

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
ASHLAND, LONDON, AND LEXINGTON DIVISIONS

IN RE: CHAPTER 11
LICKING RIVER MINING, LLC, *et al.* CASE NO. 14-10201
DEBTORS IN POSSESSION JOINTLY ADMINISTERED

DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) AUTHORIZING SALE OF SUBSTANTIALLY ALL ASSETS OF J.A.D. COAL COMPANY, INC., FOX KNOB COAL CO., INC., AND SANDLICK COAL COMPANY, LLC FREE AND CLEAR OF LIENS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §§ 363(b) AND (f); AND (B) WAIVING THE STAY IMPOSED BY FED. R. BANKR. P. 6004(h)

Come Licking River Mining, LLC, Licking River Resources, Inc., S. M. & J., Inc., Fox Knob Coal Co., Inc., J.A.D. Coal Company, Inc., U.S. Coal Corporation, Harlan County Mining, LLC, Oak Hill Coal, Inc., Sandlick Coal Company, LLC, and U.S. Coal Marketing, LLC, as jointly-administered debtors and debtors in possession (collectively, the "Debtors"), by counsel, and pursuant to 11 U.S.C. §§ 105(a), 363(b), (f), and (m), and 1107, Fed. R. Bankr. P. 2002 and 6004, and all other applicable law, respectfully request that the Court enter an Order: (a) authorizing Debtors J.A.D. Coal Company, Inc., Fox Knob Coal Co., Inc., and Sandlick Coal Company, LLC (collectively, the "JAD Debtors") to sell substantially all of their assets free and clear of liens, claims, interests, and encumbrances; and (b) waiving the stay requirements of Fed. R. Bankr. P. 6004(h) (the "Motion"). In support of this Motion, the Debtors respectfully state as follows:

I. JURISDICTION AND VENUE

1. On May 22, 2014, an involuntary petition seeking relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code") was filed against Licking River Mining, LLC ("LR Mining"). On May 23, 2014, involuntary petitions seeking relief

under Chapter 11 of the Bankruptcy Code were filed against Licking River Resources, Inc. (“LRR”) and Fox Knob Coal Co., Inc. (“Fox Knob”). On June 3, 2014, an involuntary petition seeking relief under Chapter 11 of the Bankruptcy Code was filed against S. M. & J., Inc. (“SM&J”). On June 4, 2014, an involuntary petition seeking relief under Chapter 11 of the Bankruptcy Code was filed against J.A.D. Coal Company, Inc. (“JAD,” and with LR Mining, LRR, Fox Knob, and SM&J, the “Subsidiary Debtors”). On June 10, 2014, an involuntary petition seeking relief under Chapter 11 of the Bankruptcy Code was filed against U.S. Coal Corporation (“U.S. Coal”).

2. On June 12, 2014, the Court entered an order for relief in each of the Subsidiary Debtors’ bankruptcy cases. On June 27, 2014, the Court entered an order for relief in U.S. Coal’s bankruptcy case.

3. On June 13, 2014, the Court entered an Order [Doc 91] directing the joint administration of the Subsidiary Debtors’ bankruptcy cases. On June 27, 2014, the Court entered an Order [U.S. Coal Doc 48] directing that the bankruptcy case of U.S. Coal be jointly administered with the Subsidiary Debtors’ bankruptcy cases. On November 19, 2014, the Court entered an Order [Doc 658] directing that the bankruptcy cases of Harlan County Mining, LLC (“Harlan”), Oak Hill Coal, Inc. (“Oak Hill”), Sandlick Coal Company, LLC (“Sandlick”), and U.S. Coal Marketing, LLC (“USCM,” and collectively with Harlan, Oak Hill, and Sandlick, the “Additional Debtors”) be jointly administered with the Original Debtors’ bankruptcy cases.

4. No trustee or examiner has been appointed in the Chapter 11 cases of any of the Debtors. An Official Committee of Unsecured Creditors (the “Committee”) was appointed in the Original Debtors’ bankruptcy cases on June 18, 2014 [*See* Doc 145].

5. On September 15, 2014, the Committee filed a Motion [Doc 468] requesting, among other things, that the Court compel the Original Debtors to file Chapter 11 petitions for the Additional Debtors, which are subsidiaries of U.S. Coal.

