

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
	:	
COLT HOLDING COMPANY LLC, <i>et al.</i> , <sup>1</sup>	:	Case No. 15-11296 (LSS)
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Debtors.	:	Jointly Administered
	:	
	:	<b>Re: D.I. 13, 273, 324, 325, 332</b>
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**DEBTORS’ OMNIBUS REPLY TO OBJECTIONS TO BID PROCEDURES MOTION**

The Debtors submit this omnibus reply memorandum (the “**Reply**”) in further support of their Bid Procedures Motion<sup>2</sup> and in response to the objections (the “**Objections**”) to the Bid Procedures Motion filed by certain parties.<sup>3</sup> For the reasons set forth below, the Court should overrule the Objections and grant the Bid Procedures Motion.

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are Colt Holding Company LLC (0094); Colt Security LLC (4276); Colt Defense LLC (1950); Colt Finance Corp. (7687); New Colt Holding Corp. (6913); Colt’s Manufacturing Company LLC (9139); Colt Defense Technical Services LLC (8809); Colt Canada Corporation (5534); Colt International Coöperatief U.A. (6822); and CDH II Holdco Inc. (1782). The address of the Debtors’ corporate headquarters is: 547 New Park Avenue, West Hartford, Connecticut 06110.

<sup>2</sup> See *Debtors’ Motion, Pursuant to 11 U.S.C. §§ 105, 363, and 365, and Fed. R. Bankr. P. 2002, 6004, 6006, 9008 and 9014, for Entry of (A) an Order (I) Approving Bid Procedures in Connection with the Sale of Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Approving Procedures Related to the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Such Sale, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling the Hearing to Consider Approval of Such Sale, and (V) Granting Certain Related Relief; and (B) an Order Approving the Sale of Substantially All of the Debtors’ Assets [D.I. 13] and the amended exhibits subsequently filed in connection with such motion [D.I. 273 and 325] (collectively, the “**Bid Procedures Motion**”). Capitalized terms used but not defined herein shall have the meaning set forth in the Bid Procedures Motion.*

<sup>3</sup> Specifically, the Official Committee of Unsecured Creditors (the “**Committee**”) [D.I. 332] and International Union, UAW and its Local 376 (the “**UAW**”) [D.I. 324].

**REPLY**

**I. The Proposed Bid Procedures Are The Product Of Sound Business Judgment And Will Maximize Value For The Debtors' Estates**

1. From the outset of these chapter 11 cases, the Debtors have made clear that pursuit of a section 363 sale was essential to ensure the Debtors will exit chapter 11 as a going concern as expeditiously as possible. The weeks leading up to the Petition Date were marked with sharp disagreement between the Company and its unsecured bondholders as to the proper capital and ownership structure of any reorganized entity. Further complicating these cases was the issue of the Debtors' lease for its West Hartford facility (the "**Lease**"), which is set to expire on October 25, 2015, and the affiliation between NPA Hartford LLC (the "**Landlord**") and Sciens Capital Management LLC (the "**Sponsor**"). And, as the Court has been made aware, the Debtors lack adequate financing to support themselves for an extended chapter 11 stay, both from a liquidity perspective, and because of the impact these cases have on the Debtors' status as a competitive market participant.

2. In light of these issues, the Company has consistently maintained that it will pursue all alternatives to "preserve its business as a viable going concern while at the same time setting forth a process that will allow for the most expeditious, effective, efficient, and fair way for the Company and its constituencies to bridge their fundamental disagreements." *Declaration of Keith A. Maib in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [D.I. 17] ("**Maib Dec.**") at 13. The Debtors have expressed a willingness to allow the Ad Hoc Consortium of Holders of 8.75% Senior Notes (the "**Consortium**") to propose a chapter 11 plan and in that regard remain open to the proposal and confirmation of a plan that facilitates prompt emergence from chapter 11. However, the facts of these cases present potential roadblocks to a plan process. Aside from issues surrounding the incremental financing that may

be necessary to fund pursuit of a plan, the Landlord may refuse to grant an extension of the Lease to whomever proposes a plan. Entry of the Bid Procedures Order provides the Debtors with more flexibility to address these issues. Accordingly, the Debtors maintain that adoption of the proposed Bid Procedures clearly reflects sound business judgment as these procedures will “open the process to widespread parties bidding from any interested party . . . focus the parties’ efforts towards determining what is the highest and best offer for the Company’s business, and . . . offer potential tenant alternatives and creative solutions to the Landlord as a party to the West Hartford Facility Lease.” *Id.* The Committee’s objection does not dispute the relevant facts facing the Debtors, and nothing in it legitimately casts doubt on the Debtors’ reasoned exercise of business judgment.

