

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

In re:

Brightmark Plastics Renewal LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 25-10472 (LSS)

(Jointly Administered)

NOTICE OF FILING OF AUCTION TRANSCRIPT

PLEASE TAKE NOTICE that on April 4, 2025, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered the *Order (I) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (II) Authorizing the Debtors to Designate One or More Stalking Horse Bidders and to Provide Bid Protections, (III) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (IV) Approving Assumption and Assignment Procedures, (V) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (VI) Granting Related Relief* [Docket No. 85] (the “Bidding Procedures Order”).

PLEASE TAKE FURTHER NOTICE that, on April 4, 2025, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Notice of Sale, Bidding Procedures, Auction, Sale Hearing, and Other Deadlines Related Thereto* [Docket No. 86] (the “Notice”).² Pursuant to the Notice and Bidding Procedures Order, the Auction took place on Monday, May 7, 2025.

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Brightmark Plastics Renewal LLC (7907); Brightmark Plastics Renewal Indiana LLC (7118); and Brightmark Plastics Renewal Services LLC (3789). The Debtors’ headquarters are located at 1725 Montgomery St, Floor 3, San Francisco, CA 94111.

² Capitalized terms used, but not defined herein shall have the meanings ascribed to them in the Bidding Procedures Order and the Notice, as applicable.

PLEASE TAKE FURTHER NOTICE that, for the convenience of the Court and all parties in interest, the transcript of the Auction is attached hereto as **Exhibit A**.

Dated: May 8, 2025
Wilmington, Delaware

Respectfully submitted,

/s/ James R. Risener III

Jeremy W. Ryan (No. 4057)

R. Stephen McNeill (No. 5210)

Brett M. Haywood (No. 6166)

Katelin A. Morales (No. 6683)

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Counsel to the Debtors and Debtors in Possession

EXHIBIT A

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1 ***UNCERTIFIED ROUGH DRAFT***

2 This unedited rough transcript draft is uncertified
3 and may contain incorrect punctuation, misspelled proper
4 names and/or terminology, an occasional reporter's note,
5 and/or inaccurate/nonsensical word combinations. There
6 WILL BE discrepancies between this form and the final
7 form.

8
9 Please keep in mind that the final certified
10 transcript's page and line numbers WILL NOT match the
11 rough draft due to the addition and/or editing of title
12 pages, indices, appearances of counsel, paragraphing,
13 formatting, and other changes.

14
15 Due to the need to correct entries prior to
16 certification, parties agree to use this transcript
17 draft only for the purpose of augmenting counsel's notes
18 and may not be cited or used in any way or at any time
19 to rebut or contradict the certified transcription of
20 the proceedings and should not be distributed in any
21 form to anyone who has no connection to this case.

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Docket No.

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Wednesday, May 7, 2025

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10:00 a.m.

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SSG Capital Advisors, LLC

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300 Barr Harbor Drive, Suite 420

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West Conshohocken , PA 19428

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19 Reported by: Chanyri Moh

20 JOB NO: 7342659

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1 A P P E A R A N C E S

2 List of Attendees:

3 Neil Gupta , Moderator and Debtor Investment Banker

4 Alex Lamm , Debtor Investment Banker SSG Advisors, LLC

5 Nick Vernacchio, Debtor Investment Banker SSG

6 Advisors, LLC

7 Brett Haywood, Debtor Counsel from Potter Anderson &

8 Corroon LLP

9 Jeremy Ryan , Debtor Counsel from Potter Anderson &
10 Corroon LLP
11 Ciara Sprance , Debtor Counsel Potter Anderson &
12 Corroon LLP
13 Dylan Rush , Debtor Investment Banker SSG Advisors,
14 LLC
15 Mark Chesen , Debtor Investment Banker SSG Advisors,
16 LLC
17 Andrew Ehermann , Debtor Counsel from Potter Anderson
18 & Corroon LLP
19 Michael Whittaker , Debtor Counsel from Potter
20 Anderson & Corroon LLP
21 Bob Powell , Bidder Brightmark Ashley Parent
22 Justin Goldstein , Bidder Brightmark Ashley Parent
23 Paul Rosenblatt , Counsel from Kilpatrick Townsend &
24 Stockton LLP
25

1 Catherine Zhu , Counsel from Kilpatrick Townsend &

2 Stockton LLP

3 Mark Desgrosseilliers, Counsel from Chipman Brown

4 Richard Jackson , Investor Jackson Investment Group

5 James Simon , Bidder Braven Enviromental LLC

6 Jeffrey Neumann , Bidder Braven Enviromental LLC

7 Jason Russell , Counsel from Morris, Nichols, Arsht &

8 Tunnell LLP

9 Robert Dehney , Counsel from Morris, Nichols, Arsht &

10 Tunnell LLP

11 Nadeem Nisar , Investor Fortistar

12 Duncan Bourgoin , Investor Fortistar

13 Matt Kimble , Investor Avenue Capital

14 Jeff McMahon , Bidder Freepoint Eco-Systems

15 Mark Worden , Bidder Freepoint Eco-Systems

16 Kathy Yang , Bidder Freepoint Eco-Systems

17 Jason Boland , Counsel from Norton Rose

18 Jennifer Zhang , Counsel from Norton Rose

19 Beth Brownstein , Counsel from ArentFox

20 Mark Angelov, Counsel from ArentFox

21 Tal Unrad , Counsel from ArentFox

22 James Britton , Counsel from ArentFox

23 Adam Saltzman , Financial Advisor FTI Consulting, Inc.

24 Andrew Scruton , Financial Advisor FTI Consulting,

25 Inc.

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1 Liz Volk , Financial Advisor FTI Consulting, Inc.