6. On October 27, 2014, the Court entered an Order [Doc 574] that authorized, compelled, and directed the Original Debtors to file Chapter 11 petitions for the Additional Debtors. On November 4, 2014, voluntary Chapter 11 petitions were filed for each of the four Additional Debtors as directed by the Court.

7. The Debtors all continue to operate their businesses and manage their properties as debtors in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

8. This Court has jurisdiction over all of the Debtors' Chapter 11 cases under 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (N), and (O).

9. The Debtors all maintain their principal places of business in Fayette County, Kentucky. Accordingly, venue for all of the Debtors' Chapter 11 cases is proper in this District under 28 U.S.C. §§ 1408 and 1409.

II. BACKGROUND

A. Procedural Background

10. On January 7, 2015, the Court entered the Order (A) Approving Bidding Procedures and Related Deadlines; (B) Scheduling Date and Time for Sale Hearing; (C) Approving Form and Manner of Notice of Same; (D) Approving Form and Manner of Notice of Proposed Assumption and Assignment or Rejection of Certain Executory Contracts and/or Unexpired Leases and Related Cure Claims; and (E) Approving Shortened Notice and Expedited Hearing on the Same [Doc 817] (the "Bidding Procedures Order"). The Debtors' noticing agent in these bankruptcy cases, Epiq

Bankruptcy Solutions, LLC (“Epiq”), served the Bidding Procedures Order on all parties listed on Master Service List No. 9 [Doc 830-1] on January 8, 2015. *See* Affidavit of Service [Doc 834].

11. As required by paragraph 6 of the Bidding Procedures Order, Epiq served the served the Notice of Approval of Bidding Procedures for Sale of Substantially All of the Assets of J.A.D. Coal Company, Inc., Fox Knob Coal Co. Inc., and Sandlick Coal Company, LLC Debtors and Scheduling of Sale Hearing and Objection Deadlines (the “Notice of Sale Hearing”), the form of which was attached as Exhibit B to said Order, on all creditors and parties in interest on January 8, 2015 and January 13, 2015 on behalf of the Debtors. *See* Affidavits of Service [Docs 834 and 837]. GlassRatner Advisory & Captial Group, LLC (“GlassRatner”), which is serving as the Debtors’ financial advisors in these bankruptcy cases, served the Notice of Sale on all parties that had expressed interest to the Debtors or their advisors in connection with the marketing and sale process authorized by the Bidding Procedures Order on January 11, 2015 and January 12, 2015 on behalf of the Debtors. *See* Affidavit of Service [Doc 835].

12. As required by paragraph 7 of the Bidding Procedures Order, Epiq served the Notice of (I) Potential Assumption and Assignment of Executory Contracts and Leases, (II) Requirements to Provide Information as to Cure Amounts, (III) Process for Determining Cure Amounts with Respect to Executory Contracts and Leases to be Assumed and Assigned, and (IV) Sale Hearing and Objection Deadlines (the “Contracts and Leases Notice”), the form of which was attached as Exhibit C to the Bidding Procedures Order, on all parties listed on the Contracts and Leases Notice and all parties listed on Master Service List No. 9 [Doc 830-1] on January 12, 2015. *See* Affidavit of Service [Doc 838].

13. On January 15, 2015, the Debtors filed the Notice of Filing of Schedule of Assets of J.A.D. Coal Company, Inc., Fox Knob Coal Company, Inc., and Sandlick Coal Company, LLC [Doc 840], as required by paragraph 9 of the Bidding Procedures Order.

14. In accordance with the Bidding Procedures attached as Exhibit A to the Bidding Procedures Order (the “Bidding Procedures”), the Debtors received multiple Initial Bids¹ to purchase certain assets of the JAD Debtors by the Initial Bid Deadline of February 9, 2015 at 5:00 p.m. EST.

15. To allow the Debtors sufficient time to review and consider all Initial Bids received, this Court entered the Agreed Order Extending Deadline for Debtors to File Motion for Sale of Assets of J.A.D. Coal Company, Inc., Fox Knob Coal Co., Inc., and Sandlick Coal Company, LLC [Doc 890], which extended the deadline for the Debtors to file the instant Motion through and including Tuesday, February 17, 2015 at 12:00 p.m. (ET). This Motion is timely filed pursuant to that Agreed Order.

