AMERICAN BANKRUPTCY INSTITUTE

Annual Spring Meeting

Auction Theory

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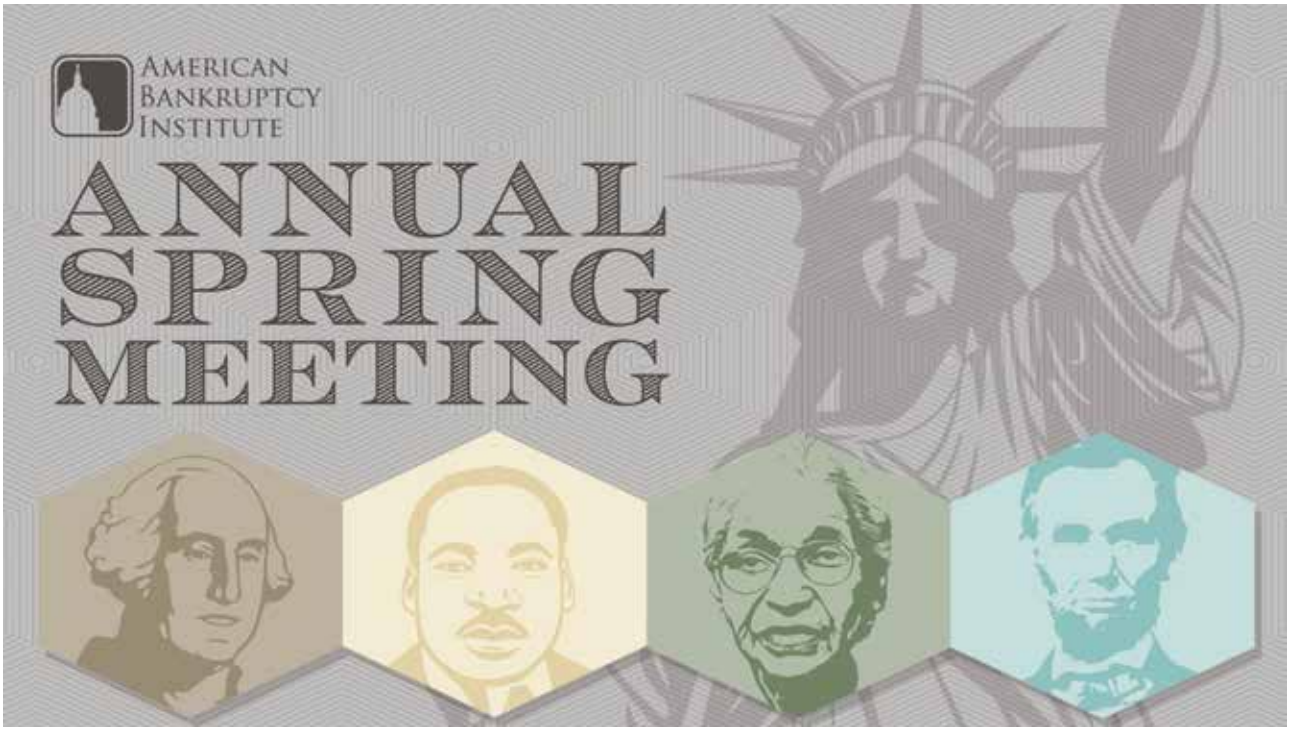
CONCURRENT SESSION

2025



AUCTION THEORY PANEL

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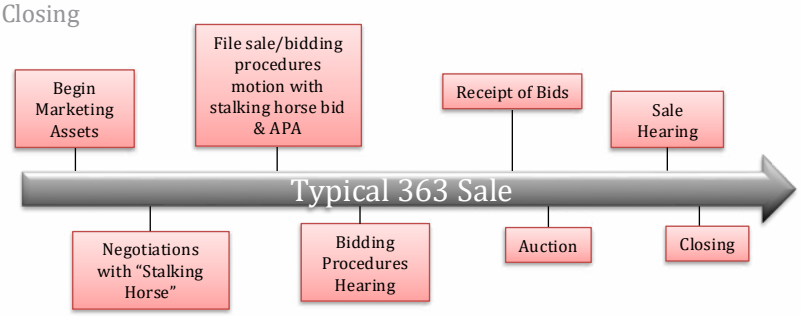
Asset Disposition: § 363 Sales

