

**High Owe, High Owe—So Off To Section 363 We Go**  
**ABI 11th New York City Bankruptcy Conference**  
**May 4, 2009**

**ASSET SALE PROCEDURES APPROVED BY VARIOUS COURTS  
PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE**

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## INTRODUCTION

ASSET SALE PROCEDURES APPROVED BY VARIOUS COURTS PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE presents in summary form a number of orders approving asset sale procedures entered by courts in the Second, Third, Fifth, Sixth, Ninth, and Eleventh Circuits. Bid protections and other pertinent sale procedures are redacted for the benefit of the reader. Provisions governing executory contracts and unexpired leases also are included. The material is organized by Circuit.

The primary focus of our inquiry was to identify cases where the sale motion was filed on the petition date or shortly thereafter and orders that presented a novel or different approach with regard to the underlying issues. While we attempted to be thorough, the cases collected do not include every case of interest. If you are aware of a set of sale procedures that would be useful to add to this survey, kindly forward the appropriate procedures order or orders to our attention. We hope to continually update this survey using additional information that comes to our attention. We would be pleased to forward to you any updates to this survey as they are completed, upon request.

## Second Circuit

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><i>In re Allegiance Telecom, Inc., et al., Case No. 03-13057 (RDD) (Bankr. S.D.N.Y. January 15, 2004)</i></p> <p>For Sale: Substantially All Assets of the Debtor</p> <p>Time of Sale in Relation to Case Filing: Seven months after filing case- prior to submission of proposed plan.</p> <p>Proposed Purchase Price: \$390 million</p>	<p>(1) confidentiality agreement; (2) evidence of financial capacity to close</p> <p>(1) submitted required information/ documents; (2) financial capability/ likelihood to consummate sale</p>	<p>(1) on the same terms and conditions or better as stalking horse bid; (2) Irrevocable until closing; (3) made in good faith; (4) no financial contingencies; (5) evidence of financial capability; (6) deposit of \$30 million if bid is for all or substantially all assets, 10% of bid for anything less</p>	<p>17 days following entry of order</p>	<p>Each potential bidder that has complied with Requirements to Submit Bid; to conduct due diligence with respect to assets to be acquired</p>	<p>\$30 million if bid is for all or substantially all assets, 10% of bid for anything less</p>	<p>\$21 million over stalking horse purchase price</p>	<p>\$8 million (~ 2%) plus reimbursement of actual, reasonable and documented expenses in connection with the transaction, not to exceed \$5 million</p>	<p>Bidders must provide the Debtor with a confidential list of leases and executory contracts that the bidder plans to assume.</p> <p>Debtor shall consult with qualified bidders regarding the calculation of cure amounts and rejection damage claims.</p> <p>Contract parties are given the ability to object to cure amounts after notice and hearing upon a later date.</p>

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<p><b><i>In re NRG Energy, Inc., et al., Case No. 03-13024 (PCB) (Bankr. S.D.N.Y. September 10, 2003)</i></b></p> <p>For Sale: Substantially all assets of jointly administered debtor subsidiary.</p> <p>Time of Sale in Relation to Case Filing: Within 7 months of the case filing.</p> <p>Proposed Purchase Price: \$159,950,000</p>	<p>(1) evidence of financial capability/likelihood to consummate sale; (2) any additional information reasonably requested by the seller</p> <p>(1) confidentiality agreement; (2) submitted required information/documents</p>	<p>(1) marked and executed stalking horse agreement to show changes in terms; (2) deposit in the amount of 5% of stalking horse bid; (3) irrevocable until 10 days post closing date; (4) no financing due diligence or other such contingencies; (5) approval of bidder's board of directors; (6) evidence of financial capability (7) proof of qualified agent to appear at auction</p> <p>Credit bid in the amount of lien on assets is allowed to value of the lien plus cash component of at least \$5 million</p>	<p>45 days following entry of order</p>	<p>Open to all bidders satisfying Requirements to Submit Bid and that the seller determined to be qualified to participate in bidding process; reasonable access to seller's books, records and executives; to be completed prior to auction</p>	<p>5% of stalking horse bid</p>	<p>\$1.5 million + break-up fee over stalking horse purchase price and thereafter, at least \$500,000 higher than the existing highest bid.</p>	<p>Either a \$5 million (~ 3%) break-up fee or expense reimbursement not to exceed \$1.5 million</p>	<p>To become a Qualified Bidder must identify each executory contract or unexpired lease, the assumption of which is a condition of closing.</p> <p>Within 5 days of entry of bid procedures order, Debtor is to notice contract parties of intent to assume and assign and provide cure amount. Contract parties then have opportunity to object</p>

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<p><i>In re Fountainhead Communications, Inc.</i>, Case No. 02-15374 (BRL) (Bankr. S.D.N.Y. November 14, 2002)</p> <p>For Sale: Inventory, accounts receivable, furniture, fixtures, equipment and certain agreements</p> <p>Time of Sale in Relation to Case Filing: Within two weeks of case filing</p> <p>Proposed Purchase Price: \$150,000 with right to credit bid</p>	(1) Audited financials; (2) proof of noncontingent offer; (3) signed purchase agreement with purchase price at least \$225,000	Purchaser must be willing to pay cure amounts	Five days to prior to date set for sale hearing	Interested purchasers must pay cure amounts	10% of the initial bid offered	\$17,500 cash with proof of cashiers check of at least 10% over previous bid	\$15,000 plus up to \$60,000 in expenses	Debtor must provide notice of sale and cure amounts to contract parties. Non-debtor parties then have 5 business days to object to cure amount.

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<p><i>In re Bethlehem Steel Corporation, et al., Case Nos. 01-15288 through 01-15302, 01-15308 through 01-15315 (BRL) (Bankr. S.D.N.Y. March 27, 2003)</i></p> <p>For Sale: Substantially all of the assets of the Debtor</p> <p>Time of Sale in Relation to Case Filing: Approx. 18 months into case. Motion to sell contemplates specific items to be included in plan.</p> <p>Proposed Purchase Price: Cash portion- \$955 million</p>	<p>(1) confidentiality agreement; (2) financial statements</p> <p>(1) submitted required information/ documents; (2) financial capability/ likelihood to consummate sale</p>	<p>(1) marked stalking horse agreement to show changes in terms; (2) irrevocable; (3) \$10 million deposit; (4) not conditioned on obtaining financing</p>	<p>18 days following entry of order</p>	<p>Qualified bidders only; to conduct reasonable due diligence; must provide non-binding proposal; not to continue past bid deadline; seller entitled to due diligence from the qualified bidder</p>	<p>\$10 million</p>	<p>\$15 million over the sum of the stalking horse purchase price; the break-up fee; and the expense reimbursement</p>	<p>\$27 million (2.7%) + expense reimbursement up to \$5 million; not permitted in competing bids</p>	<p>Debtor is to notice contract parties of intent to assume and assign and provide cure amount. Contract parties then have opportunity to object.</p>