2 Michael Slade , Bidder UMB Bank, NA

3 Craig Jalbert , Chief Restructuring Officer Vedolino &

4 Lowey, P.C.

5 Timothy Bernlohr , TIndependent Director JB Management

6 Consulting, LLC

7 Jake Reisner , Debtor Counsel Potter Anderson &

8 Corroon LLP

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1 P R O C E E D I N G S

2 MR. GUPTA: Going on the record now,
3 this is the auction for the sale of the assets of
4 Brightmark Plastics Renewal, LLC; Brightmark Plastics
5 Renewal Services LLC; and Brightmark Plastics Renewal,
6 Indiana LLC, in connection with the jointly
7 administered Chapter 11 bankruptcy cases in the United
8 States Bankruptcy Court for the District of Delaware,
9 under lead case 25-10472 and the bidding procedures
10 order entered by the court on April 4, 2025.

11 We'll take appearances for the record
12 in a moment. But as a reminder, if you are not

13 speaking, please keep your microphone on mute unless
14 and until you have anything to say for the record.

15 Today's auction is being recorded and
16 transcribed by a court reporter. We ask that any
17 statements or comments by any party be limited to one
18 designated representative -- possible so that the
19 court reporter can properly document the auction.

20 We also ask that each individual who is
21 going to speak on behalf of a bidder identify yourself
22 for the record each time you speak for the benefit of
23 the court reporter. Breakout rooms will be available
24 for consultation if required.

25 All statements and comments or comments

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1 by any party are restricted to the submission of
2 qualified bids and over bids; clarification and
3 confirmation of qualified bids and over bids; request
4 for time to break for consultation; bidding
5 procedures; and active auction proceedings only.

6 In accordance with the auction protocol
7 previously circulated to the parties, SSU reserves the
8 right to mute and/or remove a party deemed to be in
9 violation of the auction protocol.

10 With that, we'll now take appearances.
11 So for the debtors, we have our chief restructuring
12 officer on the line.

13 MR. JALBERT: Yes, correct. Craig
14 Jalbert's on.

15 MR. GUPTA: We have our independent
16 director.

17 MR. BERNLOHR : Timothy Bernlohr is on.

18 MR. GUPTA: And then in the room here
19 we have counsel for the debtors, Potter Anderson.

20 MR. HAYWOOD: Brett Haywood of Potter
21 Anderson on behalf of the debtors.

22 MR. GUPTA: You just want to announce
23 everybody --

24 MR. HAYWOOD: We've got Jeremy Ryan of
25 Potter Anderson on behalf of the debtors. Jake

1 Reisner, Andrew Ehermann, Ciara Sprance, and Mike
2 Whittaker, all of Potter Anderson on behalf of the
3 debtors.

4 MR. GUPTA: Okay, great. And for
5 investment banker -- for the debtors, SSG Capital
6 Advisors, we have Neil Gupta, Alex Lamm, and Nick
7 Vernacchio here in person, and Mark Chesen and Dylan
8 Rush via Zoom.

9 Now, for the bidders. And I'll ask
10 each qualified bidder to identify and confirm the
11 individual representative who's authorized to speak on
12 behalf of and bond such bidder, and maybe use that
13 individual representative to appear on behalf of the
14 group.

15 So first we have Brightmark Plastics,
16 Ashley HoldCo, LLC, who we'll refer to as Brightmark
17 Parent going forward.

18 MR. ROSENBLATT: Paul Rosenblatt on
19 behalf of Brightmark Parent. I'll be the person
20 speaking on behalf of Brightmark Parent.

21 MR. GUPTA: Okay. Thank you, Paul.
22 Then we have Freepoint Eco-Systems Bartow Supply LLC,
23 we will refer to as Freepoint going forward.

24 MR. MCMAHON : Yeah, this is Jeff
25 McMahon for Freepoint, and I'll be the person speaking

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1 on behalf of Freepoint.

2 MR. GUPTA: Okay, great. Then Braven
3 Environmental LLC, who we will refer to as Braven.

4 MR. SIMON: And this is Jim Simon with
5 Braven Environmental. I'll be speaking on behalf of
6 Braven.

7 MR. GUPTA: Allright. Thanks, Jim.
8 And then UMB Bank, NA who we will refer to as UMB

9 MS. BROWNSTEIN : Beth Brownstein from
10 ArentFox Schiff on behalf of UMB, and I will be
11 speaking for UMB. But I do have my partners on the
12 line, Mark Angelov, Tal Unrad, and James Britton. And
13 we also have our financial advisors on the line from
14 FTI Consulting, and Michael Slade from UMB is also on
15 the line.

16 MR. GUPTA: Okay, great. Thanks, Beth.

17 All right. The bidding procedures
18 order provides that consultation parties may attend
19 and observe this auction, but only qualified bidders
20 may participate. As of now, we do not have any, but
21 consultation parties would be asked to mute themselves
22 for the duration of the auction unless a statement is
23 required for the record. All other observers will be
24 placed on meet at this time.