B. The Proposed Sale

16. The Debtors, in consultation with the Consulting Parties,² reviewed each of the Qualified Bids³ received by the Initial Bid Deadline and determined in their business judgment that the Bid submitted by Myron Bowling Auctioneers, Inc. (the “Proposed Buyer”) represents the current “highest and best” offer to purchase that certain equipment owned by JAD that is listed on Exhibit A attached hereto (the “JAD Equipment”), which is substantially all of the equipment assets of JAD and of the Debtors’ JAD Division.

17. A true and accurate copy of the Initial Bid proposal submitted by the Proposed Buyer is attached hereto as Exhibit B. The following description of the Proposed Buyer’s Initial Bid is

¹ See Section D of the Bidding Procedures.

² Under Section C of the Bidding Procedures, the “Consulting Parties” includes the “Licking River Lenders” (East Coast Miner LLC, East Coast Miner II LLC, Michael Goodwin, and Keith Goggin), the “JAD Lenders” (Aubra Paul Dean, Carl E. McAfee, Julia McAfee, and Dean McAfee Holdings, LLC), and the Committee.

intended solely to provide a brief overview thereof and to highlight material terms and provisions.

Interested parties should refer to Exhibit B to review the complete terms thereof. In the event of any inconsistencies between this summary and Exhibit B, Exhibit B shall govern.

- (a) Purchase Price:⁴ The Proposed Buyer will pay JAD the sum of \$6,500,000.00 in cash for the JAD Equipment (the “Purchase Price”). Ten percent (10%) of the Purchase Price will be paid to JAD within five (5) days of entry of an order approving the sale, and the balance will be paid to JAD two days prior to the Proposed Buyer’s Auction discussed in paragraph 17(b).
- (b) Proposed Buyer’s Auction: The Debtors will allow the Proposed Buyer access to their property and to the JAD Equipment prior to the auction to be conducted by the Proposed Buyer (the “Proposed Buyer’s Auction”). During that time, the Proposed Buyer will prepare the JAD Equipment for the Proposed Buyer’s Auction to be conducted on the Debtors’ properties within a certain period of time after the hearing to consider this Motion, which period JAD and the Proposed Buyer will agree upon between now and said hearing. JAD will receive no proceeds beyond the Purchase Price, regardless of the outcome of the Proposed Buyer’s Auction of the JAD Equipment.
- (c) Post-Auction Activities: Following the conclusion of the Proposed Buyer’s Auction of the JAD Equipment, the Proposed Buyer will be responsible for the removal of all sold equipment.

18. Subject to approval and the submission of any higher or better offers at the Auction (as defined below), by this Motion, the Debtors are seeking approval of the proposed sale of the JAD Equipment on the terms set forth herein. The Debtors propose that all cash proceeds shall be paid to JAD, and JAD shall hold such proceeds in escrow and shall not use those proceeds without further order of the Court after notice and a hearing.

19. Although the Debtors are not appointing an Initial Bid for the JAD Debtors’ assets aside from the JAD Equipment (including, but not limited to, leases, bonds, real property, and contracts) at this time, the Debtors are still considering bids received from various Qualified Bidders

³ See Section D of the Bidding Procedures.

⁴ Exhibit B contemplates both a “Cash Purchase Proposal” and a “Commission Auction Proposal.” In their business

with respect to such assets. **The Debtors expressly reserve the right to seek bids on any and all of the JAD Debtors' assets at the Auction to be held on February 20, 2015 (as described below) and to seek to authorize the sale of such assets at the Sale Hearing (as defined below) by supplementing and/or amending this Motion.** For the purpose of clarity, in addition to seeking approval to sell the JAD Equipment, this Motion also seeks approval for the JAD Debtors to sell substantially all of their other assets to the highest and best bidder on such terms as will be determined at the Auction discussed herein below.

20. By this Motion, and as required by the Bidding Procedures, the Debtors are providing notice to all creditors and parties in interest of: (a) the JAD Equipment proposed to be transferred to the Proposed Buyer and the material terms of the contemplated sale transaction; and (b) the JAD Debtors' intention to seek approval of a sale of all of the JAD Debtors' other assets on such terms as may be negotiated at the Auction.

