Chesley, I  
22 will ask counsel for the Debtor, the  
23 Committees, the various parties in interest to  
24 the case which per force and necessarily  
25 excludes the two bidders, at this point I'll

1 ask counsel for all of the parties in interest  
2 to the case to join me back in the jury room.  
3 I have not yet really convened a conference  
4 back in there since we moved back so we'll  
5 make a little use of that real estate that we  
6 annexed in the move and I'll let you tell me  
7 what's exactly going on and what your proposal  
8 for going forward may be.

9 All right. So we'll go in recess.

10

11 (A break was had in the proceedings)

12

13 THE COURT: -- the Polaroid  
14 Corporation and Petters Company matters. And  
15 after a chambers conference, I believe that  
16 the parties arrived at understandings as to  
17 how the matter of the sale of Debtors' assets  
18 was to go forward for submission to the court  
19 together with any remaining objections over  
20 the next several days.

21 So I will just ask who's to note for  
22 the record here. Mr. Lodoen?

23 MR. SINGER: Your Honor,  
24 briefly. Before we get into the process.

25 THE COURT: Go ahead.

1 MR. SINGER: Attorney from  
2 ArcSoft didn't have an opportunity to put  
3 something on the record about his objections  
4 and I think he's prepared to do that.

5 THE COURT: All right. Yes.  
6 And I do have a note from my law clerk here.

7 MR. KLOBUCAR: Good morning,  
8 Your Honor. Jeff Klobucar of Foley &  
9 Mansfield representing ArcSoft. We are here  
10 to withdraw the objection that we filed in  
11 this case on March 26. However, for the  
12 record, we'd also like to note that the OEM  
13 license agreement that we had a relief from  
14 stay motion last week regarding, that  
15 particular license has been terminated and we  
16 just wanted to make a record of that. Thank  
17 you, Your Honor.

18 THE COURT: All right.  
19 Anything else to note relating to that matter?  
20 All right. Withdrawal of the objection is  
21 noted for the record, then. Okay.

22 Let's go on, then, to note  
23 understandings here. Mr. Lodoen.

24 MR. LODOEN: Your Honor, as we  
25 mentioned in chambers, and I may even have

1 mentioned to the Court when I introduced the  
2 matters this morning, there are issues with  
3 respect to the auction and the potential bids.  
4 And neither of the particular bids either from  
5 that point or forward given timing, given  
6 parameters of bidding, given the requirements  
7 of getting signed agreements before the Court  
8 today are in the final shape, if you will, in  
9 order to present to the Court. And because of  
10 the issues surrounding the auction process and  
11 those considerations, the parties in interest  
12 exclusive of the bidding parties met and have  
13 come up with a proposal that they believe will  
14 maximize value to the estate that will provide  
15 a structured route going forward and that will  
16 allow everybody a playing field in which to  
17 come forward with a proposal. And the terms  
18 of the deal are as follows. Or the terms of  
19 the bidding process from here going forward is  
20 as follows:

21 Patriarch and Hilco Gordon Brothers  
22 have until 4 p.m. Tuesday, tomorrow, to submit  
23 improved bids if they wish. Their improved  
24 bids need to be submitted in writing to the  
25 Debtors' financial advisors, Houlihan, and

1 then the Debtors, the Debtors' committee,  
2 creditors committee, the PGW, PCI creditors  
3 committee, along with Ritchie, Acorn and  
4 Mr. Peterson on behalf of Lancelot will be  
5 consulted by the Debtors and the Debtors'  
6 creditor committee to assess these bids and  
7 determine which is the final and best bid  
8 going forward.

9 As part of submitting their package at  
10 4 p.m. on Tuesday, they need -- the bidders  
11 need to submit signed asset purchase agreement  
12 and final schedules. They need to submit  
13 their final LLC agreement and they also need  
14 to submit a form of final proposed order. And  
15 these will be black lined against prior  
16 versions of those documents.

17 There will be no negotiations between  
18 the bidders and Houlihan or the Debtor and the  
19 Committee with respect to their bid proposals  
20 prior to them making their bid. They do have  
21 the opportunity to work with creditors  
22 committee and Debtors' counsel to address  
23 legal issues with respect to revisions to  
24 their documents which are probably just an  
25 hour or two from being final at this point.

1 So that should be minimal on a go forward  
2 basis.

3 There will be a 25 percent equity cap  
4 on the bid. So in terms of the bidding  
5 currency, the upper limit on equity is  
6 25 percent.

7 By noon Wednesday the Debtors will file  
8 with the Court a copy of the prevailing bid, a  
9 summary of the prevailing bid, and also the  
10 final documents relating to that prevailing  
11 bid so that all parties will have the  
12 opportunity to see those final documents.

13 At approximately 10:30 I believe Your  
14 Honor advised on Thursday we'll have a hearing  
15 back in front of this Court to seek approval  
16 of the prevailing bid as determined from that  
17 process and to address any objections that  
18 remain and to have any testimony that is  
19 required.