25 Now, I'll be asking each qualified

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1 bidder to confirm a few matters under the bidding
2 procedures order. First, we're asking each of the
3 designated representatives to confirm their bids as
4 previously submitted are currently in force, in effect
5 for all purposes of this auction, that the bids are
6 binding, in good faith, and bona fide offers to
7 purchase the assets in accordance with the bidding
8 procedures order. Braven, can you please confirm?

9 MR. SIMON: I confirm for Braven.

10 MR. GUPTA: Brightmark Parent?

11 MR. ROSENBLATT: Confirmed for

12 Brightmark Parent.

13 MR. GUPTA: Freepoint

14 MR. MCMAHON : Confirmed for Freepoint.

15 MR. GUPTA: And UMB?

16 MS. BROWNSTEIN : Confirmed for UMB.

17 MR. GUPTA: Thanks. Lastly, I'll ask
18 each of the designated representatives to confirm that
19 any verbal bids made today at this auction shall bind
20 the bidder and remain legally enforceable under the
21 terms of the respective asset purchase agreement
22 extended by each party with the sole exception being
23 the change in price as may be bid during this auction,
24 and that each of the bidders agree that, after the
25 auction, they will execute and deliver to the debtor's

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1 an amendment to the previously submitted asset

2 purchase agreement so that it conform with bids that

3 are made during the auction.

4 Braven, can you please confirm?

5 MR. SIMON: Raven is confirmed.

6 MR. GUPTA: Brightmark Parent?

7 MR. ROSENBLATT: Brightmark Parent

8 confirms.

9 MR. GUPTA: Freepoint?

10 MR. MCMAHON : Freepoint confirms.

11 MR. GUPTA: UMB?

12 MS. BROWNSTEIN : UMB confirms.

13 MR. GUPTA: Thank you. All right.

14 Pursuant to the bidding procedures order, the debtors
15 confirmed that a form asset purchase agreement was
16 publicly filed and noticed to all parties in interest
17 at Docket Number 131 in the lead case. A copy of the
18 asset purchase agreements between the debtors and each
19 of the qualified bidders was provided to the bidders
20 through their respective counsel prior to this
21 auction.

22 In accordance with the bidding
23 procedures order, the debtors informed all qualified
24 bidders of the qualified bids submitted by the bid
25 deadline and the baseline bid that will set the price

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1 at which bidding will commence.

2 For the record, the debtors have
3 received four bids for their assets. The debtors have
4 deemed all bids to be qualified bids under the bidding
5 procedures order. The first bid is from Brightmark
6 Parent, who has offered a base price of \$7.5 million
7 in cash, and we received a cash deposit currently
8 being held in escrow on the amount of \$750,000.

9 I'll ask the Potter Anderson team if
10 there's any other points --

11 MR. HAYWOOD: So other consideration
12 for the Brightmark Parent bid include they are credit
13 bidding \$7.0 million of their credit facility. That
14 credit bid is being applied to assets on which the
15 Brightmark Parent lender has a first lien.

16 They have also agreed to assume what
17 are referred to in the form asset purchase agreement
18 and their asset purchase agreement as the straddle
19 liabilities. And the debtors have placed a value of
20 the straddle liabilities for those -- assuming of \$2.8

21 million is what the debtors have valued the assumption
22 of those liabilities to be in terms of value to the
23 estate.

24 So if I'm missing anything else from
25 the consideration being paid, that is, we do recognize

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1 their purchase price states 27 million, but from the
2 purpose of the debtor's valuation, it is \$7.5 million
3 cash, a \$7 million credit bid, assumed liabilities of
4 the straddle liabilities of which the debtors are
5 placing a value at \$2.8 million.

6 And then they will be assuming what is
7 referred to as the bridge loan, which is a
8 pre-petition secured loan that they are assuming in
9 terms of value to the estate. The debtors understand
10 that's being assumed, but the debtors are not adding a
11 value to that in terms of the value of the debt. But
12 we do understand that that is today going to be an
13 assumed liability.

14 MR. GUPTA: Yeah, I think for purposes
15 of the auction, we're considering their bid \$7.5
16 million as the net bid for comparison purposes.

17 MR. HAYWOOD: For normalization. Now,
18 Mr. Haywood has a couple of points to clarify with
19 Brightmark Parent on their bid. Or Ms. Sprance, I'm
20 sorry.

21 MS. SPRANCE : Yes. Hi. Thank you
22 very much. So for Brightmark Parent, could you
23 confirm the -- one of the closing conditions was the
24 written commitment from UMB to remit accounts
25 receivable. Are you able to state on the record that

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1 you'll be willing to take that out subject to this
2 being addressed by the sale order?

3 MR. ROSENBLATT: Yeah, that provision
4 deals with post-closing collections that would
5 erroneously be sent to UMB and not the buyer entity.
6 But we are willing to accept either an agreement with

7 UMB to turn those collections over or a provision of a
8 sale order that would direct UMB to do so.

9 MS. SPRANCE : Okay. Thank you, Paul.
10 And then one other point. Section 212 governing the
11 effect of termination sets forth that the seller's
12 exclusive and sole remedy in the event of termination
13 by sellers for purchaser's breach is the deposit and
14 interest thereon. We've requested that that section
15 be stricken.