- Pre-planning and Marketing Assets for Sale
- Stalking Horse Bidder/Break-up Fees/Expense Reimbursements
- Running the Bidding Process/Auction
- Court Approval and Closing



The Theory Behind An Auction Process

Pre-Auction and Bid Process

- Structuring the Marketing and Bid Process
- Importance of Diligence, NDAs and A Robust VDR
- To Have or To Have Not A "Stalking Horse"
- Importance of Bidding Procedures
- Dealing With and Qualifying Bidders
- Other Complications -- Insiders and Credit Bidders

The Auction

- Zoom vs. In Person Auctions – Which is Better?
- Auction Rules – How Strict Are They *Really*?
- Controlling Discussions Among Bidders – When to "Group" Bidders?
- Valuing Bids – What Happens When Non-Cash Consideration Shows Up?
- What Considerations Go into Determining the Winning Bidder?
- Do You Really Need A Back-Up Bidder?
- Is the Auction Really Ever Done?

Court Approval

- Challenges to Approval of the Winning Bid
- Don't Forget About Assumption and Assignment of Contracts and Leases – And Adequate Assurance of Future Performance
- Best Practices for A Sale Hearing

Best And Final Words of Advice

AMERICAN BANKRUPTCY INSTITUTE
ANNUAL SPRING MEETING

AUCTION THEORY PANEL
Friday, April 25, 2025
9:45 am to 10:45 am ET

Nancy Peterman, Moderator
Greenberg Traurig, LLP

Mike Carey, Speaker
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GENERAL OVERVIEW OF SECTION 363 SALES

Pursuant to Section 363 of the Bankruptcy Code, a debtor (or trustee)[1] may sell all or a portion of its assets free and clear of any liens, claims, interests, and encumbrances outside of the ordinary course of business (a "Section 363 sale"). 11 U.S.C. § 363(b) and (f). Section 363 sales are court supervised requiring notice and a hearing. They may involve sales of equipment, real estate, intellectual property, a going concern business or any combination thereof. Section 363 sales are an effective and commonly used tool in bankruptcy to maximize the value of a debtor's assets, with many such sales occurring within the first 60 to 90 days of a bankruptcy case.

In this article, we will explore (a) the pros and cons of Section 363 sales, (b) each of the stages of a Section 363 sale process (marketing, selection of a stalking horse bidder, negotiating bidding procedures, running an auction and seeking court approval of the winning bidder) and (c) certain issues that can arise throughout the Section 363 sale process. The materials included in this article provide basic background for our panel discussion on "auction theory." During the panel discussion, we will focus on certain strategic and business issues to consider as you structure and conduct an auction process and how to tailor that auction process to specific situations.

Pros and Cons of 363 Sales

There are many pros and cons to a Section 363 sale process from a debtor/trustee's perspective and from a buyer's perspective. Certain advantages to Section 363 sales include:

- ***Fast Process.*** Section 363 sales provide a more rapid process to effectuate sale transactions (especially for a going concern businesses) without having to comply with the extensive requirements of a chapter 11 plan confirmation. Generally, the standard

[1] Throughout this article, references to the debtor likely also apply to a trustee.

for approval of Section 363 sales is the business judgment standard, making it much easier to obtain court approval.

- ***Acquisition Free and Clear of Liens.*** If a debtor can satisfy the requirements of Section 363(f) of the Bankruptcy Code, the debtor's assets are transferred to the buyer free and clear of all liens, claims, interests, and encumbrances. 11 U.S.C. § 363(f). However, some liens and interests may survive a Section 363 sale, including intellectual property infringement claims, certain environmental liabilities or obligations, certain pension obligations and certain successor liability claims involving product liability issues. In addition, the debtor attempts to obtain consent to the sale transaction from all creditors with liens against the assets being sold to allow for approval of the sale "free and clear." 11 U.S.C. § 363(f)(1). Without consent, the debtor must satisfy another subsection of Section 363(f) of the Bankruptcy Code to allow for a "free and clear" sale, which can be challenging. For example, a district judge in New York wrote an opinion in 2014 espousing a narrow reading of Section 363(f)(5) that would allow the sale of property free and clear of liens only when the debtor or the trustee, not a creditor, "could compel the interest holder to accept a money satisfaction for its interest." *Dishi & Sons v. Bay Condos LLC*, 510 B.R. 696, 710 (S.D.N.Y. 2014).
- ***Cherry Pick Assets Acquired.*** For buyers, they can cherry pick which assets to acquire and which assets to leave behind. In addition, debtors can more easily assume and assign contracts and leases to buyers given anti-assignment and written consent requirements are generally unenforceable.
- ***Sale Order Protections.*** Buyers can obtain an order approving the sale that insulates them from fraudulent transfer and successor liability risk. *See In re Motors Liquidation*