20 There will be a later scheduled hearing  
21 to address any unresolved objections to  
22 executory contract assumption issues and  
23 matters related to executory contracts.

24 Parties to executory contracts are free to  
25 communicate with the bidders to include any

1 language in the orders that they might request  
2 or require.

3 And at this point Hilco's LLC agreement  
4 has been shared with Patriarch. We don't yet  
5 have a final draft of the Patriarch LLC  
6 agreement but it's in almost final form and we  
7 will present a version of that sometime today  
8 to Hilco so that they have an equal playing  
9 field of seeing the counterpart to the LLC  
10 agreement. If it's not finalized by the end  
11 of the day, we will provide to them whatever  
12 is the best and current form but we certainly  
13 hope to have that finalized by today.

14 Those are the points that I recall.  
15 And apparently Mr. Chesley may have a point or  
16 two that he wants to add just to clarify the  
17 process.

18 THE COURT: All right.

19 MR. CHESLEY: Thank you, Your  
20 Honor. Richard Chesley on behalf of the  
21 Committee.

22 Just two points of clarification which  
23 I think all parties are in agreement on. One,  
24 counsel indicated that the bidding parties, as  
25 part of their package, will submit a form of

1 order. I think the way it's going to work is  
2 the Debtors, in conjunction with the  
3 committee, will provide each of the parties  
4 with a form of order shortly this afternoon,  
5 and they are to provide us any further  
6 comments or clarification on that form of  
7 order with their bid package. They're not to  
8 prepare their own form of order.

9 Second, Your Honor, and I think this  
10 was stated but I just want to be clear on it  
11 that the parties with respect to exchange of  
12 information the only thing that will be shared  
13 other than the form of order will be the  
14 Patriarch LLC agreement. Neither Houlihan  
15 Lokey nor the Debtors' representatives will be  
16 available to either party for additional  
17 diligence questions or the like to preserve  
18 the integrity and a fair playing field in the  
19 short period of time that we have. If there  
20 is some exigent request, I would simply ask  
21 that those be directed specifically to  
22 Debtors' counsel who will certainly involve  
23 Committee counsel just to make sure that  
24 everybody's playing off the same playbook at  
25 this point.

1 With that, Your Honor, those are the  
2 only clarification points that we had. Other  
3 counsel who had lodged objections may have  
4 additional points. Thank you, Your Honor.

5 THE COURT: Okay. All right.  
6 The floor is open here.

7 MR. GORDON: Your Honor, may I  
8 be heard?

9 THE COURT: Sure.

10 MR. GORDON: Good morning,  
11 Your Honor. Greg Gordon, Jones, Day. I'm  
12 here on behalf of Patriarch. We basically  
13 have set up a Lithograph Legends LLC and we  
14 believe we were the prevailing bidder at the  
15 auction and I appreciate Your Honor letting me  
16 appear before you this morning. But I did  
17 want to rise right away to lodge an objection  
18 to the proposal that's being made.

19 And fundamentally, Your Honor, the  
20 concern we have is that this Court, pursuant  
21 to prior orders, put into place a bid process  
22 and an auction process to be followed by the  
23 parties. That process was followed to the  
24 letter, and I'd like to spend a few moments on  
25 that if I could, Your Honor, by Patriarch. It

1 was followed to the letter when we submitted  
2 our bid package. It was followed to the  
3 letter during the auction and then there were  
4 changes in rules and the like. And I think  
5 fundamentally what's happening here, Your  
6 Honor, is there's a suggestion now based on an  
7 in-chambers meeting that this Court should  
8 override its prior orders and override a court  
9 approved process and reopen an auction which,  
10 to my way of thinking, goes right to the  
11 integrity of the process and is inequitable  
12 and, frankly, could set a type of precedent  
13 that will chill bidding at auctions like this.

14 The parties rely on court approved  
15 procedures to come into a court-sanctioned  
16 auction and then after the fact are then being  
17 told based on statements made to the court in  
18 chambers and then ultimately a court ruling  
19 that what stood at the auction no longer  
20 stands and it's reopened as if the auction did  
21 not even occur. That to us isn't fair and  
22 could chill the process.

23 And it also raises a number of issues,  
24 Your Honor, in my mind as to where you even  
25 start over again. If we're to restart this

1 process, are we to pretend as if the auction  
2 didn't take place at all? Are we to start at  
3 some point in the middle of the auction? I  
4 mean, where are we now in the auction process  
5 because it's not even clear to us on what  
6 bases Your Honor is revisiting the process.

7 And if I could spend a minute or two,  
8 I'd like to just provide a bit more detail of  
9 what we did and why we think the auction was  
10 conducted appropriately and the auction  
11 results should stand and not be overturned  
12 after the fact by the Court.