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<p><b><i>In re RSL COM PRIMECALL, INC., et al., Case No. 01-11457 and 01-11469 (ALG) (Bankr. S.D.N.Y. April 11, 2002)</i></b></p> <p>For Sale: Data and long distance servicing company and certain executory contracts and unexpired leases</p> <p>Time of Sale in Relation to Case Filing: one year after filing; prior to plan confirmation</p> <p>Proposed Purchase Price: \$2.6 million cash in escrow; assume \$5.15 million in liabilities</p>	<p>(1) confidentiality agreement; (2) financial statements</p> <p>(1) submitted required information/documents; (2) financial capability/likelihood to consummate sale</p>	<p>(1) written, signed offer to purchase marked to reflect changes to the stalking horse agreement; (2) on the same terms and conditions or better as the stalking horse bid, with at least \$1 million better offer; (3) not conditioned on further due diligence; (4) does not request a break-up fee or similar reimbursement; (5) includes a deposit of \$2.6 million and (6) is likely to receive all necessary governmental approvals</p>	<p>15 days following entry of order</p>	<p>Open to all bidders who advise Debtor in writing of intent to make qualifying bid, the structure and financing of the transaction, and any significant departure from the terms of the purchase agreement</p>	<p>\$2.6 million</p>	<p>\$1 million initial overbid, successive overbids are \$250,000</p>	<p>\$3.1% break-up fee of \$475,000 for \$15.5 million purchase price</p>	<p>Asset Purchase Agreement provides for the assignment of certain contracts, prohibition of certain assignments; and the option upon request to assign other contracts.</p> <p>Specific government contracts are assumed and assigned and the purchaser is not responsible for paying the pre-petition amounts due per the terms of the order.</p>

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<p><b><i>In re Genuity, Inc., et al., Case No. 02-43558 (PCB) (Bankr. S.D.N.Y. December 16, 2002)</i></b></p> <p>For Sale: Substantially all assets.</p> <p>Time of Sale in Relation to Case Filing: Less than two months after filing the case.</p> <p>Proposed Purchase Price: \$242,156,160 subject to adjustment</p>	<p>(1) confidentiality agreement; (2) financial statements</p> <p>(1) submitted required information/ documents; (2) financial capability/ likelihood to consummate sale</p>	<p>(1) written, signed offer to purchase marked to reflect changes to the stalking horse agreement; (2) irrevocable until closing of sale; (3) deposit of at least the sum of the expense reimbursement and break-up fee; (4) on the same terms and conditions or better as stalking horse bid; (5) evidence of financial capability</p>	<p>22 days following entry of order</p>	<p>Qualified Bidders only; access to seller's data room and other relevant materials; designated point person of seller; seller entitled to due diligence from the qualified bidder; not to continue past bid deadline</p>	<p>Sum of the expense reimbursement and break-up fee or greater</p>	<p>\$12 million over the sum of the stalking horse purchase price, break-up fee and maximum expense reimbursement</p>	<p>\$10 million (~ 4.1%) + expense reimbursement not to exceed \$3 million; not permitted in competing bids</p>	<p>Within 5 days of entry of bid procedures order, the Debtor shall serve notice to contract parties of intent to assume and cure amount. Contract parties will have opportunity to object.</p>

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<p><b><i>In re PSINET, Inc., et al., Case No. 01-13213 (REG) (S.D.N.Y. July 19, 2001)</i></b></p> <p>For Sale: Ordinary shares of PSINet Hong Kong Limited</p> <p>Time of Sale in Relation to Case Filing: Within two months of filing case.</p> <p>Proposed Purchase Price: HK\$148 million (~\$19 million)</p>	See bid requirements	(1) marked purchase agreement; (2) evidence satisfactory to sellers and creditors committee of financial capability	25 days following entry of order	Competing offers shall not be conditioned on the outcome of unperformed due diligence by the bidders.	Not Addressed	<p>Initial competing proposal must be at least US\$20,288,461 (unclear what initial bid was)</p> <p>Overbids must include additional consideration of US\$512,821</p>	Approximately \$551,282 plus expenses of up to approximately \$250,000	Not Addressed

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<p><i>In re The Singer Company N.V., et al, Case Nos. 99-10578 through 99-10607, 99-10613, 99-10616 through 99-10629, and 00-10423 (BRL) (Bankr. S.D.N.Y. July 26, 2000)</i></p> <p>For Sale: Capital stock of Singer Europa SGPS, SA</p> <p>Time of Sale in Relation to Case Filing: 8 months after case filing; after plan filed but before confirmation</p> <p>Proposed Purchase Price: \$36.75 million Euros (~\$34 million)</p>	<p>(1) confidentiality agreement; (2) financial statements</p> <p>(1) submitted required information/documents; (2) financial capability/likelihood to consummate sale</p>	<p>(1) stalking horse agreement marked to show changes in terms; (2) irrevocable until 48 hours after the closing of a transaction with successful bidder; (3) 1.5 million Euro deposit; (4) written evidence of financial capability</p>	<p>30 days following entry of order</p>	<p>Qualified bidders only; receive confidential memorandum and stalking horse stock purchase agreement; to conduct due diligence, must provide non-binding proposal; designated point person of seller; not to continue past bid deadline</p>	<p>1.5 million Euros; retained by seller until 48 hours after closing of the transaction, but not later than 30 days after the sale hearing</p>	<p>1.5 million Euros over stalking horse price</p>	<p>3% + out of pocket expenses not to exceed \$250,000 Euros; not permitted in competing bids</p>	<p>Not Addressed</p>

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<p><i>In re Stylesite Marketing, Inc., et al., Case No. 00-10099 through 00-10101, 00-10103 (SMB) (Bankr. S.D.N.Y. February 9, 2000)</i></p> <p>For Sale: Substantially all of the Debtors' Assets</p> <p>Time of Sale in Relation to Case Filing: One month after case filed</p> <p>Proposed Purchase Price: Omitted from filed documents available on docket.</p>	<p>(1) confidentiality agreement; (2) financial qualifications; (3) such other information the sellers reasonably request</p> <p>Proof of ability to close transaction subject to bids</p>	<p>(1) marked purchase agreement; (2) 10% deposit; (3) identify assets to be bid on; (4) specify portion to be paid in cash and portion in other form of value; (5) provide information regarding non-cash value; (6) evidence of legal empowerment and financial capability to consummate sale; (7) no contingencies; (8) identify contracts/leases to be assumed.</p> <p>Seller reserves right to withdraw from sale, reject all bids if not a fair and adequate price in seller's reasonable judgment</p>	Unclear	Sellers will provide copy of proposed purchase agreement and will provide reasonable access to seller's books, records and executives	10% of bid; returned within 5 days after closing	None (no stalking horse)	None (no stalking horse)	<p>All contracts and leases including the amounts to cure which are subject to being assumed or rejected are described in the asset purchase agreement. Contract parties must be served with notice of the sale motion; an adequate assurance package of the winning bidder and a copy of the sale order. Court will fix a date for contract parties to file objections.</p> <p>If contracts/leases are to be assumed, bidder must provide adequate assurance of ability to perform in the future</p>