Co., 829 F.3d 135 (2nd. Cir. 2016) ("A bankruptcy court may approve a section 363 sale free and clear of successor liability claims if those claims flow from the debtor's ownership of the sold assets.").

There are, however, some disadvantages to a Section 363 sale process, including:

- ***Subject to Higher and Better Bids.*** For buyers, their bids are usually shopped and subject to higher and better offers. Buyers may expend considerable time and resources in preparing a bid – only to get outbid at the auction.
- ***Multiple Negotiations.*** Both debtors and buyers may engage in multiple negotiations before finalizing a bid. First, the debtor and buyer must agree on terms. Then, the debtor's lenders will weigh in on the bid. Finally, if a creditors' committee is formed (which may happen after an asset purchase is signed), the committee may have comments and require modifications to the purchase agreement. In addition, other parties in interest may have objections to the proposed purchase agreement and bidding process, including the U.S. Trustee, contract parties, landlords and other creditors. All of these parties and negotiations creates some unpredictability in the process.
- ***Limitations of Section 363 Asset Purchase Agreements.*** Many asset sales in bankruptcy are "as is, where is" sales. Most 363 sale asset purchase agreements have limited representations and warranties, all of which expire at closing; no escrows; no indemnities; no working capital adjustments; and lack other provisions that are included in "healthy" side purchase agreements. As a result, while a buyer acquires the assets "free and clear," the buyer will need to conduct targeted diligence regarding any liabilities that may survive closing and any information needed to ensure a smooth transition of the business or assets to the new owner.

The 363 Sale Process

While a 363 sale can occur rapidly at the beginning of a bankruptcy case, these sales require extensive planning beginning with marketing the assets for sale, possibly selecting a stalking horse bidder, then developing bid procedures and running an auction process and finally, culminating in a court hearing seeking approval of the highest and best bidder as a result of that sale and auction process.

The Marketing Process. A Section 363 sale process begins with development of a marketing plan to attract potential bidders. The debtor may market its assets to insiders (existing investors, lenders, key customers, key suppliers, or other creditors), financial investors, and/or strategic buyers of assets. A well-run marketing process maximizes the value of the debtor's assets and will be key evidence needed to obtain court approval of the bidding procedures, any stalking horse bid and ultimately approval of the sale to the winning bidder.

To effectively market assets for sale, a debtor typically retains financial professionals, brokers, or investment bankers to run the marketing process and serve as a witness in court, as needed, to establish that a thorough, appropriate marketing process was run. Depending upon the assets being sold and the circumstances, a thorough, appropriate marketing process may involve contacting hundreds of potential buyers, a few carefully selected buyers or negotiations with the only logical buyer.

During the marketing phase of the Section 363 sale process, it is imperative that a fulsome dataroom is available to potential buyers and non-disclosure/confidentiality agreements are entered into with potential buyers prior to their access to the dataroom.

The Stalking Horse Buyer. The sale and marketing process often occurs prior to commencement of a bankruptcy case allowing the debtor to identify a stalking horse buyer, enter

into a purchase agreement with the stalking horse buyer and file for bankruptcy with the stalking horse bid in hand. The stalking horse buyer functions to set the floor purchase price for the Section 363 auction and to attract other prospective buyers to bid on the assets, potentially culminating in a competitive auction. For the sale of a going concern business, the presence of a stalking horse buyer provides security to lenders, vendors, employees, and customers, who know that there is a buyer in place and the business will continue as a going concern. This bid also helps to maximize the debtor's value as a going concern by encouraging competing bids and stabilizes the debtor's business pending completion of the sale process.