13 We submitted our bid package. We  
14 submitted a bid that was an all-cash bid which  
15 we understood was what the Debtors and the  
16 Committee were looking for. To our surprise,  
17 we were then advised a couple of days later  
18 that there were two other qualified bids, both  
19 of which contained equity components which we  
20 understood the Debtors were not interested in  
21 and did not want. We inquired about that. We  
22 also inquired wanting to know well, if you're  
23 going to consider equity, let us know and tell  
24 us what you want. We did not get a response  
25 to that. We question why you would consider

1           qualifying bids that had so little cash and  
2           such high equity components. We were  
3           basically told thereafter, well, in fact  
4           you're right. The one bid, the bid submitted  
5           by Therum, we're going to disqualify because  
6           it's primarily equity, very little cash.

7                       We were also told that the other bid,  
8           the Hilco Gordon Brothers bid which had a  
9           significant equity component was under  
10          consideration as to whether it should be  
11          qualified or not. We were then advised  
12          shortly before the auction that, in fact, that  
13          bid would be disqualified as well unless  
14          substantial additional cash were put up by  
15          Hilco Gordon Brothers and the equity were  
16          withdrawn. As a matter of fact, we were then  
17          told shortly before the auction that Hilco  
18          Gordon Brothers did revise its bid eliminate  
19          the equity component at about, as I recall,  
20          about \$9 million in additional cash.

21                      Notwithstanding that, we started the  
22          auction. It was determined by Houlihan Lokey,  
23          the advisors here, that the Patriarch bid was  
24          the highest and best bid as submitted and the  
25          bidding commenced off of that. Again, our

1 clear understanding was no equity. This is  
2 cash or assets left behind.

3 Then we have many delays in the  
4 auction, notwithstanding the fact that the  
5 procedures had hour time limits. And my  
6 understanding, Your Honor, is that you've seen  
7 the transcript of the auction. Hilco comes  
8 back with an initial bid. They put an equity  
9 component in. There's discussion about that.  
10 That bid is rejected. No equity. They then  
11 come back, revise their bid, actually then put  
12 in some cash as I recall. That's deemed the  
13 higher and better bid.

14 We then countered. We submitted a bid,  
15 as I recall, that left additional assets  
16 behind in excess of \$6 million and that was  
17 deemed then to be the highest and best bid.  
18 Then there were long breaks again, as I  
19 recall, discussions about equity. Hilco then  
20 came back. This was late, well, probably mid  
21 afternoon or the first day with a bid with a  
22 20 percent equity component again. The same  
23 amount of equity that was rejected as I recall  
24 from their initial stalking horse bid.

25 There was then an adjournment because

1 the representative of Patriarch, the CEO of  
2 Patriarch, Ms. Tilton, had an engagement she  
3 could not get out of later that day. And as  
4 we understand it, at that point there was then  
5 a meeting that occurred between Hilco and  
6 Gordon Brothers where they presented a  
7 business plan for the entity that would be  
8 their purchaser to support their equity  
9 proposal.

10 We then came back the next day and what  
11 we were told was that based on valuation work  
12 that Houlihan had done, that their bid was not  
13 viewed as higher and better and it was  
14 rejected.

15 There were then further delays where  
16 Hilco is permitted to go out and have -- and  
17 revisit its bid again. It then came back with  
18 a new bid with a 15 percent equity component,  
19 as I recall \$4 million in additional cash, a  
20 million dollar breakup fee and that bid to our  
21 surprise was accepted.

22 And so for the first time, and this was  
23 on the morning of the second day of this  
24 auction, we were then in a scenario where  
25 equity was being bid and so from our

1 perspective the rules of the auction were  
2 dramatically changed.

3 Fortunately, Your Honor, we were  
4 prepared. We had put together, Patriarch had  
5 put together a business plan and we were then  
6 asked to make a presentation to the creditors  
7 on our business plan. We did that. Houlihan  
8 went off, did a valuation which they said they  
9 would run through their models and came back  
10 and, coincidentally, Your Honor, it valued our  
11 equity at precisely the same price as the  
12 Hilco equity even though the business plans  
13 were entirely different. One is a company,  
14 you know, Patriarch, that takes distressed  
15 companies, rebuilds them, keeps the employees,  
16 builds on the base of employees, builds on the  
17 business. The other is a liquidator.

18 We haven't seen the business plan for  
19 Hilco Gordon Brothers so we don't have a view  
20 on the valuation that Houlihan did with  
21 respect to that equity. But we certainly  
22 had -- you know, we know our business plan.  
23 We asked for the analysis of the equity value.  
24 We weren't given that. But again,  
25 coincidentally, it came back at \$650,000 per

1 point of equity.