16 MR. ROSENBLATT: I'll get back to you
17 on that after the break.

18 MS. SPRANCE : Thank you. I think
19 that's all that we had for Brightmark Parent, unless
20 anybody else from the Potter team has anything to add.
21 Thank you.

22 MR. GUPTA: The second bid is from
23 Braven who offered a base purchase price of \$5 million
24 of cash. We did receive a cash deposit currently
25 being held in escrow on the amount of \$500,000. They

1 are also assuming the straddle liability that we are
2 valuing at \$2.8 million. They are -- the other thing,
3 we are adjusting their bid down by \$100,000 dollars to
4 account for the cost of cleaning tanks, which will be
5 the responsibility of the debtors according to their
6 APA.

7 So as such, you know, similar to
8 Brightmark Parent, we're kind of keeping the \$5
9 million as their bid, but adjusting that down by a
10 \$100,000. So for purposes of comparison in the
11 auction, the Braven bid will be \$4.9 million. And
12 I'll turn it over to Potter Anderson.

13 MR. RYAN: Yes. So we just need
14 confirmation from Braven, given that the 30-year feed
15 stock agreement -- Schedule 1 of Braven's asset
16 purchase agreement is held by a non-debtor affiliate.
17 We just need confirmation that that contract is not
18 material.

19 MR. SIMON: This is Jim Simon for
20 Braven. We accept that that's not material.

21 MR. RYAN: -- unless anyone says
22 anything -- okay. That should be it for Braven.

23 MR. SIMON: Neil, I've got a comment to
24 add if now is a good time, on the Braven bid. In

25 addition to our \$5 million cash offer, we made an

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1 alternative bid of a \$25 million note, senior secured
2 note with interest prepaid and payable over a
3 five-year term. We're wondering how that's being
4 valued in this process of that auction.

5 MR. GUPTA: Sure. Yeah, yeah, and
6 thanks for bringing that up. Yeah, that was -- we
7 looked at the two options, either \$5 million of cash
8 or the \$25 million note and determined that it was too
9 difficult to value what the note would be -- the value
10 of that to the estate. Ultimately, just with that
11 being -- I know Braven did provide some additional
12 information about their business plan, but given the
13 uncertainty around that, we felt that the \$5 million
14 cash offer was something that we could value and was
15 potentially higher than the \$25 million note.

16 MR. RYAN: And to be clear, you know,
17 we understand that's an alternate form of

18 consideration that was being offered to the seller
19 because those proceeds would go to the secured lender
20 who is not a consultation party because they are a
21 bidder. We have not been able to discuss with the
22 secured lender, UMB, what their view of that value
23 would be.

24 The debtors are amenable should Braven
25 prevail at the auction, if -- which will be on a cash

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1 basis. If Braven -- and after the auction is over,
2 they want to enter a discussion with the secured
3 lender as to whether the secured lender would rather
4 receive cash or a note for their proceeds, the debtors
5 will not object to such a discussion after the auction
6 so that that optionality is preserved for Braven
7 post-auction.

8 MR. SIMON: Okay, thank you.

9 MR. RYAN: And that was Jeremy Ryan,
10 Madam Court Reporter.

11 MR. GUPTA: All right. The third bid
12 is from Freepoint, who has offered a base purchase
13 price of \$5 million of cash. We did receive a cash
14 deposit being held in escrow for \$500,000. We are
15 also adjusting their bid down by \$100,000 to capture
16 the cost of cleaning tanks as stated in their APA.
17 Freepoint is, is not assuming the straddle
18 liabilities, so we are also adjusting their bid down
19 for that \$2.8 million estimate for straddle
20 liabilities.

21 So between the \$100,000 for cleaning
22 tanks and the 2.8, their net bid for purposes of the
23 auction is 2.1 million. Freepoint also offered a net
24 profit interest, which would be payable starting in
25 2027. Could be upwards of \$25 million based off of a

18

1 a formula for sharing profits.

2 Similarly to how we viewed the Braven
3 alternative consideration, it was too difficult for us

4 to underwrite knowing that it was a couple years out,
5 and not having information about the business plan and
6 the probability of achieving any of that net profit
7 interest. So we are not assigning any value to that
8 in their bid.

9 MR. HAYWOOD: And one clarification for
10 Freepoint -- for the record, this is Brett Haywood of
11 Potter Anderson and Corroon on behalf of the debtors.
12 We had asked Freepoint, in line with other bidders,
13 that the reps and warranties in the draft asset
14 purchase -- or proposed asset purchase agreement
15 expire at closing.

16 Can the representative from Freepoint
17 confirm that, if they are the winning bidder, the APA
18 will be revised such that those reps and warranties
19 expire at closing, in line with other bidders?

20 MR. MCMAHON : Yeah. Can I let Jason
21 Boland respond to that for Freepoint?

22 MR. HAYWOOD: Of course. Thank you.

23 MR. BOLAND : Sure. Jason Boland for
24 Norton Rose on behalf of Freepoint. We can confirm
25 that with respect to the reps and warranties. And

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1 given the deducts, Neil, you just went through, what
2 we would appreciate as we go through this auction
3 process just to make sure there's no confusion on what
4 our bid and amount is, if we can just come up with a
5 specific number each time we go around the table.
6 That would be helpful.

7 MR. GUPTA: Sure. Yeah. We'll -- once
8 we start the auction process, we'll put up our tracker
9 of the spread -- of what the bids are, and we can give
10 you any clarification you need, Jason.