The stalking horse buyer has the advantage of setting the baseline bid and determining the contract terms and structure of the transaction that other bidders will have to follow if they want to submit topping bids. Stalking horse bidders also may have the benefit of working with regulators in advance of auction to satisfy any regulatory issues that may arise, and they have the time to build relationships with other key players in the Section 363 sale process early on.

The stalking horse bidder will also negotiate key bid protections, including a break-up fee (a fixed amount, typically 3-5% of the sale price, paid if another bidder tops the stalking horse bid and is the successful buyer), an expense reimbursement fee (a capped amount to reimburse for diligence expenses and professional fees), and the minimum topping bid (the minimum amount that a competing bidder must bid to top the stalking horse bid, which is usually the break-up fee plus expense reimbursement plus an additional negotiated amount). These bid protections can often ensure that the stalking horse bidder will be the winning bid at the auction. This is especially true if there is little time between approval of the stalking horse bid and submission of competing bids.

The Credit Bid. Credit bidding permits a secured creditor to bid for and purchase its collateral by offsetting its outstanding secured debt against the proposed purchase price. It is a right expressly provided for in the Bankruptcy Code. *See* 11 U.S.C. § 363(k). A portion of, or the full value of, the secured debt may be credit bid to acquire assets that constitute the secured lender's collateral.

In many bankruptcy cases, if a secured lender is undersecured (meaning that the sale will not generate sufficient dollars to pay the secured lender in full), the lender may decide to credit bid to acquire the assets. Alternatively, in many cases, the lender may sell its debt to another third party interested in acquiring the assets and that third party can then credit bid the assets (a "loan to own" transaction).

The prospect of a credit bid may discourage other potential buyers from bidding on the assets, given that the lender (or owner of the debt) is bidding with debt and not cash. Credit bidding may allow a creditor to buy at a discount (given other bidders may be disinclined to bid if the lender or debt owner is known in the market as engaging in "loan to own" transaction). Credit bidders may also find it to be an advantage that their ability to credit bid can have a chilling effect on competing bidders in the process – especially if the credit bidder has significant "dry powder" (meaning that the credit bidder is undersecured and can continue to increase its bid without paying any cash).

A credit bidder can serve as the stalking horse bidder. Alternatively, a credit bidder may negotiate alternative bidding procedures that reduce its obligations with respect to the submission of a competing bid and automatically qualifies them to participate at the auction.

Bidding Procedures. Bidding procedures lay out the terms of the sale process, including key deadlines, qualifications for bidders, and proposed terms for any purchase. The procedures

include any negotiated bid protections, such as expense reimbursement, break-up fees, and the initial overbid bid increment. Bidding procedures typically provide debtors with significant deference to run the auction process in as effective a manner as possible to maximize recoveries. If there is a stalking horse bidder, the debtor and the stalking horse will negotiate the bidding procedures, which are then carefully scrutinized by the courts and other interested parties, because the procedures can determine the balance of control in the sale process and influence the outcome of an auction.

There are certain aspects of bidding procedures that are typically negotiated. These include:

- **Minimum overbids**: A competing bidder's minimum bid must exceed an earlier bid or the stalking horse bid. If there is a stalking horse bid, the minimum opening bid typically must equal the stalking horse bid *plus* break-up fee *plus* expense reimbursement *plus* minimum overbid amount.
- **Bid deadlines:** Competing bids must be submitted a minimum number of days before the auction. The stalking horse bidder will favor shorter deadlines so that competitors have less time for diligence, regulatory approvals, or securing financing.
- **Late bids**: The stalking horse usually insists that no bids be allowed after the deadline. Courts may allow late bids in the interest of maximizing purchase price.
- **Deposits**: All bidders (including the stalking horse) must put money down, sometimes up to 10% or the purchase price, to show good faith in their bid obligations.