3. Additionally, while approval of a sale is not before the Court at this time, there are certain factors supporting the Debtors’ pursuit of the Bid Procedures Order that the Court should bear in mind, which were outlined by Judge Gerber in his seminal opinion approving General Motors’ asset sale. *In re General Motors Corp.*, 407 B.R. 463, 490 (Bankr. S.D.N.Y. 2009) (citations omitted). These factors include:

- **“Does the estate have the liquidity to survive until confirmation of a plan?”**

4. As explained in the Declaration of Keith A. Maib in Support of the Bid Procedures Motion (the “**Aug. 17 Maib Dec.**”) filed concurrently with this Reply, the Company’s current projections suggest that there is a risk the Company will run out of liquidity necessary to fund operations and administration of these cases by mid-September. Aug. 17 Maib Dec. at 3.

- **“Will the sale opportunity still exist at the time of plan confirmation?”**

5. In the absence of a global agreement resolving all issues relating to the Lease, the attempted confirmation of a chapter 11 plan that contemplates litigation with the Landlord is susceptible to challenge under the feasibility requirement in Bankruptcy Code section 1129. Accordingly, if the section 363 sale process is delayed to first determine whether a plan can be confirmed, the possibility of accomplishing an auction and approving a sale to a third-party bidder almost certainly would not occur before October 25th. Without assurance of approval of a sale prior to October 25th, which would allow for assumption and assignment of the Lease (including any state law rights a purchaser may have with respect to the Landlord), bidders currently conducting diligence may withdraw from the sale process.

- **“If not, how likely is it that there will be a satisfactory alternative sale option or a standalone plan equally desirable for creditors?”**

6. As Mr. Maib's declaration makes clear, if a standalone plan that is desirable for creditors and confirmable is proposed in these cases, the Debtors will, of course, consider it very carefully. But, while a feasible plan *may* emerge, the Debtors cannot stand by idly and let the time pass by. If a section 363 process is initiated only after a failed plan process, the value of the company's businesses could well crater. And, if the Company runs out of cash during these chapter 11 cases, everyone suffers - creditors, employees and customers. *Id.* at 3-4. Thus, the Committee's argument that adoption of the Bid Procedures should be delayed “to allow the Debtors and their creditor constituencies to *exhaust* a potential consensual plan process” fails. Committee Objection at 10-11 (emphasis added).

- **“Is there inherent risk that by deferring the sale the patient will die on the operating table?”**

7. The Debtors, in their business judgment, believe that delaying the sale process in the hope a chapter 11 plan that has not yet emerged can be confirmed jeopardizes the Company’s continued viability. The Debtors have substantial financing needs that must be addressed and while the Landlord has indicated a willingness to negotiate in good faith with all potential future owners of the Company, the Debtors believe that continuation of the sale process will produce additional parties who could possibly satisfy the Landlord’s requirements for a long-term lease extension. Or, a sale process may provide the Debtors with bidders who can deliver significant value while not needing a lease extension at all. Additionally, the Debtors have expressed a willingness for the Consortium to pursue a chapter 11 plan (while the Debtors continue the sale process on a dual track) and to have the Consortium serve as the stalking horse bidder in connection with a 363 sale and such a resolution with the Consortium may also provide a solution to the Debtors’ challenges. Notably, neither the Consortium nor the Debtors’ term loan lenders are opposing approval of the proposed Bid Procedures. That lack of opposition is important.