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<p><i>In re Our Lady of Mercy Medical Center, Case No. 07-10609 (Bankr. S.D.N.Y. March 8, 2007)</i></p> <p>*At time of publication, no order entered on this motion. Hearing on motion to approve bid procedures had been set but not held.</p> <p>For Sale: Substantially all assets of the debtor as a going concern, including hospital, parking garage, licenses, intellectual property and certain executory contracts</p> <p>Time of Sale in Relation to Case Filing: Motion to Approve Bidding Procedures was filed on date of case filing</p> <p>Proposed Purchase Price: Approximately \$24.7 million</p>	<p>(i) Confidentiality agreement; (ii) written nonbinding expression of interest</p>	<p>(i) irrevocable, noncontingent, unconditional offer in substantially same terms as the purchase agreement attached to motion; (ii) purchase price over \$35 million; (iii) evidence of ability to close</p> <p>*Closing will require governmental and regulatory approval</p>	<p>Will be set in final order</p>	<p>Not specifically addressed</p>	<p>\$1.3 million</p>	<p>\$100,000</p>	<p>\$650,000 maximum including expenses</p>	<p>Debtor to give notice of motion and cure amounts to contract counterparties; debtor can remove and/or amend list of assumed contracts before hearing but must provide notice; nondebtor party will have opportunity to object but if objection is not resolved by sale hearing amount of cure will be put in escrow account</p>

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<p><b><i>In re Refco Inc., et. al., Case No. 05-60006 (RDD) (Bankr. S.D.N.Y. Oct. 17, 2005)</i></b></p> <p>For Sale: Regulated Commodities Futures Merchant Business/ Assumption and Assignment of Executory Contracts and Leases/ Substantially all assets of the Debtor</p> <p>Time of Sale in Relation to Case Filing: Within one month</p> <p>Proposed Purchase Price: \$282,000,000</p>	<p>Non-binding indication of interest; (2) confidentiality agreement; (3) evidence of financial capability/ likelihood to consummate sale</p> <p>Potential Bidder: Can seek court review of debtor's determination that bidder is qualified so long as challenge raised and resolved prior to auction.</p> <p>Bidder qualifications are irrevocable after auction commencement.</p> <p>Bidders with submitted qualified bids will receive: (1) written notice of auction; (2) copies of all bids; (3) financial information on estimated value of each bidders proposed treatment of employees.</p>	<p>Identify the bidder and sponsors; (2) written evidence of governing body approval; (3) specify whether purchasing all or part of the business; (4) must specify a separate purchase price for non-core assets from the Acquired Business; (5) must state whether keeping current employees or address severance etc.</p>	<p>9 days following entry of Order</p>	<p>Bids will be adjusted downward in an amount equal to additional severance costs if the bid proposes to sever more employees than stalking horse.</p>	<p>Not addressed.</p>	<p>Increments of at least \$2 Million; (2) comply with stalking horse bidder requirements; (3) financial disclosure of capability to consummate sale</p>	<p>No break-up fee, termination fee or expense reimbursement allowed.</p>	<p>10 days notice of proposed assumption and assignment given to counterparty and if no objection, such notice is adequate</p>

## Third Circuit

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><i><b>In re Archway Cookies LLC, Case No. 08-12323, (Bankr. D. Del. Oct. 6, 2008)</b></i></p> <p><i><b>In re Mother's Cake &amp; Cookie Co., Case No. 08-12326 (Bankr. D. Del. Oct. 6, 2008)</b></i></p> <p><b>Jointly administered under Case No. 08-12323 (CSS)</b></p> <p>For Sale: Archway- Substantially all of the tangible and intangible debtor's assets; Mother's- certain assets</p> <p>Time of Sale in Relation to Case Filing: within 2 months of the bankruptcy filing</p> <p>Purchase Price: Archway- \$25 million; Mother's- \$12.1 million</p>	<p>(1) submit required documents; (2) deposit; (3) financial capability/likelihood to consummate sale; (4) irrevocable until closing; (5) no break-up fee expense reimbursement or similar payment (except for stalking horse bidder); (6) disclose each entity bidding for assets or participating in bid and all terms of its participation</p> <p>Debtor may aggregate separate bids from unaffiliated persons to create one qualified bid</p>	<p>(1) provide marked stalking horse agreement to show changes in terms; (2) same terms and end date as stalking horse agreement; (3) no release for bidder of preference liability in excess of \$400,000; (4) not contingent on obtaining financing or due diligence or board of director/internal approval or consent; (5) no conditions precedent; (6) meet minimum purchase price: (Archway-\$26.2 million; Mother's-\$5.3 million; Joint-\$31.5 million)</p>	<p>7 days following entry of order (November 25, 2008)</p>	<p>Any party is allowed access to all material information provided to any potential bidder if party executes an acceptable confidentiality agreement</p>	<p>Archway-\$1,500,000</p> <p>Mother's-\$500,000</p> <p>Joint- \$2 million</p>	<p>Archway-\$250,000</p> <p>Mother's-\$100,000</p> <p>Joint-\$350,000</p> <p>Stalking horse bidder receives a credit in the amount of the break-up fee</p>	<p>Archway-\$750,000 break-up fee and expenses not to exceed \$200,000</p> <p>Mother's-\$150,000 break-up fee and expenses not to exceed \$50,000</p>	<p>Archway- (1) Purchaser has sixty (60) days after closing to designate the contracts to be assumed and assigned by seller; (2) Purchaser shall provide assumption notice to non-debtor party to contract designated for assumption; (3) assumption notice shall be filed with the bankruptcy court containing: (i) proposed cure amount; (ii) notice that objections must be filed within fifteen (15) days after filing of assumption notice; (iii) failure to timely object results in waiver; (iv) party failing to timely object is deemed to have consented; (4) if objection timely filed Purchaser shall remove contract from list of assumed contracts or set hearing to resolve objection</p> <p>Mother's- (1) One (1) day after closing Purchaser must file rejection motion/notice for any contracts listed in schedules; (2) seller shall bear all costs and fees for filing and service of rejection motion/notice and same for any additional contracts; (3) Seller has five (5) business days after schedules are amended to provide purchaser with any cure amounts; (4) seller shall not seek to assume or reject contracts for sixty (60) days following notice</p>

