

## **Judge Bruce Black (Bankr. N.D. Ill.) Issues New Decision on Secured Lenders' Right to Credit Bid in Bankruptcy Asset Sales in River Road Hotel Partners, LLC Bankruptcy Cases, Rejects Third Circuit's Decision in *Philadelphia Newspapers***

Bankruptcy Judge Bruce Black of the Northern District of Illinois bankruptcy court entered an order yesterday denying a bidding procedures motion filed by River Road Hotel Partners, LLC and its affiliates, which filed chapter 11 bankruptcy cases in August of 2009. The debtors developed and manage the InterContinental Hotel Chicago O'Hare located in Rosemont, Illinois (a suburb of Chicago close to O'Hare International Airport).

Separately, Judge Black also denied approval of bidding procedures for substantially all of the assets of RadLAX Gateway Hotel, LLC and its affiliates that were proposed by the debtors. Judge Black's order notes that the proposed bidding procedures were substantially identical to the bidding procedures in the chapter 11 bankruptcy cases of River Road Hotel Partners, LLC and its affiliates and refers to his decision in those cases for the basis of his decision. The two groups of debtors are represented by the same counsel, despite not being administered together. RadLAX Gateway owns the Radisson Hotel at Los Angeles Airport, which is located at 6225 W. Century Boulevard in Los Angeles. According to the company, the location of the hotel is of particular importance because it is the closest hotel to LAX (within walking distance).

In June, the River Road Hotel debtors filed a motion seeking the approval of bidding procedures for the sale of substantially all of their assets. Among other things, the debtors' proposed bid procedures sought to deny their secured creditors the right to submit a credit bid, which the debtors asserted was appropriate because they were proceeding under section 1129(b)(2)(A)(iii) of the Bankruptcy Code (11 U.S.C. § 1129(b)(2)(A)(iii)) or, alternatively, because cause exists under section 1129(b)(2)(A)(ii). Two of the debtors' lenders, Amalgamated Bank (acting as trustee of Longview Ultra Construction Loan Investment Fund) and the Federal Deposit Insurance Corporation (as receiver for San Diego National Bank), objected to the proposed denial of their right to credit bid. In support of their objection, they argued that the debtors could only proceed under section 1129(b)(2)(A)(ii) and that the debtors had not demonstrated cause under that subsection to deny the lenders' right to credit bid.

Judge Black noted that the debtors' arguments relied heavily on the Third Circuit Court of Appeals decision in *In re Philadelphia Newspapers, LLC* (559 F.3d 289 (3rd Cir. 2010)), but stated that he "finds Judge Ambro's well-reasoned dissent in *Philadelphia*



*Newspapers* more persuasive." As a result, Judge Black found that the debtors could not use section 1129(b)(2)(A)(iii) of the Bankruptcy Code to preclude the lenders from credit bidding. Therefore, he then turned to the question of whether the debtors had demonstrated cause for denial of credit bidding under section 1129(b)(2)(A)(ii). The debtors offered three arguments for why the court should find cause to deny credit bidding:

1. The lenders' actions caused the debtors to fail.
2. Allowing the lenders to credit bid would chill the bidding process.
3. There are millions of dollars in mechanics' liens that are being litigated in state court.

The court rejected all three of these arguments, finding that the debtors had offered insufficient evidence to demonstrate that cause existed.

On a related note, in an article published yesterday on the [New York Times Dealbook](#) site, Stephen J. Lubben cited the same Philadelphia Newspapers opinion as his "most disfavored" of a series of recent decisions in the Third Circuit that he asserts have put the Delaware bankruptcy court "at risk of losing its privileged place in the Chapter 11 world." You can find Mr. Lubben's article [here](#). In addition, you can find a more extensive discussion of the Philadelphia Newspapers decision authored by partners [Mark S. Chehi](#) and [Chris L. Dickerson](#) of Skadden, Arps, Slate, Meagher & Flom LLP on [Skadden's website](#).

### ***About netDockets:***

With over 1.9 million documents filed in over 1,000 of the largest corporate chapter 11 bankruptcy cases, all professionally-coded to be quickly and easily searchable, netDockets allows you to find not just more precedent, but the best, most relevant precedent.

Learn more and sign up for a free trial account by visiting [www.netdockets.com](http://www.netdockets.com). In addition, please contact us directly to learn more about special free trial and payment options for mid-size and large law firms. Contact information can be found on our JDSupra profile page and at [www.netdockets.com](http://www.netdockets.com).