2 Nonetheless, notwithstanding all of  
3 that, Your Honor, we agreed to go forward and  
4 continue bidding on equity provided that there  
5 was some limitation placed on the amount of he  
6 equity that could ultimately be bid in  
7 connection with a new company. Houlihan  
8 agreed the 20 percent would be an appropriate  
9 limit. You're hearing 25 percent now this  
10 morning. The creditors committee was there,  
11 agreed. The Debtors agreed and we had an  
12 understanding that that was the basis on which  
13 the auction would continue.

14 We then went back and we made a new  
15 bid. We had a 10 percent equity component in  
16 our bid. It was viewed as higher and better.  
17 As I recall, Your Honor, we went several more  
18 rounds after that and then I think our bid was  
19 up to the \$59 million level and then we  
20 thought we ought to make it clear because it  
21 hadn't been stated on the record that we had  
22 this agreement we thought to a rule with a  
23 20 percent equity cap. That was then put on  
24 the record. We attempted to put that on the  
25 record. We were advised by Hilco Gordon

1 Brothers that they had never heard about that  
2 before which we thought they had. And then  
3 there were big adjournments then at that  
4 point.

5 When we came back, Hilco Gordon  
6 Brothers basically ultimately just said we'll  
7 make another bid. The bid they made was a  
8 nonconforming bid because they bid in at  
9 20.5 percent of equity which was clearly in  
10 excess of the cap which, based on the record,  
11 was put on the record prior to them as the  
12 rule being imposed by the estate and on that  
13 basis the bid was rejected. The creditors  
14 committee acknowledged that it was a nonbid.  
15 Hilco Gordon Brothers was asked to submit  
16 another bid. They did not. The auction was  
17 concluded and we were declared the prevailing  
18 bidder. And that's where we stood, Your  
19 Honor.

20 And so from our perspective, we had a  
21 two-day auction. We had it based on court  
22 approval, court-approved bidding procedures  
23 and auction proceedings -- auction procedures.  
24 We felt that the rules were changed mid-game  
25 to even allow an equity component to come in,

1 nonetheless. We were flexible in that. We  
2 proceeded on that basis. Further rules were  
3 set. The bidding proceeded with those rules  
4 in place and at the end of the day we were  
5 declared the winner. And now we come into  
6 court today and are being told that that  
7 process should be revisited and reopened. And  
8 again, starting from where and on what basis  
9 it's not clear to me.

10 It seems to me, Your Honor, that if  
11 this court wants to reconsider its prior  
12 orders and change the outcome here that it  
13 would only be appropriate at a minimum to do  
14 that with an evidentiary basis. I mean, if  
15 parties are prepared to come in here and  
16 testify that there was some problem with the  
17 integrity of the process, the fairness of the  
18 process, the openness of the process,  
19 whatever, I think they should have their day  
20 in court. We don't think there's any question  
21 that this process had sufficient integrity,  
22 that it was open, that Hilco Gordon Brothers  
23 had every occasion and every opportunity to  
24 submit a final bid. They submitted a final  
25 bid that they knew at the time wasn't in

1 compliance with the rules, it was rejected,  
2 and we were declared the winner. And from our  
3 perspective, Your Honor, that should be  
4 honored. It should be honored not only for  
5 purposes of this case but for, as I said  
6 before, the potential precedent it could set  
7 in other cases where, again, people proceed in  
8 reliance on rules. They proceed in reliance  
9 on court orders and find out after the fact  
10 that all of that, the game can be completely  
11 changed and simply reopened. And so we would  
12 urge the Court not to do that.

13 Thank you, Your Honor.

14 THE COURT: Okay. Does  
15 anybody else want to speak in the first  
16 instance to the proposal that's been read out  
17 to the record here?

18 MR. DURRER: Good morning,  
19 good afternoon. Good morning still, Your  
20 Honor. Van Durrer, Skadden, Arps, Slaten,  
21 Meagher & Flom on behalf of the Harmer Group.  
22 Just one small request. When the sale order  
23 is made available to the bidders, it would be  
24 helpful if it could also be made available in  
25 Word format to all the objectors so that they

1 can put in language changes most  
2 expeditiously. Just make that request, Your  
3 Honor.

4 THE COURT: Just to get that  
5 one taken care of, I assume that's no problem,  
6 Mr. Lodoen.

7 MR. LODOEN: No problem.

8 THE COURT: Okay. Good. So  
9 required, then. Mr. Kalla?

10 MR. KALLA: Thank you, Your  
11 Honor. I think that if you have read the  
12 transcript of the auction or you do read it  
13 and Mr. Runck's objection, you'll get a fair  
14 idea of what happened at the auction. I think  
15 that the resolution here is probably one of  
16 the only ways to resolve all the objections  
17 before the Court today.

18 And I just want to point out that the  
19 joint venture I represent is not the joint  
20 venture of the two liquidation arms of these  
21 companies. This is going to be an ongoing  
22 business with -- if equity is part of the bid,  
23 it will provide a tremendous value to the  
24 estate. And the joint venture provided all of  
25 this information in a detailed summary to both

1 the debtor and the creditors committee and all  
2 the nonbidders in this process. Thanks.