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><b><i>In re Whitehall Jewelers Holdings, Inc. et al., Case No. 08-11261-KG (Bankr. D. Del. June 23, 2008)</i></b></p> <p>For Sale: Substantially all of the Debtors' assets (excluding consigned goods by order and opinion dated July 28, 2008)</p> <p>Time of Sale in Relation to Case Filing: Within 2 months of the bankruptcy filing.</p> <p>Proposed Purchase Price:</p> <p>Purchase of assets from 17 store locations-price to be calculated at closing</p>	<p>(1) unconditional offer to purchase all or substantially all of debtors' assets; (2) submit evidence of financial capability/likelihood to consummate sale; (3) provide adequate assurance of future performance for assumption and assignment of executory contracts in bid proposal; (4) no shared bids</p> <p>Landlords of debtors are deemed qualified bidder for their respective leases provided they waive any lease rejection damage claim</p>	<p>(1) submitted in form of mark-up Purchase or Agency Agreement with initially payment of at least .5% greater than guaranteed percentage; (2) deposit of 10% of Guaranteed Amount; (3) use reasonable efforts to comply with document requests by landlord whose lease is proposed to be assumed and make a witness available for deposition on Aug. 5, 2008 at 10:00a.m.; (4) irrevocable until 7 days after selection of Successful Bidder</p>	<p>14 days following entry of order (July 15, 2008)</p>	<p>Qualified bidders only; Second Highest Bidder is required to keep bid open until transaction with Successful Bidder closes</p>	<p>10% of Guaranteed Amount</p>	<p>If Landlord credit-bids, must post deposit equal to 10% over amount of credit bid.</p>	<p>Stalking-horse break-up fee is denied by the Court.</p> <p>If Successful Bidder or second-highest bidder after 7 days following the sale hearing fails to consummate sale, the deposit is not refundable.</p>	<p>Provide adequate assurance of future performance for assumption and assignment of executory contracts in bid proposal.</p> <p>Use reasonable efforts to comply with document requests by landlord whose lease is proposed to be assumed and make a witness available to testify for deposition regarding adequate assurance on Aug. 5, 2008 at 10:00a.m.</p> <p>Debtors shall provide adequate assurance for unexpired leases on real property and notify counterparties to executory contracts proposed to be assumed and assigned with the identity of the successful bidder</p>

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><b><i>In re Cable &amp; Wireless USA, Inc., et al., Case No. 03-13711 (CGC) (Bankr. D. Del. December 22, 2003)</i></b></p> <p>For Sale: Substantially all of the Debtors' assets</p> <p>Time of Sale in Relation to Case Filing: Within the same month as the bankruptcy filing. Plan already on file.</p> <p>Proposed Purchase Price: \$50million-\$125 million</p>	<p>(1) submitted required information/ documents (written offer to purchase all or substantially all of debtor's assets; willingness to enter into legally binding agreement on terms no less favorable than stalking horse bid; financial statements or other financial disclosure); (2) financial capability/ likelihood to consummate sale</p>	<p>(1) irrevocable until closing if winning or back-up bidder; (2) no financing or due diligence contingencies; (3) evidence of financing capability; (3) deposit of \$5 million</p>	<p>20 days following entry of order</p>	<p>Not Addressed.</p>	<p>\$5 million</p>	<p>\$1.5 million over the sum of the stalking horse purchase price, break-up fee and Expense reimbursement</p>	<p>Expense reimbursement not to exceed \$1 million and <u>either</u> break-up fee of \$2.5 million (2.0%) <u>or</u> termination fee of \$1.5 million (1.2%)</p>	<p>Cure notice must be sent to contract parties within ten days of entry of bid procedures order. Contract party has two weeks to object to the cure amount or assert other issues.</p>

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><b><i>In re Cone Mills Corporation, et al., Case No. 03-12944 (MFW) (Bankr. D. Del. November 7, 2003)</i></b></p> <p>For Sale: Substantially all of the Debtors' assets.</p> <p>Time of Sale in Relation to Case Filing: Within two months of bankruptcy filing</p> <p>Proposed Purchase Price: \$46 million cash portion of payment. Also accepting certain post petition expenses and professional fees</p>	<p>(1) confidentiality agreement; (2) written evidence of financial ability to consummate sale</p> <p>(1) submitted required information/ documents; (2) financial capability/ likelihood to consummate sale</p>	<p>(1) marked stalking horse agreement to show changes in terms or a purchase and sale agreement; (2) irrevocable until closing of sale transaction; (3) deposit of at least 10% of Qualified Bid amount; (4) not conditioned on obtaining financing; (5) written evidence of financial capability</p>	<p>55 days following entry of order</p>	<p>Qualified bidders only; reasonable due diligence; must provide non-binding proposal; not to continue past bid deadline</p>	<p>10% of the amount of the Qualified Bid</p>	<p>\$2.8 million over the stalking horse purchase price</p>	<p>\$1.8 million (~2%) + expense reimbursement up to \$750,000; not permitted in competing bid</p>	<p>Debtor must serve cure amount notice to contract parties within ten business days of entry of the order.</p> <p>Contract parties have approximately 60 days to file an objection.</p>

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><i>In re Pillowtex Corporation, et al.</i>, Case No. 03-12339 (PJW) (Bankr. D. Del. August 28, 2003)</p> <p>For Sale: Intellectual Property, equipment, contracts, avoidance actions. Not real property, inventory or accounts receivable.</p> <p>Time of Sale in Relation to Case Filing: Within one month of case filing.</p> <p>Proposed Purchase Price: \$56 million subject to purchase price adjustment</p>	<p>(1) confidentiality agreement; (2) financial statements</p> <p>(1) submitted required information/ documents; (2) financial capability/ likelihood to consummate sale</p>	<p>(1) marked stalking horse agreement to show changes in terms; (2) irrevocable until closing if successful or next highest bidder or until one day after entry of sale order if; (3) deposit of at least 10% of Qualified Bid amount (increased to 15% if successful bidder); (4) not conditional on obtaining financing or due diligence</p>	<p>22 days following entry of order</p>	<p>Qualified Bidders only; reasonable due diligence; not to continue past bid deadline; seller entitled to due diligence from the qualified bidder</p>	<p>At least 10% of Qualified Bid amount (increased to 15% if successful bidder)</p>	<p>\$500,000 over the sum of the stalking horse purchase price, break-up fee and expense reimbursement</p>	<p>\$1.54 million (~ 2.5%) + expense reimbursement not to exceed \$500,000</p>	<p>Within three business days of entry of the order approving bid procedures debtors shall serve notice of the cure amounts to all contract parties to unexpired leases, license agreement and executory contracts that are proposed to be assumed by the purchaser.</p> <p>Contract party has 30+ days to file objection.</p> <p>Court must approve assumption and/or assignments at time of approval of asset sale.</p>