11 MR. BOLAND : Appreciate that.

12 MR. GUPTA: All right. The fourth bid
13 is from UMB Bank who has offered a base price of \$5
14 million in the form of a credit bid. They are also
15 not assuming the straddle liabilities, so we are
16 adjusting their bid down by \$2.8 million to account
17 for it. As such, their net bid for purposes of the
18 auction is \$2.2 million. I'll turn to Potter
19 Anderson. Any clarifications?

20 MR. REISNER : Yeah, this is Jake
21 Reisner for Potter Anderson on behalf of the debtors.

22 We would just ask for a few confirmations on the
23 record. First, could UMB please confirm that the
24 interim covenant set forth in your Article 6 can come
25 out of the the APA?

20

1 MS. BROWNSTEIN : This is Beth
2 Brownstein for ArentFox Schiff on behalf of UMB. The
3 discussion was that we would walk it back for
4 maintaining the business basic. So we will work on
5 language to address those covenants.

6 MR. REISNER : Understood. And that's
7 my understanding. Apologies for the confusion.

8 MS. BROWNSTEIN : No problem.

9 MR. REISNER : Second, could you please
10 confirm that former Section 6.06 E regarding
11 irreparable damage and specific performance as a
12 remedy can come back into the APA form?

13 MS. BROWNSTEIN : We did speak to the
14 debtors about this request, and we are going to speak

15 to our client during the break.

16 MR. REISNER : Thank you. And finally,
17 could you please confirm that the representations and
18 warranties will expire as of the closing date? And
19 those are specifically with reference to 8.06 E is
20 where this is found.

21 MS. BROWNSTEIN : Again, we did speak
22 to the debtors about this prior to starting the
23 auction, and we will revert with our client during the
24 break on that point.

25 MR. REISNER : Great, thank you very

21

1 much.

2 MR. GUPTA: All right, and one other
3 point I'll make. I know we did circulate the initial
4 versions of each one of the APAs to all the parties
5 last night, that there are further revised red lines
6 that we received. Those are prior to all the on the
7 record clarifications we made. But we we will be

8 circulating those to everybody as well.

9 Yeah. Yep. So the debtors in
10 consultation with the -- sorry, the, the debtors have
11 determined that the bid of Brightmark Parent for 7 and
12 a half million dollars will be the starting bid for
13 the auction. The initial bidding will be done with
14 minimum over bids of \$250,000 each round, as long as
15 there are -- well, first off, we're going to ask
16 parties to -- first round will be to normalize
17 everybody up to the 7 and a half million dollars
18 baseline bid. And then subsequent to that, each round
19 will be a \$250,000 minimum overbid.

20 As long as there are more than two
21 bidders still active, each round, all parties must
22 match the highest bid of that round in order to
23 continue. So round two, when we're at 7.75 million of
24 the minimum, everybody would have to match that. If
25 somebody would decide to go higher, then that round,

1 everybody would have to match that to go to the next
2 round.

3 Once we get to a point where there's
4 only two bidders left, then we'll just have minimum
5 overbids for each party, each round. Anything that I
6 missed there?

7 MR. HAYWOOD: Yeah, are there any
8 questions on that? We want to make sure we're very
9 clear on -- it'll be a two-stage auction on that. So
10 if parties have questions initially, we'd like to
11 answer them now so that everyone can hear the
12 questions.

13 But you know, the idea is that all four
14 parties would hit a number, and then it's the next
15 increment for all four parties to meet. Only when
16 we're down to two bidders will it revert to the
17 traditional auction format of, you know, bid to one,
18 and then the next one has to top.

19 So as Neil said, assuming the other
20 three bidders normalize their bids up to the baseline
21 bid of the Parent, the next round will be \$7.75
22 million, and every party will have to only meet that.
23 A party does have the option of exceeding that in that
24 round and then -- you know, so it's 775, but if
25 someone in round two wants to go to 7.9, everyone else

1 would have to go to 7.9.

2 When we are down to two bidders, in the
3 auction, we will revert to the normal auction format.
4 In the event that the baseline bidder is one of the
5 final two bids -- and for hypothetical purposes, if
6 two parties drop out after 10.5 million, the next bid
7 would be at a lower bid increment. We will discuss
8 that with consultation parties, if any, and the
9 baseline bidder we'll get the benefit of the bid going
10 to the other party.

11 So hypothetically, if it was 10.5
12 million with two parties remaining, the next bid could
13 be 10.6 million. If it's Brightmark Parent and any of
14 the other three, the bid will go to that other
15 non-baseline bidder.

16 If it is only two parties remaining,
17 neither of which are the baseline bidder, we know we
18 will have at least one consultation party, and we will

19 consult with the consultation party or parties as to
20 who the bid should go to in a fair manner.

21 MR. GUPTA: And maybe -- Nick, are you
22 able to just pull up the spreadsheet just so we can
23 show you guys exactly how we're going to be comparing
24 the bids before we -- and Jeremy, are we breaking now,
25 or are we just going to start the auction now?

24

1 MR. RYAN: I think we should -- I think
2 we can put the bid to the other three people, the
3 other three bidders, Neil. We have the baseline bid
4 and I do know that people have expressed a desire for
5 a break to talk about some of the clarifications on
6 the APA.