3 THE COURT: All right.

4 Anybody else in the first instance here?

5 Okay.

6 Mr. Lodoen, do you want to speak to the  
7 objection that's been made to the proposal?

8 MR. LODOEN: Your Honor, I  
9 think I've already addressed that in our  
10 responses and some of the prior summaries with  
11 the Court. Unless the Court is interested in  
12 going through on a blow-by-blow basis, I don't  
13 think that furthers our process today.

14 THE COURT: Okay. Well, I do  
15 want you to say something. All right?

16 MR. LODOEN: All right. Your  
17 Honor, my -- as I said, our view is that where  
18 we are today we don't have final signed  
19 agreements before the Court for starters. The  
20 process has been backed up by a two-day  
21 auction. We don't have agreements in. We've  
22 been working on them. We've come up as we've  
23 been working over the last few days with  
24 rejection issues with Patriarch that we spent  
25 a considerable amount of time addressing

1 because of certain contracts that were on  
2 their assumption list that was filed with the  
3 Court -- or excuse me, not with the Court.  
4 That was submitted to the parties, to us as  
5 part of their bidding process which contained  
6 contracts that they really did not intend on  
7 assuming. So we had to work through that.  
8 And, you know, we are comfortable with the  
9 resolution that we presented to the Court on  
10 how best to proceed with this going forward.

11 The record I think is pretty clear that  
12 there are issues that both parties are raising  
13 back and forth when they think the process was  
14 unfair to them but fair to the other side and  
15 the counter parties are raising the same  
16 thing. So to the extent that there's any  
17 issues with respect to the current, you know,  
18 order of the Court, the Court's certainly got  
19 the ability to modify that if the Court is so  
20 inclined.

21 But at the end of the day, the sale  
22 order, or excuse me, the bid procedure order  
23 and one of the last terms of paragraphs in  
24 that order ultimately says the Debtor has the  
25 discretion to come forward and submit the best

1 bid up until the date the Court signs an order  
2 approving the sale. And based upon what has  
3 happened today and the various views of the  
4 different bids, you know, in order to come  
5 forward and present that highest and best bid,  
6 we feel that we need to proceed with the  
7 process that all of the parties in interest,  
8 if you will, have essentially consented to and  
9 adopted which has been read on the record.

10 THE COURT: Ultimately, I  
11 think, if I'm gleaning this correctly from the  
12 submissions you've made on behalf of the  
13 Debtors so far, the Debtors see this as having  
14 become a process of rather than just selling a  
15 bag of apples, it's ended up being a bag of  
16 apples and oranges mixed at the instance of  
17 the two bidders, right?

18 MR. LODOEN: That's right,  
19 Your Honor.

20 THE COURT: I mean, it's not  
21 just to the form of consideration. It's also  
22 bid in terms of the bundle of various  
23 relationships as well as assets that would be  
24 sold by the Debtors or contractual rights that  
25 would be assumed and assigned.

1 MR. LODOEN: Correct. There  
2 are many items that go into a review of what  
3 is a -- is the best bid. This isn't like a  
4 garage sale where we're bidding a dollar for a  
5 box of books and somebody bids two and  
6 somebody bids three and they get the box.  
7 This is a situation where parties are bidding  
8 cash. There's no prohibitions in the bid  
9 procedures on accepting equity or other  
10 consideration. Parties are paying cash. And  
11 then after a while it turns to equity. Many  
12 of the auctions that all of us in this room  
13 have attended before have proceeded exactly  
14 that way. Parties bid with cash. They bid  
15 with equity. They start to exclude certain  
16 assets. They sometimes address contracts. It  
17 is a process that has a lot of flexibility to  
18 it. And Houlihan Lokey who ran the auction,  
19 certainly did their best to facilitate a  
20 robust auction, to move it forward, to  
21 maximize value to the estate, and to be as  
22 flexible as possible, and that flexibility was  
23 certainly exhibited.

24 It's recognized in the record and we  
25 tried to accommodate certain requests for both

1 parties. The 20 percent cap throughout the  
2 process was accommodated for Patriarch. Hilco  
3 came in with one of their bids and tossed in  
4 what is kind of a secondary breakup fee as  
5 part of a contingency to accepting their bid  
6 that ultimately the parties, you know,  
7 consented would be brought to this court to  
8 see if the Court would be -- would approve  
9 that if they were not the prevailing bidder.

10 There's a lot of give and take, a lot  
11 of accommodations. Some went some ways, some  
12 went the others, and at the end of the day  
13 we've got two parties, neither of whom are  
14 completely satisfied with the process, both of  
15 whom think that they have the highest and best  
16 bid. And ultimately the discretion, you know,  
17 lies with the Debtors to submit -- you know,  
18 to facilitate the auction with assistance of  
19 its advisors. And, you know, we're here  
20 before the Court with that discretion advising  
21 the Court that the proposal that has been put  
22 on the record is one that we think makes sense  
23 and addresses the interests of all parties.