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><b><i>In re SHC, Inc., et al., Case No. 03-12002 (MFW) (Bankr. D. Del. July 28, 2003)</i></b></p> <p>For Sale: Substantially all of the Debtors assets</p> <p>Time of Sale in Relation to Case Filing: Within one month of the case filing</p> <p>Proposed Purchase Price: \$125 million subject to specific adjustments</p>	<p>(1) confidentiality agreement; (2) financial statements</p> <p>1) submitted required information/ documents; (2) financial capability/ likelihood to consummate sale</p>	<p>(1) marked stalking horse agreement to show changes in terms; (2) irrevocable; (3) deposit of at least 10% of Qualified Bid amount; (4) no financing contingencies</p>	<p>30 days following entry of order</p>	<p>Qualified bidders only; allowed to conduct reasonable due diligence, must provide written, non-binding proposal; not to continue past bid deadline; seller entitled to due diligence from the qualified bidder</p>	<p>At least 10% Qualified Bid amount</p>	<p>\$1 million over the stalking horse purchase price</p>	<p>Denied; requested break-up fee of \$4.375 million and expense reimbursement of \$1.25 million</p>	<p>Debtor to provide notice of entry of bid procedures and proposed cure amounts order to contract parties within three days of entry of order.</p> <p>Contract parties must file objection within approximately 30 days.</p> <p>Decision to assume and assign is subject to court approval and consummation of the asset sale</p>

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><i>In re Fleming Companies, Inc., et al., Case No. 03-10945 (MFV) (Bankr. D. Del. July 8, 2003)</i></p> <p>For Sale: Wholesale Distribution Business</p> <p>Time of Sale in Relation to Case Filing: Within 4 months of case filing</p> <p>Proposed Purchase Price: \$400,000,000.</p>	<p>(1) confidentiality agreement; (2) evidence of financial capacity to close</p> <p>(1) submitted required information/ documents; (2) financial capability/ likelihood to consummate sale</p>	<p>(1) marked and executed stalking horse agreement to show changes in terms; (2) irrevocable until 10 days after closing of the sale; (3) \$18 million deposit, or, if bid is for less than substantially all the Wholesale Distribution Business, amount equal to at least 4.75% of the cash purchase price (4) evidence of financial capability with no contingencies</p>	<p>20 days following entry of order</p>	<p>Each potential bidder that has complied with Requirements to Submit Bid; to conduct due diligence; designated point person of seller; not to continue past bid deadline</p>	<p>Good faith deposit of at least \$18 million, or, if bid is for less than substantially all the Wholesale Distribution Business, amount equal to at least 4.75% of the cash purchase price</p>	<p>\$19 million (or 4.75%) over the stalking horse purchase price</p>	<p>\$11 million (2.75%) + expense reimbursement up to \$4 million</p>	<p>Debtor must serve notice of intent to assume or assign to contract parties and contract parties have the opportunity to object</p>

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><b><i>In re Touch America Holdings, Inc., et al., Case No. 03-11915 (KJC) (Bankr. D. Del. July 14, 2003)</i></b></p> <p>For Sale: Substantially all of the debtors' assets</p> <p>Time of Sale in Relation to Case Filing: Within first month of bankruptcy filing.</p> <p>Proposed Purchase Price: \$28 million subject to adjustment</p>	<p>(1) confidentiality agreement; (2) financial statements</p> <p>(1) submitted required information/ documents; (2) financial capability/ likelihood to consummate sale</p>	<p>(1) written offer to purchase; (2) willingness to enter legally binding agreement; (3) similar to or more favorable than stalking horse bid; (4) irrevocable until day after closing; (5) \$250,000 deposit; (6) evidence of financial capability;</p>	<p>16 days following entry of order</p>	<p>Qualified bidders only; notice to seller of nature and extent of any additional due diligence; seller designates its point person; no obligation to furnish information after bid deadline</p>	<p>\$250,000</p>	<p>\$250,000 + break-up fee over stalking horse purchase price</p>	<p>Break-up fee + expense reimbursement of \$500,000 (in addition to \$500,00 previously paid to stalking horse); not permitted in competing bids</p>	<p>The debtor must give notice of its intention to assume and assign as well as the cure amount to the contract parties within 7 days. Contract parties have deadline to file objections prior to final sale hearing.</p>

## Fifth Circuit

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><b><i>In re Mirant Corporation, Case No. 03-46590 (Bankr N.D. Tex. October 28, 2004)</i></b></p> <p>For Sale: Turbines</p> <p>Time of Sale in Relation to Case filing: Over one year after case filed, prior to plan confirmation</p> <p>Proposed Purchase Price \$46.5 million for 3 turbines; price decreases for purchase of 1 or 2 turbines only.</p>	<p>(1) Confidentiality agreement; (2) financial proof of ability to close; (3) proof of internal authority to engage in sale transaction</p>	<p>Provide definitive purchase agreement marked to show modifications; present exact price and number of turbines sought to be purchased; indicate noncontingent nature of offer</p>	<p>Approximately 30 days from entry of order approving bid procedures</p>	<p>Must sign confidentiality agreement and provide evidence to Debtor to show reasonably likely to consummate sale</p>	<p>5% of proposed consideration regardless of number of turbines sought</p>	<p>\$100,000</p>	<p>Reimbursement and break up fee Depend on the number of turbines actually sold and for what reason they were not sold to Stalking Horse. On high end: (1) reasonable and actual documented out of pocket costs not to exceed \$600,000; (2) topping fee of \$1,395,000</p>	<p>Not addressed</p>

## Sixth Circuit

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><i>In re Gateway Homecare Inc., et al., Case No. 03-17457, (Bankr. N.D. Ill. April 21, 2003)</i></p> <p>For Sale: Equipment, inventory, intangible property, certain vehicles, assumed agreements and telephone number</p> <p>Time of Sale in Relation to Case Filing: Within two weeks of case filing</p> <p>Proposed Purchase Price: \$16,700,000</p>	<p>(i) Signed Asset Purchase Agreement marked to show revisions; (ii) irrevocable offer; (iii) qualified financial reports</p>	<p>Must indicate offer of at least \$668,000 greater value than that proposed by stalking horse</p>	<p>Within approximately 22 days of entry of bid procedures order.</p>	<p>Seller will provide reasonable and appropriate due diligence information after interested purchasers sign confidentiality agreement. Confidentiality agreement may not be the same for all parties.</p>	<p>\$500,000</p>	<p>\$250,000</p>	<p>\$668,000</p>	<p>Debtor to serve notice to contract parties with cure amount. Contract parties then have seven business days to object.</p>

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><i>In re Universal Access Global Holdings, Inc. Case No. 04-B-28747 (Bankr. N.D. Ill. November 12, 2004)</i></p> <p>For Sale: Substantially All Assets of subsidiary including real property leases and executory contracts</p> <p>Time of Sale in Relation to Case Filing: Approximately 4 months after case filing.</p> <p>Initial Purchase Price: Buyer will assume specific liabilities</p>	(i) provide sufficient evidence of ability to close	(i) Bid must exceed initial purchase price by \$600,000; (ii) not conditioned on due diligence or financing; (iii) must be in writing	No later than 48 hours before first hearing on the approval of the sale	None addressed	\$500,000	\$100,000	\$500,000 inclusive of costs and expenses	Debtor shall serve notice of sale and cure amounts to contract parties and those parties have approximately 30 days to file objection

