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## 'Deeply Troubled' Judge OKs Williams Services Stalking Horse

By **Emily Lever**

Law360 (August 18, 2023, 6:20 PM EDT) -- A reluctant Delaware bankruptcy judge Friday allowed Williams Industrial Services Group to move toward an auction after Williams' DIP lender helped break a stalemate over the stalking horse bidder for Williams' estate refusing to be the backup bidder.

Judge Shannon begrudgingly approved an offer from DIP agent EICF Agent LLC to pay the breakup fee and expense reimbursement to Energy Solutions should the assets sell to another buyer, rather than having that sum come out of the estate. While acknowledging the parties' arguments that the sale was on shaky ground and needed to keep the stalking horse from bolting, Judge Shannon took exception with the stalking horse bidder's attempts to exert pressure on the sale.

"The stalking horse has been accused, without rebuttal from the debtor, of trying to walk away from the deal and trying to re-trade this deal," Judge Shannon said. "I am deeply troubled by totally unsatisfactory explanations for refusing what would be standard, typical and normal," he added, referring to the refusal to be the backup bidder.

After adjourning Thursday's lengthy hearing and reconvening it Friday morning, Judge Shannon acquiesced to what he called Williams' "plaintive request" to allow the sale to move along after the parties offered three solutions. Sean Gordon of Thompson Hine LLP, counsel to the debtors, first offered the judge the option to allow the bidding procedures "as is." That option was supported by the unsecured creditors as well as the debtor and the DIP lender in the Thursday hearing, but went nowhere.

When the judge cut Gordon off mid-sentence, Gordon presented him with option two, which was the DIP lender backstopping the bid protections for the stalking horse bidder.

"There will be absolutely no hit to the estate from the break fee and the expense reimbursement," Gordon said. The debtor had told the court Thursday that the stalking horse bidder had agreed to waive the breakup fee and expenses if there was no sale, which Gordon argued made the deal a win-win.

Judge Shannon was initially skeptical of the backstop deal and remained skeptical, even as he ultimately ended the hearing by approving it. While stalking horse bidders not wanting to be backup bidders is not unheard of, the timeline of the auction would require the backup bidder to remain on hold for a minimal amount of time, making Energy Solutions' stance puzzling, Judge Shannon said.

"I am frankly flummoxed. I cannot perceive what the ultimate game here is," Judge Shannon said. "This is a matter of hours. If someone is not willing to remain for that narrow period following the auction in the event they don't win, I have doubts about them being a serious purchaser."

Arguing for the judge to approve the arrangement, the debtor and lender argued they needed to do whatever was necessary to keep the stalking horse bidder in place, because it had become apparent that the marketing process would turn up no other bidders.

"It's important to have a backup bidder at the auction, but most important is the lead bidder, and if the stalking horse walks away, we don't have one," Matthew Ward, counsel to EICF, told the court. "We've tried to come up with creative solutions to hold this buyer to the table because they're the only game in town, and all parties win."

Counsel for Energy Solutions, which handed Williams a \$60 million stalking horse bid going into the bankruptcy process, said the company was reluctant to be a backup bidder for "business reasons" but did not elaborate on the record.

The debtors and lender emphasized the dire straits Williams finds itself in and the unlikelihood of an auction even taking place to argue in support of the workaround deal. But for the judge, these factors were all the more reason why Energy Solutions should have had no problem theoretically being on standby for a few hours or a few days.

"The lenders have said with confidence that there are no other bidders, that the company is on death's door," Judge Shannon said. "I can't fathom why your client is prepared to close rapidly by 5pm on Friday the 8th, but they refuse to commit to close at 5:15, or on Saturday."

Finally, Gordon offered the judge option three, which would consist of a "naked auction" without stalking horse approval. Under those circumstances, the stalking horse would not be locked into the \$60 million purchase price it offered but could enter the auction and underbid itself, devaluing the estate, Gordon said.

"It would be unfair and unjust to allow the stalking horse bidder to re-trade this deal based on a small term that's probably not even going to come into play," Gordon said.

Judge Shannon ultimately went with option two, reluctantly okaying the bidding procedures with the DIP lender putting up the breakup fee and expense reimbursement.

Atlanta-based Williams — which provides construction and maintenance services for power plants, paper mills and municipal water systems — filed for bankruptcy in July with just under \$68 million in debt, citing economic conditions and the loss of a pair of major contracts in 2022.

It has two profitable major subsidiaries, but another, Williams Industrial Services, has been losing money due to being locked into fixed-rate contracts to provide services to water and sewer systems in Florida and Texas, according to its declaration. The company previously said its water services business has lost more than \$15 million since 2021. The water systems business is not part of the Energy Solutions bid.

Williams is represented by Mark L. Desgrosseilliers of Chipman Brown Cicero & Cole LLP and Sean A. Gordon, Austin B. Alexander, Alan R. Lepene and Scott B. Lepene of Thompson Hine LLP.

The committee of unsecured creditors is represented by Phillip Khezri of Lowenstein Sandler LLP.

The Office of the U.S. Trustee is represented by its own Joseph Cudia.

The case is In re: Williams Industrial Services Group Inc. et al., case number 1:23-bk-10961, in the U.S. Bankruptcy Court for the District of Delaware.

--Editing by Vaqas Asghar.