C. Competing Bid Selection Process

21. As contemplated in the Bidding Procedures, all Initial Bids are subject to higher and better bids including, without limitation, credit bids. Since the Debtors received more than one Qualified Bid, the Debtors will hold an auction among all Qualified Bidders on **February 20, 2015 beginning promptly at 9:00 a.m. EST** at the offices of Stoll Keenon Ogden PLLC, 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507 (the "Auction"). At the Auction, Qualified Bidders may bid to purchase or credit bid on, as applicable, any or all of the JAD Debtors' assets, regardless of whether they are part of the JAD Equipment. Pursuant to the Bidding Procedures Order, only Qualified Bidders, the United States Trustee, and the Consulting Parties may attend the Auction.

judgment, the Debtors have chosen to move forward with only the Cash Purchase Proposal, *not* the Commission Auction Proposal.

22. At the conclusion of the Auction, the Debtors, in consultation with their professionals and the Consulting Parties, will determine which Qualified Bid(s) are the highest and best bid(s) (the “Successful Bid(s)”), and the next highest and best Qualified Bid. The Debtors will then file the Auction results in the record of these bankruptcy cases on or before **February 24, 2015**, and they will supplement and/or amend this Motion to the extent necessary to align the Motion with the Successful Bid(s) on or before that same date. This Motion will be heard by the Bankruptcy Court on **February 27, 2015 at 9:30 a.m. EST** (the “Sale Hearing”). To the extent that this Motion is modified, supplemented, and/or amended prior to the Sale Hearing, the Debtors will provide notice to all creditors and parties in interest of same.

III. RELIEF REQUESTED

23. By this Motion, the Debtors respectfully request entry of an Order, pursuant to 11 U.S.C. §§ 105(a), 363(b), (f), and (m), and 1107, Fed. R. Bankr. P. 6004, and all other applicable law: (a) authorizing the JAD Debtors to sell substantially all of their assets free and clear of liens, claims, interests, and encumbrances; (b) waiving the stay requirements of Fed. R. Bankr. P. 6004(h); and (c) granting the Debtors such other and further relief as the Court deems just and proper. Recognizing that there is a potential for amendments and/or supplements to this Motion to address any subsequently accepted bids for the JAD Debtors’ assets, while also recognizing the need for this Court and all interested parties to have an opportunity to review the terms of a sale order sought by the Debtors, the Debtors are filing a draft, proposed order granting this Motion as Exhibit C hereto. The Debtors anticipate tendering a revised, final version of a proposed order granting this Motion in advance of the Sale Hearing.

IV. BASIS FOR REQUESTED RELIEF

A. The Proposed Sale Should be Approved.

a. **The Proposed Sale is in the Best Interests of the Debtors and their Estates.**

24. Approval of the proposed sale of the JAD Equipment and any and all of the JAD Debtors' other assets is authorized and appropriate under the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow a debtor in possession, "after notice and a hearing, [to] may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Where a debtor believes in the exercise of its business judgment that such a use, sale, or lease of property of its bankruptcy estate is in the best interests of the debtor and its estate, the debtor may enter into such a transaction outside the ordinary course of business. *See, e.g., Stephens Industries, Inc. v. McClung*, 789 F.2d 386, 389 (6th Cir. 1986) (holding that "a bankruptcy court can authorize a sale of all of a Chapter 11 debtor's assets under § 363(b)(1) when a sound business purpose dictates such action.") (citing *The Comm. of Equity Sec. Holders v. The Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983)); *see also In re Continental Airlines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (finding that, "for the debtor-in-possession to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for . . . selling . . . the property outside the ordinary course of business.") (internal citations omitted).

25. The Debtors have evaluated the JAD Debtors' ability to reorganize and have determined that a sale of substantially all of the JAD Debtors' assets is in the best interests of their Estates and creditors. The Bidding Procedures that were approved by the Bidding Procedures Order have governed the submission and review of bids for the JAD Debtors' assets and were designed to obtain the highest and best possible offers to purchase those assets. The Debtors have evaluated the terms, conditions, benefits and risks associated with the proposed sale of the JAD Equipment and will evaluate the same for any additional asset sale proposed at the Auction, as well as the risks and

benefits of other alternatives. In their sound business judgment, the Debtors have concluded that a sale of the JAD Equipment to the Proposed Buyer offers the most advantageous terms and greatest economic benefit to the JAD Debtors and their Estates, subject to the potential for receiving higher and better bids at the Auction. The Debtors have also concluded that a sale of the JAD Debtors' remaining assets on such terms as may be negotiated at the Auction will be the best option for their Estates and all interested parties.