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><b><i>In re CXM, INC., Case No. 03-28236 (Bankr. N.D. Ill. 2004)</i></b></p> <p>For Sale: Inventory, A/R, claims and rights to assumed contracts, intellectual property, real property, equipment, permits, proprietary lists, books and records</p> <p>Time of Sale in Relation to Case Filing: Within 5 months of filing.</p> <p>Proposed Purchase Price: \$5,914,000</p>	<p>Evidence of financial ability to close.</p> <p>Submitted required information/ documents showing financial ability to consummate sale</p>	<p>(1) On terms that are substantially similar and at least as favorable; (2) irrevocable until hearing on sale</p>	<p>40 days following entry of order</p>	<p>Not addressed</p>	<p>\$250,000</p>	<p>Initial overbid; \$250,000; subsequent overbids; \$25,000</p>	<p>Actual expenses up to \$200,000 on purchase price of \$6,164,000 before adjustments, ~ 3.2%)</p>	<p>Not Addressed</p>

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><i>In re Conseco, Inc., et al., Case No. 02-B 49672 (CAD) (Bankr. N. D. Ill. January 8, 2003)</i></p> <p>For Sale: Substantially all of the Assets of the debtors.</p> <p>Time of Sale in Relation to Case Filing: Motion to approve sale filed the same week as the bankruptcy filing.</p> <p>Proposed Purchase Price: Not easily calculated from documents available on docket.</p>	<p>(1) confidentiality agreement; (2) financial statements</p> <p>(1) submitted required information/ documents; (2) financial ability to consummate sale</p>	<p>(1) in sufficient conformity with the Asset Purchase Agreement; (2) irrevocable until the closing; (3) willingness to enter into legally binding sales agreement no less favorable to the sellers; (4) must offer to repay, or provide for repayment of, any DIP loan; (5) evidence of financial capability</p>	<p>28 days following entry of order</p>	<p>All potential bidders who desire to become Qualifying Bidders shall be provided with reasonable access to the Seller's books, records and executive subject to execution of a confidentiality agreement</p>	<p>None</p>	<p>\$5 million over the sum of the stalking horse purchase price, Break-up Fee, and profit sharing rights if proposed purchaser elects to purchase M Servicing Business</p>	<p>\$30 million + expense reimbursement not to exceed \$5 million; reduced break-up fee of \$15 million under certain circumstances</p>	<p>Debtor is to send approved "Cure Notice" to the parties to the assumed agreements</p>

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><b><i>In re Comdisco, Inc., et al., Case No. 01-24795 (BWB) (Bankr. N.D. Ill. August 9, 2001)</i></b></p> <p>For Sale: Global continuity solutions business of the Debtor.</p> <p>Time of Sale in Relation to Case Filing: Order entered within one month of bankruptcy filing</p> <p>Proposed Purchase Price: \$610 million subject to adjustment</p>	<p>(1) confidentiality agreement; (2) financial statements; (3) terms</p> <p>(1) submitted required information/ documents; (2) financial capability/ likelihood to consummate sale</p>	<p>(1) stalking horse agreement marked to show changes in terms; (2) irrevocable until earlier of 48 hours after the closing of the sale of the Business or 30 days after Sale hearing; (3) \$25 million deposit; (4) written evidence of financial capability</p>	<p>20 days following entry of order</p>	<p>Qualified bidders only; designated point person of seller; not to continue past bid deadline; may provide multiple, simultaneous access to seller among qualified bidders</p>	<p>\$25 million retained by seller until earlier of 48 hours after closing of the sale or 30 days after conclusion of sale hearing</p>	<p>\$25 million increase in overall value (i.e., over purchase price + break-up fee)</p>	<p>Stalking horse gets \$18.3 million (3%) + expense reimbursement not to exceed \$5 million; not permitted in competing bids</p>	<p>Debtor must serve notice of cure amounts on all non-Debtor parties to the assumed contracts and the non-debtor parties have specified deadline by which to object.</p>

## Ninth Circuit

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><b><i>In re Microage, Inc., et al., Case Nos. B-00-3833, 00-03840 through No. B-00-03850 (CGC) and B-00-10615 (CGC) (Bankr. D. Ariz. December 13, 2000)</i></b></p> <p>For Sale: Substantially all of the Debtors' Assets</p> <p>Time of Sale in Relation to Case Filing: approximately 7 months after filing</p> <p>Proposed Purchase Price: Not easily calculated from documents available on docket.</p>	<p>(1) confidentiality agreement; (2) financial information</p> <p>(1) submitted required information/ documents capability/ likelihood to consummate sale</p>	<p>(1) stalking horse agreement marked to show changes in terms; (2) irrevocable until the earlier of 48 hours after closing or 20 days after sale hearing; (3) evidence of financial capability; (4) value exceeds stalking horse purchase price by \$1.5 million; (5) not materially more burdensome; (6) no financing or due diligence contingencies; (7) no break-up fee</p>	<p>5 days following entry of order</p>	<p>Qualified bidders only; receive materials provided to stalking horse; bidders who submit non-binding proposal and who sellers in consultation with creditors committee determines will result in a bona fide and serious bid may receive additional due diligence access; point person designated by sellers</p>	<p>None</p>	<p>\$1.5 million over purchase price</p>	<p>\$2.5 million + fee reimbursement of \$1 million</p>	<p>Debtor to provide notice of contracts to be assumed and proposed cure amounts. Non-debtor parties have opportunity to object.</p>

## Eleventh Circuit

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><b><i>In re Piccadilly, Case No. 03-27976 (Bankr. S.D. Fla. Oct. 29, 2003)</i></b><sup>2</sup></p> <p>For Sale: Substantially all of Debtors' Assets to Piccadilly Acquisition Corp., including real property</p> <p>Time of Sale in Relation to Case Filing: within approximately 4 months</p> <p>Proposed Purchase Price: Minimum overbid purchase price in procedures order: \$55.82 Million</p>	<p>(1) execute and deliver to debtor confidentiality agreement; (2) escrow agreement between bidder and seller in similar form to procedure order example; (3) bidder information sheet; (4) financial statements and current financial statements and any financial disclosure to demonstrate financial capability to close the sale; (5) proof of authority to enter into transaction; (6) deliver cashiers check for not less than break-up fee.</p>	<p>(1) must use form of purchase agreement attached with red-line changes; (2) no financing contingency; (4) must close no later than date of stalking horse bid; (5) marked agreements have further requirements: (a) letter identifying bidder; (b) bidder offers to purchase assets on term and conditions of marked bid; (c) summarizing the proposed consideration; (d) state aggregate value of consideration under proposed Marked Agreement; (e) form of qualified bidder deposit made; (f) binding and irrevocable for 20 days after entry of sale order.</p> <p>Note holders can credit bid without paying deposit or other requirements and are considered qualified bidder. If over 50% of notes owned by existing creditors, no break-up and only termination fees. If less than 50%, entitled to Break up and not termination fee.</p>	<p>Approximately two months following entry of procedures order</p>	<p>Limited to terms of stalking horse bid<sup>3</sup> and subject to the supplemental bid requirements.</p>	<p>Increased from \$1 Million to \$1.62 Million if selected as Successful Bidder</p>	<p>Initial Overbid Amount \$55.82 Million</p>	<p>\$1.62 Million inclusive of expenses paid from the successful bidder deposit.</p> <p>Termination fee if Debtor terminates, in the amount of \$350,000 (within one month) or \$550,000 (within day of sale auction) or \$750,000 (after sale auction) inclusive of all expenses.</p>	<p>At least 10 days prior to initial bid deadline Debtor must provide counterparties notice of intent to assume and assign the executory contract to proposed buyer or successful bidder and the cure amount as necessary to assume.</p>