7 And so when we come back, we'll ask for
8 those clarifications to be confirmed, and then for
9 people -- but I think, to be efficient, we should also
10 let people know what the incremental increase to their
11 bid value is in the perspective of the debtors to

12 reach the baseline bid value.

13 MR. GUPTA: Okay. Yeah. So if you
14 guys can see the screen that my colleague has shared
15 here, basically we're valuing that the Braven bid at
16 4.9, the Freepoint bid at 2.1, UMB at 2.2 and the
17 baseline bid from be Brightmark Parent at 7 and a half
18 million dollars.

19 So essentially, each party, to proceed,
20 would have to match the 7 and half million dollars.
21 So Freepoint's offer would have to increase by \$5.4
22 million. We would just call that a 7 and a half
23 million dollar bid, but technically, that would be a
24 \$10.4 million cash bid.

25 Similar for Braven, you'd have to

25

1 increase your bid by \$2.6 million in order to get to
2 the 7 and a half. And UMB would have to increase
3 their bid by \$5.3 million to get to the 7 and a half
4 million. Any questions on that? No. Okay.

5 MR. RYAN: How long do parties think
6 they need for a break? We would suggest coming back -
7 - is 11:28. We would suggest coming back on at noon.
8 So do parties feel that is a sufficient amount of
9 time? Does anyone object to coming back at noon?

10 MR. SIMON: No objection here.

11 MR. RYAN: Hearing no objection and one
12 affirmative, no objection, we will break until noon.
13 And we are off the record, Madam Court Reporter.

14 (Off the record.)

15 MR. GUPTA: All right. Nick, can you
16 put up the auction spreadsheet now? So I know we have
17 this in a different order up here right now, but I
18 think first we'll go to Brightmark Parent. I know
19 there was at least one term from the APA that we were
20 hoping that Brightmark Parent would confirm before we
21 move ahead.

22 Paul, have you been able to confirm
23 that with your client?

24 MR. ROSENBLATT: I'm sorry, confirm
25 which point?

1 MS. SPRANCE : Yeah, I can say this.

2 This is Ciara Sprance from Potter Anderson on behalf
3 of the debtors. Paul, we're just wanting to follow up
4 on Section 212, effective termination. The request
5 was to delete that provision.

6 MR. ROSENBLATT: Yeah, we'll agree to
7 do that. We've made some changes to the provision to
8 delete that the deposit is the sole remedy. Was that
9 the issue you had?

10 MS. SPRANCE : I think that was perhaps
11 the key issue there for us was that it was limiting
12 seller's remedy. So yes, I think subject to, you
13 know, our review of that revised section, I think that
14 addresses the point. So thank you, Paul.

15 MR. ROSENBLATT: Thank you.

16 MR. GUPTA: Okay. So with with that
17 we'll confirm Brightmark Parent's baseline bid of 7
18 and a half million.

19 Now, going to Braven, I think we've
20 confirmed everything we talked about in terms of the
21 APA. Would you like to increase your bid to match the
22 7 and a half million? Your net bid, essentially, to

23 be 7 and a half million dollars?

24 MR. SIMON: Neil, it's Jim Simon for

25 Braven. What we'd like to do is update our bid to \$5

27

1 million in cash at closing and a \$25 million five-year
2 note with interest pre-funded semi-annually, that note
3 being senior secured. We see the software as far
4 exceeding the 7 and a half million dollar value placed
5 on the leading bid currently.

6 MR. GUPTA: So just so I have the terms
7 again, Jim, so a \$25 million note with a five-year
8 term, what was the interest rate again?

9 MR. SIMON: We have it at 8 percent and
10 pre-funded that interest on a semi-annual basis,
11 starting at the note closing. Note signing, I should
12 say.

13 MR. GUPTA: Okay --

14 MS. BROWNSTEIN : Sorry, can you repeat
15 that one more time? I apologize. Can you repeat that

16 one more time? The note --

17 MR. SIMON: Absolutely. \$25 million
18 senior secured note. This is in addition to -- I'll
19 start over. \$5 million in cash at closing. In
20 addition to that, a \$25 million senior secured note,
21 five-year term, 8 percent interest, with the interest
22 pre-funded semi-annually.

23 MR. GUPTA: I think we'll have to
24 probably discuss in terms of how to value that first
25 before -- move. But maybe before we do that, we can

28

1 go on to Freepoint first.

2 Freepoint. Would you -- I think we've
3 cleared all the points from the APA we discussed
4 earlier as well. Would you like to increase your net
5 bid of 2.1 million to a net bid of 7 and a half
6 million dollars, which would be a cash bid of 10.4
7 million? Or assuming the straddle; right? Assuming
8 the straddle liabilities to make up for some of that.

9 MR. MCMAHON : Sorry, having audio
10 problems here. Can you hear me now?

11 MR. GUPTA: Yep, we can hear you, Jeff.

12 MR. MCMAHON : Yeah. Okay. So just to
13 be clear, an all-cash bid of \$10.4 million from
14 Freepoint would be on par with the 7.5 opening bid;
15 right?

16 MR. GUPTA: Yep, that's correct.

17 MR. RYAN: Or assume the --

18 MR. GUPTA: Yeah. Or -- right. Or if
19 you would do a 7 and a half million dollar bid plus
20 assuming the straddle liabilities and --

21 MR. RYAN: 7.6.

22 MR. MCMAHON : Yeah. So --

23 MR. RYAN: A 7.6 cash plus assuming
24 straddle liability, or with those two deductions,
25 would need to be a 10.4 million cash.

