

Rockport Creditors Challenge Bid Protections In Ch. 11

By **Shayna Posses**

Law360 (June 1, 2018, 7:25 PM EDT) -- The Rockport Co. LLC's unsecured creditors objected Friday to proposed protections in the footwear maker's agreement with a stalking horse bidder, saying a \$4.5 million breakup fee and \$2 million expense reimbursement aren't appropriate because they'd be due even if the bidder killed the deal, forcing the debtor to liquidate.

The official committee of unsecured creditors lodged a limited objection in the Chapter 11 case of Rockport and its affiliates, challenging bid protections laid out in stalking horse bidder CB Marathon Opco LLC's \$150 million offer for the footwear company's global wholesale and e-commerce assets.

"The committee appreciates the work done by the debtors and the stalking horse bidder to develop and negotiate the stalking horse [asset purchase agreement], and supports setting a floor for the auction," the creditors said. "However ... the \$4.5 million breakup fee and \$2 million expense reimbursement sought by the stalking horse bidder should not be approved due to the following deficiencies in the stalking horse [asset purchase agreement]."

The creditors asserted that the provisions don't preserve the value of the estate because they could still be triggered if the agreement doesn't end up providing any benefits, as would be the case if Marathon drops the pact or Rockport nixes it because of a breach by the stalking horse.

The agreement doesn't even establish a legitimate floor for the asset sale, the creditors contended, noting that the bidding procedures don't require Marathon, an affiliate of Charlesbank Equity Fund IX, to serve as a backup bidder unless it chooses to bid at the auction.

Plus, in the case that Marathon is outbid, Rockport could be forced to liquidate anyway if it can't close the deal with the successful bidder, while still potentially being required to cough up the breakup fee and reimbursement, the creditors argued.

"Accordingly, the bid protections are not necessarily beneficial to the debtors' estates, and should not be approved unless the stalking horse bidder agrees to unconditionally serve as a back-up bidder at the auction," the committee said.

Jay R. Indyke, who represents the unsecured creditors, told Law360 on Friday that they very much support the sale process and are only concerned about the limited issues they laid out in their objection.

“We’ve been in discussions with the company and with the stalking horse about the issues, and we’ll see if we can reach an accommodation before the hearing” on the bidding procedures, which is slated for Tuesday afternoon, he said.

Representatives for Rockport didn’t immediately return a request for comment late Friday.

Rockport was founded in 1971 and designs, distributes and sells a variety of footwear, including casual and dress-style shoes, sandals and boots under its brand name, as well as the Aravon and Dunham brands.

But the company hit Chapter 11 on May 14 after costs associated with unwinding the operation from former parent company Adidas were much higher than expected. Coupled with supplier issues in recent years, the challenges led to strained liquidity and an effort to find a buyer.

The stalking horse bid will be subject to a 25-day no-shop period where Rockport will only be able to discuss bids with parties that completed due diligence prior to the bankruptcy filing.

The stalking horse will be purchasing Rockport’s global wholesale operations and its e-commerce platforms, but its North American retail operations are not yet included in the baseline bid. Charlesbank is considering making an offer on some part of the retail network, but Rockport received permission from the court during a first-day hearing to prepare for the liquidation of the stores not selected by the stalking horse.

Also during the Wilmington hearing, Rockport got approval to access up to \$10 million in new debtor-in-possession financing from its noteholders, on top of an existing \$60 million credit facility, according to a May 16 news release.

This will allow Rockport to maintain its operations in the ordinary course of business, including cash to pay its employees’ wages and invoices to its critical vendors, through the sale process, which it hopes to consummate by mid-July, the debtor’s attorney Mark D. Collins of Richards Layton & Finger PA said at the time.

All in all, the debtors carried \$287 million of debt into court, made up of \$57 million left on a secured revolving credit facility, \$188 million due on prepetition secured notes, \$12 million in subordinated notes and about \$30 million in trade debt, according to court filings.

The unsecured creditors committee is represented by Jay R. Indyke, Robert Winning, Sarah A. Carnes and Lauren A. Reichardt of Cooley LLP and Christopher M. Samis, L. Katherine Good and Aaron H. Stulman of Whiteford Taylor & Preston LLC.

The debtors are represented by Mark D. Collins, Michael J. Merchant, Amanda R. Steele, Brendan J. Schlauch and Megan E. Kenney of Richards Layton & Finger PA.

The case is In re: The Rockport Co. LLC et al., case number 1:18-bk-11145, in the U.S. Bankruptcy Court for the District of Delaware.

--Additional reporting by Vince Sullivan. Editing by Orlando Lorenzo.