<sup>2</sup> This case is currently on appeal to the United States Supreme Court. See *State of Fla. v. Piccadilly Cafeterias, Inc.*, 484 F.3d 1299 (11th Cir. 2007), cert granted \_\_\_ U.S. \_\_\_, 128 S. Ct. 741 (Dec 7, 2007). The following are links to parties' briefs on appeal:

[http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/07-312\\_Petitioner.pdf](http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/07-312_Petitioner.pdf);  
[http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/07-312\\_Respondent.pdf](http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/07-312_Respondent.pdf);  
[http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/07-312\\_PetitionerAmCu7LocalStateOrgs.pdf](http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/07-312_PetitionerAmCu7LocalStateOrgs.pdf); and  
[http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/07-312\\_PetitionerAmCu27States4Cities.pdf](http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/07-312_PetitionerAmCu27States4Cities.pdf).

	<u>Qualified Bidder Requirements</u>	<u>Supplemental Bid Requirements</u>	<u>Timeline for Submitting Bids</u>	<u>Due Diligence Processes and Limitations</u>	<u>Required Deposit</u>	<u>Overbid</u>	<u>Break-up Fee, Reimbursement of Costs and Other Bid Protections</u>	<u>Procedures Regarding Executory Contracts and Unexpired Leases</u>
<p><b><i>In re Pike Nursery Holding LLC,, Case No. 07-79129 (MGD) (Bankr. N.D. Ga Nov. 14, 2007)</i></b></p> <p>For Sale: Part or all assets of the Debtor</p> <p>Time of Sale in Relation to Case Filing: Within 4 months</p> <p>Proposed Purchase Price: Asset specific and undefined with no minimum</p>	<p>(1) written agreement; (2) deposit of 10% of bid; (3) evidence of financial capacity to close; (4) financial capability/ likelihood to consummate sale</p>	<p>(1) closing within 11 days of bid submission deadline/or must be the same as proposed by the stalking horse bidder; (2) other terms required to match those proposed by the stalking horse bidder; (3) identify any assigned contracts in proposals; (4) no financial contingencies/due diligence conditions; (5) if for same asset as stalking horse bidder-the competing bid must be greater than break up fee plus \$100,000 or such amount as shall be acceptable by debtor after committee consultation; (6) irrevocable until closing;</p> <p>Credit bidding allowed pursuant to §363(k)</p>	<p>9 days following entry of order</p>	<p>Open to all bidders satisfying Requirements to Submit Bid and that the seller determine to be qualified to participate in bidding process</p> <p>No due diligence conditions or financing contingency permitted.</p>	<p>10% of bid/purchase price</p>	<p>Amount agreed by debtor not to exceed 3% cash purchase price of stalking horse bidder</p> <p>Can bid by lot or by gross and Debtor has discretion to determine either one</p>	<p>Amount agreed by Debtor after committee consultation &amp; break-up fee not to exceed 3% of stalking horse bid</p> <p>Break-up fee obligations shall have administrative expense claim</p>	<p>Purchaser shall identify each executory contract or unexpired lease subject to a bid</p> <p>On same deadline for submitting bids, Debtor is to schedule with court intent to assume and assign and provide a cure amount. Contract parties have opportunity to submit written objection which shall include: (1) grounds; (2) any and all defaults including a) cure amount b) action to cure non-monetary default c) any/all claims related to contract</p>

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<p><b><i>In re Adventure Parks Group LLC, Case No. 06-70659 (JTL) (Bankr. M.D. Ga. Sept. 11, 2006)</i></b></p> <p>For Sale: Wild Adventures Amusement Park (“WAV”) and Cypress Gardens Adventure Park (“CGAP”), or both</p> <p>Time of Sale in Relation to Case Filing: Approximately one year</p> <p>Proposed Purchase Price: (each sold separately)</p> <p>WAV amusement park- \$34.5 Million</p> <p>CGAP amusement park-\$16.8 Million</p>	<p>(1) evidence of financial ability/likelihood to close; (2) must provide proof of authorization and committed lending to consummate transaction</p>	<p>(1) irrevocable until end of auction; (2) bids delivered prior to auction will not be shared to bidders except for stalking horse bid; (3) unconditional and not contingent without limitation or due diligence investigation; (4) must specify WAV or CGAP, or both and must be in form template attached to procedures delivered with clean copy and redline version; (5) written bid on form provided</p> <p>Stalking horse can credit bid the break-up fee for an overbid</p> <p>Anyone with allowed secured claim can credit bid so long as such party follows all bid procedures</p> <p>CGAP - Agent has 7 days after conclusion of auction to object to credit bid for accepted bid if bid provides for cash consideration to Debtors at closing in amount not accepted to in writing. If agent does not credit bid, Debtors have 3 days to determine to accept accepted bid or back-up bid for CGAP</p>	<p>Within one month from entry of order (26 days)</p>	<p>(1) No due diligence investigation; (2) irrevocable until end of auction; (3) confidential</p>	<p>10% of cash</p>	<p>WAV amusement park – \$250,000 plus amount of breakup fees over Stalking horse purchase price</p> <p>CGAP amusement park - \$146,000 plus amount of breakup fees over Stalking horse purchase price</p> <p>If overbid received auction will be held with increments of not less than \$100,000</p>	<p>WAV amusement park – \$1.035 Million</p> <p>CGAP amusement park-\$504,000 plus fees and expenses not to exceed \$200,000</p> <p>Stalking horse bidder can credit bid the break-up fee and does not waive break up fee by submitting overbid at auction</p>	<p>Executory contracts are not addressed in procedure order</p>