24 THE COURT: Am I correct in  
25 gleaning, then, from the structure of the

1 proposal that's before -- been put to me now  
2 that it's the Debtors' hope that by asking for  
3 one final bid to be presented by both of these  
4 parties completely independently, not in a  
5 competitive auction type setting, that the  
6 Debtors, the creditors committee, and the  
7 stakeholders that would be consulted then will  
8 be presented with a clear choice that can be  
9 evaluated and ultimately reduced down to  
10 numbers, right?

11 MR. LODOEN: That's certainly  
12 our expectation.

13 THE COURT: All right. And at  
14 this point, however, the Debtors are not  
15 comfortable with what's been produced so far  
16 because, among other reasons, the fact that  
17 the ability to reduce the bids made so far to  
18 numbers has been as late coming as it has  
19 been.

20 MR. LODOEN: I don't think  
21 reducing it to numbers has been the biggest  
22 challenge. It's determining who has the final  
23 and best bid and what are the parameters in  
24 which to consider that. There has been  
25 valuation and it's -- you know, both of these

1 two companies were valued under Houlihan's  
2 model and consulting with their internal  
3 people, and that equity number of 650,000 per  
4 point came back the same for each but their  
5 model produced very similar numbers. And it's  
6 telling that when we told Hilco that that's  
7 what we were valuing theirs at, they were  
8 upset because they felt that their value was  
9 highly superior to that. When we went back  
10 and told Patriarch that's how we're valuing  
11 their equity, they were upset because they  
12 felt that their value was highly superior.

13 So ultimately, we've got two buyers  
14 here who both think that they can provide the  
15 best ultimate value in return to the creditors  
16 once they acquire these assets by way of  
17 equity return and they have different plans  
18 for the business. They have different models  
19 but they're both very credible models and both  
20 companies have a history of success and that's  
21 how the Debtors and the creditors committee  
22 are valuing them. That's why they're --

23 THE COURT: Okay. So let me  
24 see if I can identify, then, one issue that  
25 sort of prompted this request to change the

1 procedures a little bit. The fact that the  
2 equity proposal came in when it did and the  
3 fact that the Debtors believe that the  
4 maximization of value, then, should allow for  
5 one last shot to augment equity as a component  
6 of the purchase price is what's prompting it.

7 MR. LODOEN: Well, what's  
8 prompting this is that we are not in a  
9 position today to deliver a final package to  
10 the Court --

11 THE COURT: Right.

12 MR. LODOEN: -- to bring some  
13 conclusion to this. We don't have signed  
14 documents. We've had negotiations going on  
15 for the past several days and we're not in a  
16 position with the bid that we were going to be  
17 proposing to the Court to come forward. We  
18 don't have final sets of documents before the  
19 Court today. Everybody's objecting to that.  
20 They don't know what's there. And how can we  
21 approve something without seeing the final  
22 documents. Plus, there are the other  
23 objections that creditors have raised in the  
24 process saying, you know, so as we weigh all  
25 of that and figure out how do we get to a

1 final point that's fair for everyone, this  
2 proposal that we have proposed is what we  
3 believe gets us there.

4 THE COURT: All right. Okay.  
5 Anything else that you wanted to note?

6 MR. LODOEN: No. Thank you.

7 THE COURT: Okay. Let's  
8 see --

9 MR. GORDON: May I be heard,  
10 Your Honor?

11 THE COURT: Sure.

12 MR. GORDON: Greg Gordon  
13 again, Your Honor, on behalf of Patriarch.  
14 And thank you very much for hearing me again.

15 First of all, with respect to the final  
16 documents point, we basically worked all night  
17 on final documents, Your Honor, and from our  
18 perspective they're basically done. Maybe  
19 there's some nits or nats left, but if the  
20 only issue here is the final documents, we can  
21 finish the final documents and submit those.  
22 From our perspective that isn't a basis to  
23 reopen the auction.

24 Also, the fact that equity has been  
25 injected into this auction as Your Honor asked

1 from our perspective doesn't justify it either  
2 because as I tried to explain and maybe I  
3 didn't explain it very well, Your Honor,  
4 equity proposals were made initially. I mean,  
5 two of the three other bids that were  
6 submitted had equity components and they were  
7 rejected on that basis. And so we started  
8 with an auction where the message was no  
9 equity components.

10 We then moved into an auction with  
11 equity components. Those equity components  
12 were then valued in a way that we disagreed  
13 with but we were prepared to live with it  
14 anyway and the auction proceeded with the  
15 equity and it closed on that basis.

16 The other thing, Your Honor, I think  
17 that's troubling here is recall from the  
18 bidding procedure that it's contemplated that  
19 there will be a prevailing bidder and a backup  
20 bidder. The bidder that's not the successful  
21 bidder has to lock in as a backup bidder. And  
22 I go back to the point I made before. If  
23 we're going to overturn the auction where  
24 people were bidding based on certain rules,  
25 where, then, do we start with the bidding?