- **Bidder qualification**: Prospective bidders must demonstrate they have the financial ability to complete the transaction. This is done by submitting recent financial statements or other financial information satisfactory to the debtor.
- **Bid qualification**: The terms and conditions of a competing bid must be substantially similar to, or the same as, those agreed to by the stalking horse. Competing bidders are often required to submit, as part of their bid package, a marked copy of the stalking horse purchase agreement with any changes noted. Competing bids for asset groupings that are different than the stalking horse may not be allowed. Competing bids generally cannot include changes considered to be "materially more burdensome" the stalking horse bid.
- **Changes to the bidding procedures**: A stalking horse bidder may negotiate a provision preventing modification of the bid procedures without its consent or court order.

The debtor will seek court approval of the bidding procedures by motion and often seek approval on an expedited basis. Bidding procedures can be reviewed under different standards, often the business judgment rule, but with respect to break-up fees and expense reimbursements, also the best interests of the estate test, administrative expense test, or a multi-factor test that utilizes both the best interests and administrative expense tests.

The business judgment standard presumes that bidding incentives are valid unless there is evidence of self-dealing. Courts may also consider whether the amount of any break-up fee and/or expense reimbursement is reasonable in relation to the proposed purchase price. *In re Integrated Res., Inc*., 147 B.R. 650, 657 (S.D.N.Y. 1992).

The best interests of the estate test is a higher standard that focuses on whether the bidding incentives (break-up fees and expense reimbursements) at issue, and the transaction as a whole, make economic sense. *In re Wintz Cos.*, 230 B.R. 840, 846-47 (B.A.P. 8th Cir. 1999); *In re Tiara Motorcoach Corp.*, 212 B.R. 133, 137 (Bankr. N.D. Ind. 1997); *In re S.N.A. Nut Co.*, 186 B.R. 98, 104 (Bankr. N.D. Ill. 1995); *In re Am. W. Airlines, Inc.*, 166 B.R. 908, 912 (Bankr. D. Ariz. 1994).

The administrative expense test is the most restrictive, requiring satisfaction of the standards for allowance of an administrative expense claim, and the bidding incentives must be actually necessary to preserve the value of the estate. *In re O'Brien Env't Energy, Inc.*, 181 F.3d 527, 535 (3d Cir. 1999).

The multi-factor test combines the prior two tests and whether a break-up fee and/or expense reimbursement is actually necessary to preserve the value of the estate. *In re Tama Beef Packing, Inc.*, 290 B.R. 90, 97-98 (B.A.P. 8th Cir. 2003); *In re Hupp Indus., Inc.*, 140 B.R. 191, 194-96 (Bankr. N.D. Ohio 1992).

The Auction. Prior to the auction, competing bidders are qualified and negotiate terms that would be accepted if the competing bidder wins the auction. If there are qualified overbids for the assets, there will be a competitive auction. The format of the auction may be a day-long or multi-day, multi-party negotiation. The auction may be held at the law firm of the debtor's counsel, in open court or by video. If there are no competing bids submitted, but there is a stalking horse bid, the auction will be cancelled, and the stalking horse bid will be deemed the winning bid.

If there is an auction, the debtor will select the highest or otherwise best bid at the conclusion of the auction in consultation with the "consultation parties," which usually includes the creditors' committee and the debtor's secured lenders. The highest bid does not necessarily win the auction, but rather the highest *or otherwise best* bid wins considering other elements, such as

certainty of closing. What bid constitutes the highest or otherwise best bid can be a source of tension between potential purchasers, as was the case in *In re Family Christian, LLC*, 533 B.R. 600 (Bankr. W.D. Mich. 2015).

In *Family Christian*, the debtors' proposed sale to the winning bidder, an insider, was objected to by the second highest bidder, who alleged that the sale process was "rigged" for the benefit of the insider. The second highest bidder asserted that the auction was unfair, if not fraudulent, because the debtors had allegedly always conspired to select the insider as the winning bidder, as evidenced by the fact that the second highest bidder entered a higher bid than the insider but was not selected as the winner. In their discussion, the court stated that a debtor, as a fiduciary in the auction, should weigh other factors, "such as contingencies, conditions, timing, or other uncertainties in an offer that may render it less appealing." *Id*. at 622. The court in *Family Christian* stressed the fact that the highest bid is not always the best bid when considering the entirety of the details of each bid.

When is an Auction Really Done (or Closed)?