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<p><b><i>In re Lake Diamond Assocs. LLC, Case No. 04-05511 (JAF), (Bankr. M.D. Fla., Feb. 24, 2004)</i></b></p> <p>For Sale: Lake Diamond Golf &amp; Country Club, licenses related to property, and service contracts</p> <p>Time of Sale in Relation to Case Filing: Approximately 14 months after filing</p> <p>Proposed Purchase Price: \$12.9M</p>	<p>(1) deposit of \$225,000 in certified or cashier's check; (2) expressly subject to debtor's obligation to pay break-up fee; (3) meet minimum overbid requirements; (4) must purchase substantially all assets; (5) no due diligence or financing contingency</p>	<p>(1) duly executed asset acquisition agreement which is substantially similar to stalking horse agreement or contains more favorable terms and conditions; (2) a closing date substantially similar to stalking horse; (3) agreement accompanied by black-lined version to reflect variations; (4) must provide proof of authorization and financial capability/likelihood to consummate sale; (5) must provide proof of ability to provide adequate assurance of future performance for executory contracts</p>	<p>Within 6 weeks of entry of procedure order</p> <p>The debtor reserves the right to accept a late bid after consultation with the Creditor's Committee</p>	<p>Debtor and Purchaser will provide bidders who request and execute a confidentiality agreement access to diligence information related to assets</p> <p>Information will be made available for inspection and bidder must pay copying costs</p> <p>Debtor will provide list of qualified bids and terms, and disclose the amount and terms of the highest proposed Qualified Bid within 5 days of bid submission deadline to Qualified Bidders only</p>	<p>\$225,000 in certified or cashier's check</p> <p>Deposit of non-winning bidders shall be returned within 5 days of auction</p>	<p>Minimum overbid is stalking horse bid plus break-up fee and \$50,000</p> <p>\$50,000 bidding increments beginning with the highest Qualified Bid</p>	<p>\$175,000 for reimbursement in cash of costs and expenses incurred including due diligence expenses</p> <p>Purchaser is granted a super-priority administrative expense claim for the break-up fee</p> <p>Shall be paid at closing or within 10 days thereof</p>	<p>Within 10 days of entry of procedure order the Debtor must file a list of service contracts proposed to be assumed and assigned</p> <p>Objections to cure amounts must be in writing, filed within 36 days, comply with local and bankruptcy rules, give nature of objection, and be served on the debtor, creditors committee, purchaser, UST, and Silver Capital of Central Florida</p> <p>If no objection is filed then the court will deem that no amount of cure is due and that the service provider consents to assumption</p>

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<p><b><i>In re Besty Ross Hotel Corp., Case No. 05-14656-BKC-RAM (Bankr. S.D. Fla., May 19, 2005)</i></b></p> <p>For Sale: Hotel</p> <p>Time of Sale in Relation to Case Filing: Within three months of filing</p> <p>Proposed Purchase Price: Not available</p>	<p>(1) bid shall remain open and irrevocable until sale hearing; (2) bid must be in writing; (3) must agree to terms of stalking horse bid or mark up stalking horse bid with proposed changes; (4) meet minimum overbid requirements; (5) not conditional on due diligence which is not completed within 48 hours prior to date of auction; (6) reasonable likelihood of consummating sale; (7) pay required deposit; (8) bid is irrevocable until order approving sale, except prevailing and back-up bidder are bound until day after sale</p>	<p>(1) financial statements or evidence of financial capability of performance; (2) must provide proof of authorization to enter sale transaction; (3) provide evidence of good faith pursuant to §363(m)</p>	<p>Less than 2 months from the entry of procedure order</p>	<p>Not addressed</p>	<p>\$250,000 in cash</p> <p>nonrefundable if winning bidder, refundable for all others bidders</p>	<p>Minimum overbid is \$250,000 over stalking horse bid;</p> <p>Bid increments of \$50,000 after initial overbid</p>	<p>\$200,000 paid to stalking horse as break-up fee on closing of transaction and paid from proceeds received in other transaction</p>	<p>Not available</p>

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<p><b><i>In re Trinsic, Inc., Case No. 07-10324 (Bankr. S.D. Ala. Feb. 7, 2007).</i></b></p> <p>For Sale: Substantially all of Debtors' Assets</p> <p>Time of Sale in Relation to Case Filing: Within two months</p> <p>Proposed Purchase Price: \$25.5 Million base purchase price subject to adjustments</p>	<p>No contingencies in bid and timely submit bid</p>	<p>(1) written bids must contain evidence of committed financing or capability to perform; (2) confirm whether assuming or assigning executory contracts; (3) timely submitted; (4) include executed versions of all material deal documents including asset purchase agreement; (5) must have an Enterprise Value of at least \$22 Million (amount of bid plus value of any excluded assets other than causes of action under Chapter 5 of Bankruptcy Code)</p>	<p>6 days following entry of order</p>	<p>All potential bidders who desire to become Qualifying Bidders shall be provided with reasonable access to the Seller's books, records and executives, subject to proof of capability to consummate sale and execution of a confidentiality agreement</p> <p>Only qualified bidders with timely submitted bids can bid at auction</p>	<p>\$2.1 Million cash deposit-nonrefundable if bidder fails to consummate transaction after bid is accepted</p> <p>Deposit not required if debt is secured and creditor is credit bidding</p>	<p>Initial overbid must be \$450,000, then increments of \$50,000</p>	<p>\$400,000 in break-up fee</p>	<p>Must provide evidence of adequate assurance of future performance for assumed leases and executory contracts.</p> <p>Must be consistent with Stipulation and Consent Order for adequate assurance payment</p> <p>Notice of cure costs must be served on counterparties within 3 days of entry of procedures order or within 3 days of Purchaser's election of assumption</p> <p>Objections must be filed within 10 days of Purchaser's notice of cure costs.</p>

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<p><b><i>In re U.S. Hotel Investors, Inc., Case No. 02-75175 (Bankr. N.D. Ga. Dec. 27, 2002)</i></b></p> <p>For Sale: Hotel</p> <p>Time of Sale in Relation to Case Filing: Within one year</p> <p>Proposed Purchase Price: \$9 Million</p>	<p>(1) financial capability/ likelihood to consummate sale;</p> <p>(2) certified check as deposit of 10% of its overbid</p>	<p>Covenant to execute an asset purchase agreement in identical form to order, changes must be submitted in redline format at time of written bid</p> <p>Seller must determine bidder is financially qualified</p> <p>Timely submit bid</p>	<p>Within 11 days of entry of procedure order</p>	<p>n/a</p>	<p>deposit of 10% of overbid</p>	<p>Not less than \$500,000 in excess of sum of purchase price and break-up fee after adjustments and assumption of liabilities</p> <p>Thereafter, bid increments of \$100,000</p> <p>Stalking horse has right for 4 hours after highest bid then bid the current overbid plus \$50,000 on same terms of this agreement except that stalking horse receives a credit toward purchase price in amount of earnest money plus accrued interest</p>	<p>2 ½ % of the purchase price plus reimbursement of actual out of pocket expenses not to exceed \$175,000</p> <p>Paid only on closing and out of closing proceeds of alternate transaction</p> <p>Obligation to pay break up fee is an administrative expense of the Debtor</p>	<p>n/a</p>