1 I think the implication of what's being  
2 suggested to Your Honor is we start with the  
3 Patriarch bid that concluded the auction based  
4 on a rule of 20 percent equity limitation.  
5 Now we're taking that rule away. But I think  
6 the implication is they want Patriarch to be  
7 bidding above that last bid, and Hilco Gordon  
8 Brothers is basically in the same boat as far  
9 as I'm concerned.

10 So if the auction is going to be  
11 reopened, I go back to the question I raised  
12 initially, Your Honor, particularly because we  
13 have this backup bidder concept as well. Do  
14 we go back to the beginning and just have the  
15 parties bid off the stacking horse bid that  
16 was in place before the auction started again  
17 pretending as if the auction didn't occur? Do  
18 we start at the point in the auction where we  
19 got into the equity and that's where the  
20 objections started to come up that Your Honor  
21 saw reflected in the transcript or what do we  
22 do? It seems to me it's not appropriate to  
23 say no, you're locked in with the last bid you  
24 made based on an auction with rules that is  
25 now being effectively thrown out. And, you

1 know, that's just another reason we think,  
2 Your Honor, it's just not appropriate or fair  
3 to reopen the process.

4 Thank you, Your Honor.

5 THE COURT: Okay.

6 MR. GORDON: I'm sorry, Your  
7 Honor. Can I say one more thing?

8 THE COURT: All right.

9 MR. GORDON: I can't read my  
10 notes here. Kind of tired today.

11 You know, the other thing too I wanted  
12 to point out to Your Honor is that as late as  
13 Friday the Debtor filed pleadings supporting  
14 Patriarch as the prevailing bidder.

15 Mr. Lodoen talked about the Debtor has the  
16 discretion to come forward with the bid. In  
17 fact, that was done on Friday. And what  
18 happened, I think where we went off course,  
19 Your Honor, just so Your Honor understands is  
20 issues were raised regarding potential  
21 rejection damage claims that might cause the  
22 estate problems. So we've had negotiations  
23 all through the weekend on how to address  
24 that. We've now come to a resolution that we  
25 believe takes care of that issue and that

1 issue has been resolved.

2 And so from our perspective, that puts  
3 us back to exactly the place where we were on  
4 Friday which was the Debtor had proceeded with  
5 Patriarch as the prevailing bid. And if the  
6 basis for going off that track was the fact  
7 that we had the issue with the rejection  
8 damages, that issue has been fully resolved.  
9 So I wanted Your Honor to be aware of that.  
10 Thank you.

11 THE COURT: All right.  
12 Mr. Chesley.

13 MR. CHESLEY: Briefly, Your  
14 Honor. Let me just cover a couple of points.

15 First of all, with respect to the  
16 resolution of this issue which apparently came  
17 up over the weekend, we're not aware -- we  
18 don't know what the resolution is. We heard  
19 there may be a resolution out there. What  
20 this process does is brings finality to the  
21 documents. The music stops, the numbers stop,  
22 and everybody knows what they're being  
23 obligated to do. It's just that simple.

24 And any claim that where are we  
25 starting and the parties don't know where

1 they're starting, I think the parties know  
2 exactly where they're starting. I think they  
3 know exactly where they need to go. And  
4 again, this is all consistent with the  
5 obligations that were set forth in the bid  
6 procedures order that says the Debtors can  
7 conduct the auction in any manner they  
8 determine will achieve the maximum value to  
9 the assets.

10 So far, Your Honor, there's two  
11 different deals on the table. The maximum  
12 value under the established criteria that  
13 everybody worked under was the Hilco bid. I  
14 don't think Houlihan would dispute that. The  
15 Debtors wouldn't dispute that with respect to  
16 the numbers. That document is signed. It's  
17 been filed. Schedules have been filed. The  
18 LLC agreement has been finalized. We  
19 obviously want the same thing from Patriarch.  
20 And all we're asking, Your Honor, is for the  
21 opportunity for everyone to sort of back off  
22 from the gamesmanship, put down what they  
23 think they're willing to pay for these assets,  
24 the exact terms they're willing to pay for  
25 this so that, in fact, we can get these assets

1 sold quickly. Because any other process, Your  
2 Honor, we believe is going to lead to exactly  
3 the erosion that we're trying to avoid by a  
4 process that we think all the stakeholders  
5 support and we think is relatively easy to  
6 manage. Thank you.