Courts generally do not reopen fairly conducted section 363 auctions that result in an adequate price. However, when a higher and better bid for the assets is offered after the auction has closed, courts must balance the debtor's duty to maximize the value of the estate with the need to preserve finality and integrity of the auction process. While accepting late bids may mean more money for creditors, over time there is risk of undermining confidence in judicial sales and discouraging parties from making their highest bids in a timely manner during the auction.

A recent ruling from the U.S. Bankruptcy Court for the Southern District of Texas addressed the tension that courts face when asked to permit a late overbid, in *In re Instant Brands Acquisition Holdings Inc.*, Case No. 23-90716 (Bankr. S.D. Tex., 2023). In this case, the debtors

sought to sell substantially all other assets, consisting of an appliances business and a houseware business line. At auction, Centre Lane was declared the winning bidder for $122.6 million. The following day, the losing bidder sought to submit a $136 million bid. At the debtors' request, the court held an emergency status conference to consider whether the bidding had closed. The debtors believed they could consider the late bid, relying on their bidding procedures and the idea of value-maximization because allowing the late bid may result in further robust bidding. After hearing arguments, the court found the auction had closed and would remain closed unless the parties failed to reach acceptable final documentation, citing the importance of the process in saying "[A] few more dollars is irrelevant… in terms of protecting the integrity of the process." *Id.*

When determining whether to reopen an auction, courts consider various factors including: the adequacy of the price; adherence to court-approved bidding procedures; equitable considerations, such as due process issues, fraud, substantial unfairness or mistake; the bidders' reasonable expectations and local customs of the court; benefit to unsecured creditors; whether the new bidder acted in good faith; whether a sale order had been entered; and support from the debtor, creditors' committee, and other parties in interest. *In re Sunland, Inc.*, 507 B.R. 753 (2014). To reopen an auction for a later bidder, the current bid must be so grossly inadequate as to shock the conscience of the court. *First Nat'l Bank of Jefferson Parish v. M/V Lightning Power*, 776 F.2d 1258 (5th Cir. 1985). Gross inadequacy can be found either where there is a substantial disparity between the prevailing bid and the appraised value of the asset, or where there is a reasonable degree of probability that a substantially better price can be obtained by reopening auction. Courts are also more likely to reopen an auction if there have been material deviations from the court-approved bidding procedures or other flaws in the auction process. In several cases, courts have

declined to reopen auctions to consider enhanced offers where the parties followed the bidding procedures. *See In re Bigler, LP*, 443 B.R. 101 (2010).

Some courts have adopted a sliding scale approach under which smaller increases in value can justify reopening an auction before sale confirmation, while larger increases are required after sale confirmation. According to this approach, a court's broad discretion to review the reasonableness of the sale narrows significantly after the court confirms the sale because the parties' expectations have become more solidified at that point and the gravity of finality has increased. *See In re Food Barn Stores, Inc.*, 107 F.3d 558 (8th Cir. 1997); *In re Fin. News Network Inc.*, 980 F.2d 165 (2nd Cir. 1992); *First Nat'l Bank of Jefferson Parish*.

Equitable considerations are also relevant before the court confirms a sale. For example, one court reopened an auction before it approved the sale after finding that the due process rights of a third party with a right of first refusal on the property were violated because it had not been given notice of the sale, and therefore was unfairly denied its contractual right to match the highest offer received for the property. *In re Farmland, Indus., Inc.*, 284 B.R. 111, 119-20 (Bankr. W.D. Mo. 2002). A post-auction bid that provides for some payment to unsecured creditors who otherwise would have received no distribution weighs in favor of the court reopening an auction, on the grounds that doing so is in the best interest of the estate. *In re Sunland, Inc*., 507 B.R. 753 (2014). At least one court held that, together with the gross inadequacy of the sale price, a sale that provided only partial payment to a single creditor and left all other creditors with nothing indicated an additional circumstance of unfairness that warranted considering higher post-auction bids, despite finding no irregularities in the sale process. *In re W. Biomass Energy LLC*, 2013 WL 4017147.

Finally, the courts will consider whether the interested parties, debtors, and creditors' committee support reopening the auction. While this alone will not result in reopening the auction, their support is crucial in the court's decision.