1 MR. GUPTA: Right.

2 MR. MCMAHON : Yeah. So just to keep
3 it simple from my perspective, we'll go with -- we
4 will increase our bid to 10.4 million cash. And just
5 to be clear, cash only. Their original APA, our
6 original bid, had a net profits interest concept. So
7 we'll remove that and go for a \$10.4 million cash bid.

8 MR. GUPTA: Okay. Now, moving moving
9 to UMB, I know there, there was still at least one
10 point in the APA, if not multiple points, to confirm.
11 UMB, are you able to confirm those points?

12 MS. BROWNSTEIN : This is Beth
13 Brownstein from ArentFox Schiff on behalf of UMB. I'm
14 going to let my partner Tal Unrad respond on the
15 specific APA points.

16 MR. UNRAD : I'll preface my comment by
17 saying that we are still waiting for the two
18 respective bond holders to have their legal teams
19 approve any final changes. So we're hoping to get
20 that done in short order.

21 The environmental matters, we have
22 modified those, and we'll be able to send those back
23 to you shortly. The same is true of the interim
24 covenants. We've significantly slimmed those down. I
25 don't expect much question on that.

30

1 The two changes to the closing matters,
2 specific performance and the rep issues, those do
3 require an answer from the holders. So I can't give
4 you a definitive answer on those right now.

5 MR. GUPTA: Okay. Would -- so I guess
6 we can perhaps give -- since we have to break anyway,
7 give you 20 minutes to --

8 MR. RYAN: Yeah. And so -- this is
9 Jeremy Ryan on behalf of the debtors. Those are, you
10 know, from the debtor's perspective, two material
11 provisions that are out of sync with the other three
12 APAs.

13 So assuming that UMB otherwise would
14 move their consideration to be equivalent to
15 Brightmark Parent, as Neil said, we'll give UMB
16 another 20 minutes to confer with their principles.

17 And if they cannot get approval to move
18 their APA to be in line with the other three APAs, the
19 debtors will then make an assessment as to whether UMB

20 should be proceeding with bidding, in fairness, or
21 whether there's a cash value to ascribe to that bid.

22 So the debtors have not made that
23 decision, but reserve all rights, should those two
24 provisions remain out of sync with the other three
25 bidders.

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1 MR. UNRAD : That's fair. And I guess
2 one thing I would suggest is if the other parties are
3 prepared now to move ahead with the bidding, you know,
4 until an actual change in circumstances of the parties
5 of the bidders exists, I would suggest that maybe we
6 proceed with the bidding.

7 And if for whatever reason we're not
8 able to address those issues internally, we could
9 either adjust the bid at that point appropriately or
10 pause once there is a change in the circumstances to
11 address this specific issue.

12 MR. RYAN: The debtors aren't

13 comfortable with that right now. We are trying to run
14 a fair and transParent process, Tal, and these are two
15 points which the debtors view as having materiality
16 and also fundamental impacts on the fairness with
17 respect to the other bidders.

18 And we do need to know, you know, with
19 decision-making authority, where UMB lands on these
20 two points so that we can run a fair process with
21 respect to all four bidders. So we are not going to
22 proceed with the second round. Obviously, also, we
23 need to -- debtors need to confer and value the \$25
24 million note. So we --

25 MR. UNRAD : That's fair. Yeah, we

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1 are -- the ask is out there, and hopefully, 20
2 minutes. I expect it will be, but we will work on it
3 as quickly as possible.

4 MR. RYAN: Thank you very much.

5 All right. We're going to adjourn, and

6 we'll be back on at -- let's just do 12:40.

7 (Off the record.)

8 MR. RYAN: And we are back on the
9 record. Chanyri, can you confirm?

10 THE REPORTER: Yes. Yes.

11 MR. GUPTA: Nick, can you put up the
12 spreadsheet again?

13 All right. So after discussing
14 internally and with Braven as well, the debtors have
15 decided the \$25 million note -- we still just don't
16 have enough evidence to assign value to the principal
17 payments. Part of the note is funding six months
18 worth of -- pre-funding six months worth of interest
19 from the beginning, so that's the only tangible piece
20 to it that we can assign value.

21 So that the debtors have decided to
22 sign a value of \$1 million, which would be that six
23 months of interest funded on the \$25 million note
24 immediately. So with that, Braven's bid would be a
25 net bid of \$5.9 million, and we would need another

1 \$1.6 million to meet the \$7.5 million baseline bid.

2 MR. SIMON: Neil, if you're looking for
3 a response, , I'll give you one now. This Jim Simon.
4 We're not in a position to up our cash bid that much
5 at the moment. We do disagree with the lack of value
6 being ascribed to the \$25 million note. In any
7 business transaction, that would be given significant
8 value far and exceeding the 7 and a half million
9 dollars.

10 To that end, if this is the decision of
11 of this body, we'd like to have the opportunity to
12 talk with the bond holders about opportunities to
13 utilize our assets and technology in response to their
14 successful future bid.

15 MR. GUPTA: Okay. So I guess you're
16 saying you're not able to increase your bid. But if
17 UMB were to be the winning bidder, you'd want to have
18 discussions with them; is that right?