26. The Debtors have further determined that the timing of the proposed sale is critical. Prices for coal continue to decrease and remain at historic lows. This hit to the JAD Debtors' revenue stream at the same time as they are facing unanticipated geological issues that significantly increase in production costs has made the last several months of operation exceptionally difficult for the JAD Debtors, and given the contemplated sale, it is not likely that the Debtors will emerge as a stand-alone going concern. Although the JAD Debtors were able to maintain their operations for the vast majority of their bankruptcy cases, market conditions recently required that the JAD Debtors slow mining operations on February 13, 2015. As the JAD Debtors no longer have an ongoing source of revenue, it is imperative that the sale proposed herein be approved promptly by February 27, 2015 and close by March 15, 2015 (as contemplated in the Bidding Procedures) to ensure that the JAD Debtors are able to yield the greatest possible return on their assets for the benefit of all creditors and parties in interest. If the contemplated sale is not approved and does not close by this time, the JAD Debtors are concerned that their Estates may not be financially able to bear the administrative burden of a continued and protracted sales process, which would be to the detriment of all interested parties.

b. The Proposed Sale is in Good Faith.

27. The Debtors state that the proposed sale of the JAD Equipment to the Proposed Buyer is in good faith and, therefore, satisfies the requirements of 11 U.S.C. § 363(m). The Debtors further state that they will ensure that the sale of any of the JAD Debtors' other assets as may be negotiated at the Auction will also satisfy the requirements of 11 U.S.C. § 363(m), and that they will provide evidence of the same in any supplement and/or amendment to this Motion describing the terms of such sale(s). Section 363(m) provides that:

The reversal or modification on appeal of an authorization under [Section 363(b) or (c)] of a sale or lease of property does not affect the validity of the sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). “Though the bankruptcy code itself does not define the term ‘good faith purchaser,’ courts have adopted the ‘traditional equitable definition of a ‘good faith purchaser,’ defined as ‘one who purchases the assets for value, in good faith, and without notice of adverse claims.’” *In re Made in Detroit, Inc.*, 414 F.3d 576, 581 (6th Cir. 2005) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1197 (7th Cir.1978)). In order “to be covered under the statutory protection of § 363(m), [a purchaser] must demonstrate that it purchased the [p]roperty ‘in good faith’ and that it did so ‘for value.’” *Id.* (quoting *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147 (3d Cir.1986)).

28. The Bidding Procedures Order established a process whereby interested parties were able to compete to establish the value of all of the JAD Debtors' assets. The Debtors diligently reviewed the Qualified Bids received and selected the Proposed Buyer's bid for the JAD Equipment in good faith and in accordance with the Bidding Procedures. The Proposed Buyer and the Debtors are in the process of negotiating the terms of the sale order at arm's length, with all parties being represented by separate, experienced professionals who are working to ensure that the proposed sale

order is negotiated, proposed, and entered into in good faith. The Debtors will complete this same good-faith process for the highest and best bid(s) for any of the JAD Debtors' other assets that may be submitted to and accepted by the Debtors at the Auction.

29. This level of fairness was and continues to be required by the Committee and affected secured creditors and their counsel, who are all working closely with the Debtors, the Proposed Buyer, and their respective counsel as the Debtors review all bids received, select the buyer(s) for the JAD Debtors' assets, and negotiate the terms of the sale order. These parties will continue to work to ensure fairness throughout the remainder of the sale process. Accordingly, the Debtors request that the Court make a finding that the Proposed Buyer of the JAD Equipment is entitled to the protections of 11 U.S.C. § 363(m). The Debtors further request that the Court find that any other buyers of the JAD Debtors' other assets as may be determined at the Auction be granted the protections of 11 U.S.C. § 363(m), to the extent that their entitlement to such protections is demonstrated by any amendments and/or supplements to this Motion and/or any arguments made by counsel at the Sale Hearing.

c. The Proposed Sale Satisfies the Requirements of 11 U.S.C § 363(f).

30. Section 363(f) of the Bankruptcy Code authorizes the sale of property under 11 U.S.C. § 363(b) to be free and clear of interests in such property held by an entity if:

- (a) applicable non-bankruptcy law permits a sale of such property free and clear of such interests;
- (b) such entity consents;
- (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (d) such interest is in bona fide dispute; or
- (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). A debtor need only satisfy one of the requirements set forth in 11 U.S.C. § 363(f) to justify approval of a sale free and clear of liens and interests. *Mich. Employment Security Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (“ . . . the language of section 363(f) is disjunctive and the sale free and clear of the interest concerned can occur if any one of the conditions of section 363(f) have been met”) (internal citation omitted); *see also In re Sumner Regional Health Sys., Inc.*, 2010 WL 2521081, *2 (Bankr. M.D. Tenn.) (same).