Late bidders can maximize their chances of a court reopening an auction in multiple ways. First, by submitting an offer that is substantially better than the prevailing bid or provides value to unsecured creditors who would otherwise receive no distribution. Second, by demonstrating that there were material deviations from the court-approved bidding procedures, or other flaws in the auction process such as fraud, substantial unfairness, or mistake. Or third, by obtaining the support of the debtor, creditors' committee, and other parties.

The Sale Hearing. Once a successful bidder is selected, the bankruptcy court will hold a hearing to approve the sale – usually a few days after auction. The court reviews the highest and best bid along with good faith considerations. The court will ensure the sale serves a sound business purpose, that the higher "entire fairness" standard of scrutiny is met in the event a bidder is an insider, and that the sale is not a sub rosa plan. *See In re Braniff Airways, Inc.*, 700 F.2d 935 (5th Cir. 1983) (363 sale agreement required secured creditors to vote in favor of future plan, releasing all parties' claims). The parties submit all transaction documents to the court for approval and the court enters an order authorizing the sale, after considering "all salient factors" and the interests of the relevant parties. *In re Lionel*, 722 F.2d 1063 (2d Cir. 1983). The sale order is automatically stayed for 14 days, giving any objecting parties time to seek a further stay while they appeal the sale order. Fed. R. Bankr. P. 6004(h); 8002. Courts can waive the 14-day stay, on request of the parties, if there is a reason to close the sale early. The transaction is generally closed either immediately after entry of the sale order (if the court waives the 14-day stay) or after the sale order has become final and non-appealable (after expiration of the 14-day appeal period).

The Future of 363 Auctions in Bankruptcy

With emerging technologies, the nature of 363 auctions in bankruptcy has changed significantly. The availability and use of digital and online auctions have become increasingly popular for asset liquidation. This is because digital or online auctions allow for broader reach that can attract more bidders (including overseas bidders), higher bids, and faster processes in the auction proceedings.

The increasing development and availability of technology, as well as the growing popularity and reliance on those technologies, will surely have an impact on what a 363 auction in bankruptcy looks like in the future. They are already being used with far more regularity, which is likely to only continue to grow.

Faculty

Michael Carey is co-CEO of Tranzon Auction Properties in Portland, Maine, and has nearly two decades of experience in the auction industry. He has played a key role in the company's growth, overseeing real estate auctions across multiple states and managing transactions totaling over $700 million. Mr. Carey specializes in auctioning commercial, residential and specialty properties, helping sellers maximize their return while ensuring a seamless transaction process. His credentials include Certified Auctioneer Institute (CAI) graduate, the highest designation awarded by the National Auctioneers Association; licensed auctioneer and real estate broker, holding multiple state licenses including Maine, New Hampshire, Massachusetts, Vermont and New York; and turnaround and bankruptcy auction specialist, working with lenders, attorneys and financial institutions to liquidate distressed assets efficiently. He also has served as an expert witness and receiver. Mr. Carey is co-chair of the Maine Chapter of the Turnaround Management Association, supervisory board member of the Town & Country Credit Union, a founding member and former chair of PROPEL (Young Professionals Network), and a member of ABI and the National Auctioneers Association, National Association of Bankruptcy Trustees, Turnaround Management Association and National Association of Realtors. He received his undergraduate degree from Wheaton College.