7 THE COURT: Okay. Mr. Kalla?

8 MR. KALLA: Just briefly, Your  
9 Honor. Having come to some resolution which  
10 is acceptable to my client, I don't want to  
11 rehash all the arguments, but if, after  
12 listening to Patriarch's attorney, you think  
13 that Hilco and Gordon Brothers were satisfied  
14 with the process, they weren't. When we -- we  
15 have the documents signed up and ready to go.  
16 Our bid represents a bid that's \$2 million  
17 higher than Patriarch's based upon the numbers  
18 that the Debtor provided for both the equity  
19 and for the assets left behind. If you ask  
20 the Debtors advisor today whose was the higher  
21 and better bid, he would say that it was the  
22 joint venture's bid by \$2 million. They felt  
23 bound by an agreement introduced late in the  
24 game to limit the amount we could put on the  
25 equity. Equity was already in the bids at

1 that point. So what was -- what came late to  
2 the game was an understanding or agreements  
3 between the Debtor and Patriarch that they  
4 would limit the joint venture's ability to bid  
5 equity. We prefer there were no caps and  
6 everybody submit their best bid but we think,  
7 as Mr. Chesley stated, this is the way to  
8 resolve it. Thank you.

9 THE COURT: All right. I'm  
10 ready to rule on this. I will order that the  
11 process go forward according to the terms that  
12 Mr. Lodoen read on the record and according to  
13 the schedule as noted previously. I will  
14 reconvene on Thursday, then, at 10:30 with the  
15 record as augmented according to the deadlines  
16 for filing that have been set forth there.

17 Ultimately, it is true both by way of  
18 general bankruptcy precepts and by way of the  
19 reservations set forth in the bidding  
20 procedures order that I entered that the  
21 Debtor, as steward of the bankruptcy estate  
22 with the obligation to maximize the  
23 realization, the recovery of value on assets  
24 of the estate, the Debtor did retain enough  
25 residual authority to go forward with from

1 today's partial impasse in terms of the number  
2 and extent of substantive objections made by  
3 creditors to the sale and the notion of even  
4 having a sale at this point as well as the  
5 objections made to the process to refine the  
6 process as proposed here today and to  
7 ascertain the final identity of a bidder and  
8 the final terms of a sale proposal through the  
9 refinements that should come through the  
10 process that's been proposed here. It's been  
11 represented to me both off the record and of  
12 course on the record here that the process  
13 that's being proposed here is not out of the  
14 ordinary in other jurisdictions.

15 I will say that this is one of the more  
16 complex motions for a Section 363 sale that  
17 have certainly been presented to me and that  
18 have been presented in this district, I'm  
19 sure, in this bankruptcy court here in  
20 Minnesota, and I have no real reason to  
21 dispute what counsel is saying about the way  
22 it's done elsewhere given the facts that other  
23 jurisdictions do entertain these with much  
24 greater frequency than we do. But ultimately,  
25 the fallback here is the fact that there is

1 enough reserved authority in the Debtor under  
2 the directive of its fiduciary duty to  
3 maximize the overall recovery to go ahead and  
4 take this one last step here. So I think I  
5 would like this set forth in the terms of an  
6 order just so it's unequivocally down there in  
7 writing for everybody.

8 So Mr. Lodoen, I'm going to ask you to  
9 submit an order accordingly in electronic  
10 format as quickly as possible today so that  
11 can be docketed here. And you can certainly  
12 consult with creditors committee counsel to  
13 fill in the details as necessary but I'd like  
14 to get that set forth in an order here.

15 Now, as was discussed back in chambers,  
16 then, and which wasn't -- has not yet been  
17 stated in any pointed way, then it's my  
18 understanding that I would be taking no  
19 testimony here today, that we'd be holding it  
20 over to Thursday and subject to the  
21 possibility of various objections being  
22 withdrawn, then, in particular going to the  
23 procedural aspects of the package that was  
24 going to be presented to me possibly going to  
25 substantive aspects as well that I'd take up

1 whatever the parties then continue to maintain  
2 by way of objections then on Thursday.

3 Is that correct? We won't take any  
4 evidence here today?

5 MR. LODOEN: Correct, Your  
6 Honor.

7 THE COURT: Okay. Anybody  
8 have anything else they want to say about  
9 that? Okay. All right. Good enough. Well,  
10 that should take care of it, then.

11 So ultimately, then, in summary, both  
12 of the bidders, then, will have the  
13 obligations to make their submissions to  
14 Houlihan Lokey by 4:00 tomorrow. The Debtor  
15 then is to identify the bidder and file a  
16 final executed form of asset purchase  
17 agreement and the various other documentary  
18 attachments by noon on Wednesday and we will  
19 then reconvene on Thursday at 10:30 to take up  
20 the matter of approval of that sale proposal  
21 and any remaining objections.

22 All right. Now's your chance to note  
23 anything else on the record. All right.  
24 Hearing nothing, then, what we'll do is recess  
25 over until Thursday at 10:30 and everybody

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will have more work to do in the meantime.

\* \* \*

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

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21 IN EVIDENCE HEREOF, WITNESS MY HAND.

22

23

24

s:/ Lisa M.Thorsgaard

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