8. Against these facts demonstrating that (a) moving ahead with a sale process is a sound exercise of business judgment and (b) the Debtors remain open to a plan process if it is feasible and delivers value, the Committee’s argument that the Debtors should abandon or postpone approval of the proposed Bid Procedures in pursuit of a plan is misplaced. The Committee does not address how such a “plan-only” process would lead to a better outcome for these estates. Nor does it show how an open-ended “plan-only” process could be funded or what terms would be acceptable to all parties and confirmed in the absence of a long-term extension of the Lease. The Committee further misses the mark in assuming that approval of the

proposed Bid Procedures sets in motion an irreversible process that would prevent confirmation of a chapter 11 plan if a consensual resolution of the Lease issues occurs. The Debtors have and continue to be actively engaged in working to bring their various constituencies together in a way that could potentially lead to a consensual chapter 11 plan. However, no guaranty exists that such a result can be achieved, and therefore the Debtors must be prepared to move forward with a sale process governed by the proposed Bid Procedures.

## **II. The Proposed Sale Timeline Is Fair and Reasonable In Light of the Debtors Marketing Efforts**

9. The Committee objects that the sale timeline is not adequate and requests an extension of key sale dates “to ensure that, if there is to be a sale, all parties-in-interest have a fair opportunity to perform due diligence and submit a bid.” *Id.* However, for the past 60 days, the Debtors have undertaken the work necessary to pursue a sale process. With the assistance of their financial advisor, Perella Weinberg Partners LP (“PWP”), the Debtors have aggressively marketed their assets and engaged with potential purchasers. *Declaration of Nikhil Menon in Support of the Bid Procedures Motion (“Menon Dec.”)* at 2-3. As discussed in the Menon Declaration, PWP has, and continues to, develop marketing materials, maintain a data room containing confidential financial and strategic information, hold management meetings with representatives from certain potential purchasers, facilitate on-site diligence sessions, and coordinate the diligence efforts of all interested parties.<sup>4</sup> *Id.* During this process, PWP has solicited expressions of interest from approximately 150 strategic and financial purchasers,

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<sup>4</sup> Contrary to the Committee’s assertion that “the Debtors have not even updated their marketing materials since early June,” PWP has updated the materials in the data room on a continuous basis and made appropriate effort to provide potential bidders with additional materials specifically requested. *Menon Dec.* at 4.

resulting in the execution of approximately 20 non-disclosure agreements with potential bidders and the submission of several written indications of interest. *Id.*

10. Additionally, the Debtors have extended the key sales dates as far as possible prior to expiration of the Lease at the request of the U.S. Trustee and have adjourned the hearing on the Bid Procedures Motion on three separate occasions in order to accommodate requests made by various creditor groups and to allow the Debtors to properly gauge whether there is sufficient interest from potential bidders to justify continuation of a sales process. The period between the commencement of the marketing process and the proposed September 25th bid deadline, which will exceed 100 days, is more than sufficient given the size and complexity of the Debtors' business, and fully consistent with the sale timeline in recently approved Delaware asset sales. *See, e.g., In re AmCad Holdings*, Case No. 14-12168 (MFW) (Bankr. D. Del. Oct. 31, 2014) [D.I. 222] (43 days between petition date and sale hearing); *In re FCC Holdings*, Case No. 14-11987 (CSS) (Bankr. D. Del. Sept. 22, 2014) [D.I. 166] (29 days between petition date and sale hearing); *In re Tactical Intermediate Holdings*, Case No. 14-11659 (KG) (Bankr. D. Del. Aug. 22, 2014) (46 days between petition date and sale hearing) [D.I. 225]; *In re Victor Oolitic Stone Co.*, Case No. 14-10311 (CSS) (Bankr. D. Del. Apr. 16, 2014) [D.I. 158] (58 days between petition date and sale hearing); *In re Constar Int'l Holdings*, Case No. 13-13281 (CSS) (Bankr. D. Del. Feb. 10, 2014) [D.I. 350, 354 & 357] (54 days between petition date and sale hearing); *In re HSS Holding*, Case No. 13-12740 (BLS) (Bankr. D. Del. Dec. 13, 2013) [D.I. 209] (51 days between petition date and sale hearing); *In re EWGS Intermediary*, Case No. 13-12876 (MFW) (Bankr. D. Del. Dec. 5, 2013) [D.I. 181] (32 days between petition date and sale hearing). Finally, no potential bidder has expressed a concern that the proposed sale timeline is too short to conduct full diligence or submit a bid prior to the proposed bid deadline. *Menon Dec.* at 5.