Teresa C. Kohl is a managing director for SSG Capital Advisors, LLC in West Conshohocken, Pa., and is responsible for originating and leading investment banking transactions. She has completed more than 200 restructuring matters, including refinancing and sale transactions for middle-market companies in bankruptcy proceedings and out-of-court workouts. Prior to her transition to investment banking, Ms. Kohl led financial and operational restructuring engagements for boutique advisory firms. Her past clients include publicly traded, privately held, private-equity sponsored and family-owned companies in the health care, retail, manufacturing, building products and financial services industries. Ms. Kohl is a frequent speaker on financial and operational restructuring issues, bankruptcy, and special-situation transactions, as well as a contributing author to the *Norton Journal of Bankruptcy Law and Practice*. She is a Fellow of the American College of Bankruptcy, and she has served on ABI's Board of Directors and in leadership positions of the Turnaround Management Association (TMA Global), for which she was the first woman to lead TMA's largest global chapter (New York City) as president and co-founded TMA Global's Network of Women. She also is the immediate past board chair of Living Beyond Breast Cancer, a national nonprofit that connects people with trusted breast cancer information and a community of support. Ms. Kohl is a member of the Association of Insolvency and Restructuring Advisors, INSOL International, the International Women's Insolvency and Restructuring Confederation and The Forum of Executive Women. She serves on the steering committee of the Eastern District of Pennsylvania Bankruptcy Conference, and as a mentor for ABI's Diversity and Inclusion Working Group Mentoring Program. Ms. Kohl was inducted into the M&A Advisor Hall of Fame in 2024 and has received numerous awards, including the 2024 M&A Advisor Leadership Award, the TMA NOW (Network of Women) – Philadelphia/Wilmington Chapter first annual Ladder Award (2024), the Global M&A Network's SHE for SHE Leader Award, the Top Restructuring Investment Banker (2022), The M&A Advisor's Distressed M&A Dealmaker of the Year Award (2021 and 2019) and TMA Global's Outstanding Individual Contribution Award (2017). In addition, she was named a U.S.A. Top Women Dealmaker by the Global M&A Network (2019). Ms. Kohl received her B.S. from Villanova University School of Business.

Scott B. Lepene is a partner with ArentFox Schiff LLP in New York. His clients include secured and unsecured creditors and debtors both in and out of court workouts and litigation, as well as those in chapter 11 proceedings, and he is an industry leader in assignments for the benefit of creditors (ABC) transactions. His client base includes industries, financial services, technology, banking, manufacturing, automotive, restaurant, retail and real estate companies. Mr. Lepene represents purchasers of assets in distressed asset sales in both chapter 11 proceedings and other insolvency proceedings, particularly mid-cap private-equity firms and many real estate investment firms. He is is frequently asked to comment on the overall economic landscape, actions by the Federal Reserve and what that means for investors of distressed assets. Before practicing law, Mr. Lepene was a television sports anchor/reporter. He is a frequent contributor to bankruptcy publications, including *The New York Law Journal* and *ABI Journal*, and he has presented at numerous bankruptcy seminars and conferences. He was selected for inclusion in *Chambers USA* (2022-24), *Ohio Super Lawyers* (2018-20) and *The Best Lawyers in America* (2015-24). Mr. Lepene received his B.S. *summa cum laude* from Ohio University and his J.D. from Vanderbilt University School of Law.

Nancy A. Peterman is a shareholder at Greenberg Traurig and chairs its Chicago Restructuring & Bankruptcy Practice. She focuses her practice on complex corporate restructurings and M&A transactions involving distressed companies. Ms. Peterman represents private-equity funds, debtors, sellers, purchasers, investor groups and creditors in these matters. She also has deep experience in health care restructuring. Ms. Peterman assisted in drafting the health care bankruptcy provisions of Public Law No. 109-8 (the 2005 amendments to the Bankruptcy Code). She is a Fellow of the American College of Bankruptcy and is Board Certified in Business Bankruptcy Law by the American Board of Certification. Ms. Peterman has been heavily involved with ABI throughout the years, including serving as a member of its Board of Directors and the Executive Committee, and serving a co-chair for multiple committees. She also was co-editor-in-chief of the *Wiley Bankruptcy Law Update*, assistant editor for West's *Norton Bankruptcy Law and Practice* treatise, and an assistant editor and a contributing author for *ABI's Health Care Insolvency Manual*. Ms. Peterman is listed in *Chambers USA* and *The Best Lawyers in America*. She received her B.A. in 1988 from the University of Michigan and her J.D. in 1991 from the University of Michigan Law School.

Teri L. Stratton, CIRA is a senior managing director and head of Special Situations at Hilco Corporate Finance in Los Angeles. Prior to joining Hilco Corporate Finance in 2022, she spent 12 years at Piper Sandler and 10 years at Macquarie Capital Advisors (and predecessor firms) in the restructuring group. Prior to her investment banking career, Ms. Stratton had eight years of experience in corporate banking, serving in both credit administration and special assets. She is a member of the Turnaround Management Association, the Association of Insolvency and Restructuring Advisors and ABI. Ms. Stratton received her Bachelor's degree in economics from the University of California at Los Angeles and her M.B.A. in finance with honors from the Anderson School at UCLA.