31. The Debtors believe that the requirements of 11 U.S.C. § 363(f) have been met with respect to the proposed sale of the JAD Equipment, and that the same will be met with any subsequently proposed sale of the JAD Debtors' other assets, because every interest in the JAD Debtors' assets fits or will fit within at least one of the Section 363(f) tests, and such interests will be adequately protected by attachment to the proceeds of the sale, subject to any claims and defenses that the Debtors and/or others may possess with respect thereto. Accordingly, the Debtors respectfully request that the Court order that the proposed sale of the JAD Equipment to the Proposed Buyer be free and clear of all liens, claims, interests, and encumbrances. The Debtors further request that the Court order that the proposed sale of any of the JAD Debtors' other assets as may be determined at the Auction be free of all liens, claims, and encumbrances, to the extent that a grant of such relief is supported by any amendments and/or supplements to this Motion and/or any arguments made by counsel at the Sale Hearing.

d. Notice of the Proposed Sale is Adequate.

32. Paragraph 11 of the Bidding Procedures Order provides that the filing of this Motion on or before February 11, 2015 and the Debtors' service of the Notice of Sale Hearing⁵ provides sufficient and adequate notice of the Motion and of the Sale Hearing under the circumstances. The Bidding Procedures Order approved this form of notice and held in paragraph 11 that it is "in full compliance with the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedures, and the Local Bankruptcy Rules of this Court." To further ensure that adequate notice is provided to all creditors and parties in interest, the Debtors (through Epiq and GlassRatner) are also serving the Notice of Sale of Substantially All of the Assets of Debtors J.A.D. Coal Company, Inc., Fox Knob Coal Co., Inc., and Sandlick Coal Company, LLC and Scheduling of Sale Hearing and Objection Deadlines (the "Notice of Sale") attached hereto as Exhibit D on all creditors of all of the Debtors, the Committee, the U.S. Trustee, and all parties who submitted Qualified Bid contemporaneously with the filing of this Motion.

B. Waiver of Bankruptcy Rule 6004(h) is Warranted.

33. Fed. R. Bankr. P. 6004(h) provides that "[a]n order authorizing the sale, use or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." For the reasons set forth above, time is of the essence in these cases, and it is imperative that the proposed sale of the JAD Debtors' assets be completed as soon as possible. Accordingly, the Debtors request that the Court waive the fourteen (14) day stays of any order authorizing the proposed sale of the JAD Debtors' assets.

⁵ This Notice was served by Epiq on January 8, 2015 and January 13, 2015, and GlassRatner on January 11, 2015 and January 12, 2015. See paragraph 11, *supra*.

V. CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court, at the conclusion of a hearing to consider this Motion, enter an order substantially in the form tendered herewith (as may be modified prior to the hearing of this Motion to resolve any objections): (a) authorizing the JAD Debtors to sell substantially all of their assets free and clear of liens, claims, interests, and encumbrances; (b) waiving the stay requirements of Fed. R. Bankr. P. 6004(h); and (c) granting the Debtors such other and further relief as the Court deems just and proper.

NOTICE AND OPPORTUNITY TO OBJECT

Notice is hereby given that the foregoing shall be brought on for hearing before the United States Bankruptcy Court for the Eastern District of Kentucky, 100 East Vine Street, Third Floor, Lexington, Kentucky, on **February 27, 2015, at the hour of 9:30 a.m. EST**, or as soon thereafter as counsel may be heard.

As set forth in the Bidding Procedures Order, any objections to this Motion shall be in writing, shall conform to the Bankruptcy Rules and the Local Rules and orders of this Court, shall set forth (i) the specific nature of the objector's claims against or interests in the Debtors' Estates, (ii) the basis for the objection, and (iii) the specific grounds therefor, and shall be filed and served so as to be *received* on or before **February 25, 2015 at 3:00 p.m. EST**. ***Any person that does not comply with these requirements shall not be heard at the hearing to consider this Motion, unless otherwise ordered by the Court.***

Respectfully submitted,

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