**III. The Debtors Will Further Revise the Bid Procedures to Address Concerns Raised By Key Constituencies**

11. The Debtors submitted a revised Bid Procedures Order on July 28th and a further revised Bid Procedures Order on August 11th, which reflected comments from key constituencies such as the Pension Benefit Guarantee Corporation, the U.S. Trustee, and the UAW. The Debtors will further revise the Bid Procedures Order in response to the concerns raised in the Committee's objection, and will submit an updated form of order and a blackline against the version submitted on August 11th at or prior to the hearing. Specifically, the Debtors anticipate accepting all changes proposed by the Committee in the blackline attached to their objection, other than those related to (i) the Debtors' rights to take appropriate actions to limit data room access to strategic bidders (which is necessary to protect sensitive information), (ii) the period during which a "Qualified Bid" submitted by the "Back-Up Bidder" will remain irrevocable (the Debtors believe a 45-day period is fair and reasonable), and (iii) the Safeguard Procedures (the Debtors removed the Safeguard Procedures from the Bid Procedures (a) at the request of the U.S. Trustee, (b) in light of the fact that an affiliate of the Sponsor is no longer serving as the stalking horse bidder, and (c) other changes made to the Bid Procedures related to participation of the Sponsor in the sale process, but to the extent necessary will request that testimony similar to the testimony contemplated under the Safeguard Procedures be offered during the Sale Hearing).

12. The Committee also notes in their objection that there is a lack of clarity regarding the role the Sponsor will play "in making decisions about the sale of the Debtors' Assets." Committee Objection at 12. None exists; as Mr. Maib testified at his deposition and makes clear in both of his declarations, all decisions related to the sale process have been delegated to the Special Committee of Independent Members of the Governing Board of Colt



Defense LLC. The Debtors will further revise the Bid Procedures to resolve any ambiguity related to this issue. *Maib Dec.* at 14; *Aug. 17 Maib Dec.* at 4; *see also Resolutions of Colt Defense LLC Attached to the Voluntary Chapter 11 Petition of Colt Defense LLC* [Case No. 15-11287, D.I. 1].

#### **IV. The Remaining Arguments in the Objections Are Not Relevant to Entry of the Proposed Bid Procedures Order**

13. The remaining arguments in the Objections not addressed above or through the revisions to the Bid Procedures Order are premature and need not be addressed by the Court at this time. First, the UAW's objection asserts that the proposed Bid Procedures should not be approved because they do not require a bidder to assume the Debtors' existing collective bargaining agreement ("CBA") in order to be designated as a Qualified Bid. This proposed requirement is not a legal necessity to commence a sale process. The Debtors cannot predict with certainty what the end result of a sale process will be, and should not be required to market their assets in a proverbial straightjacket for the benefit of one constituency. The revised Bid Procedures do require each Potential Bidder to clearly state their proposed treatment of the CBA and other employee related obligations in order to be designated as a Qualified Bid. In the event that the Debtors determine that a bid to purchase their assets that does not intend to assume the CBA provides the highest and best offer, the Debtors will take appropriate steps in seeking court approval of that sale. Nothing in the Bid Procedures Order prevents the UAW from asserting an objection to that decision, or purports to change existing law as to the Debtors' burden in that circumstance.

14. The Committee's objection also raises several other issues not germane to approval of the Bid Procedures Order -- and appear designed to challenge the outcome of a sale. These issues include (i) a request that the Debtors exclude insurance policies, Chapter 5 Causes

of Action, and Estate Causes of Action from the proposed section 363 sale, and (ii) proposed revisions to the release and exculpation section of the proposed Sale Order. With respect to the first argument, the Debtors will consider bids for all of their assets, including existing insurance policies, Chapter 5 Causes of Action, and Estate Causes of Action. If the Debtors seek to sell those assets -- or any other assets -- and the Committee believes the designated winning bidder has not provided the highest and best offer to the Debtors, they can object. Similarly, any objections to the terms of the proposed Sale Order should be reserved until a final version of the Sale Order is presented to the Court for approval in advance of the Sale Hearing.

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**V. Conclusion**

15. For the foregoing reasons, the Debtors respectfully request that the Court overrule the Objections and enter the Bid Procedures Order as amended.

Dated: August 17, 2015  
Wilmington, Delaware



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