19 MR. SIMON: That's correct. And even
20 as soon as during the auction, if we're not going to
21 be considered a bidder anymore, then we'd like to talk
22 with them sooner rather than later.

23 MR. RYAN: You're free to talk to them

24 at the conclusion of the auction. You know, their bid
25 is premised on being a liquidation bid. So you know,

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1 we have not considered their bid as a going concern
2 bid. But I think it's -- that's just the bid they
3 have submitted, very clearly that they were submitting
4 a liquidation bid. But as of right now, they're still
5 a bidder. So I think for right now, we're going to
6 say you're free to talk with them when the auction
7 concludes.

8 MR. SIMON: Very good.

9 MR. GUPTA: I guess moving to UMB,
10 then, it seems like -- I think we have cleared
11 everything. So at least from an APA standpoint, we're
12 on a consistent basis with other bidders, UMB would
13 have to increase their bid by, by \$5.3 million to meet
14 the \$7.5 million baseline bid.

15 UMB, would you like to increase your
16 bid?

17 MS. BROWNSTEIN : This is Beth
18 Brownstein from ArentFox Schiff on behalf of UMB. So
19 just to confirm that the email that was sent by Tal
20 today at -- I believe it was 12:59 with the redline,
21 that that red line was acceptable to the debtors and
22 we are bidding off that APA, to confirm?

23 MR. RYAN: Yes, that that red line was
24 generally acceptable. I mean, we may have small
25 revisions, but in concept, we view that as an

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1 acceptable redline.

2 MS. BROWNSTEIN : Okay. Okay. Then --
3 and we can confirm that we are prepared to submit a --
4 using a credit bid for the \$7.5 million.

5 MR. RYAN: And so to be clear, that
6 would be --

7 MR. GUPTA: Yeah, a \$10.3 million
8 credit bid less the \$2.8 million.

9 MS. BROWNSTEIN : Correct. Correct.

10 Accounting for the adjustment, yes.

11 MR. GUPTA: Okay. All right. Now
12 we'll move on to round two. So the minimum bid in
13 round two will be 7 -- and from a net bid perspective,
14 as well, with the adjustment. So it'll be \$7.75
15 million. So the bid will go to Freepoint first. Your
16 cash bid would have to be \$10.65 million, and then
17 with the adjustments, to be a \$7.75 million bid.

18 MR. MCMAHON : Yeah. With the
19 departure of Braven, I think we'd like to request a
20 breakout session, because the way that this \$2.8
21 million is treated now without Braven in the mix I
22 think requires some additional discussion.

23 MR. RYAN: I think we'd like to have
24 that discussion on the record.

25 MR. MCMAHON : Okay. So the way we see

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1 it right now is, essentially, Brightmark Parent is
2 getting credit for what is essentially a credit bid of

3 a portion of their DIP, which is unsecured. And it
4 was different when Braven was in. That's a third
5 party taking over liabilities.

6 But with Brightmark Parent in here,
7 who's the owner of the DIP, essentially those
8 transition liabilities should be funded under the DIP.
9 And if they want to include that as part of their bid,
10 they can credit bid that, but it shouldn't be treated
11 as a cash adjustment like it's being treated here.
12 And let me just defer to my colleague, Jason or Mark.

13 MR. BOLAND : Just to add to that --
14 this is Jason Boland, Norton Rose. You know, if the
15 DIP, which is a subordinated DIP, is funded to --
16 well, which is funded to pay those straddle costs, I
17 mean, that \$2.8 million is dollar for dollar reduction
18 of the secured debt versus what is effectively, as
19 Jeff said, a credit bid by Brightmark Parent right
20 now.

21 So we don't see these being dollar for
22 dollar comparisons of the bid, and we think our bid is
23 well superior than the existing bids on the table with
24 Braven dropping out.

25 MR. WORDEN : Yeah. And, and this is

1 Mark Worden from Freepoint. So the Parent is already
2 obligated under the DIP to provide 13 million of
3 financing. My understanding is that limit has not
4 been reached. So the debtor is fully able to pull the
5 2.8 million that we're talking about here from DIP
6 financing.

7 Why wouldn't the debtor pull that money
8 instead of reducing bids that would go to other
9 creditors? That's the question; right? The 2.8
10 million's already funded, but we're trying to deduct
11 it from bids, and that doesn't seem to make any sense.

12 MR. RYAN: We understand your
13 articulation of the issue, and we thank you for
14 putting that on the record. The debtors will consider
15 that issue.

16 I do want to note right now that, while
17 Braven has chosen not to make a bid, that was based on
18 the rules and valuations we announced at the beginning
19 of the last round. And so I understand your
20 perspective of the debtors, the perspective with

21 respect to Brightmark. But you know, the debtors also
22 need to be mindful of whether the process was also
23 fair, and maintains fair, and doesn't change after the
24 fact in a way that Braven might have acted
25 differently.

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1 So the debtors also have duties to all
2 who have participated in the process. We're not
3 announcing a a decision right now. We understand your
4 concerns, and the debtors will confer to to discuss
5 those returns. But we did want to just note that it
6 is not from the debtor's perspective, at this point.

7 MR. MCMAHON : Well, I'd like to make a
8 point here, though, because it's not like we're
9 proposing that we change the rules. What we're
10 proposing is the value of assuming those transition
11 liabilities with Braven gone. Now the bids are
12 different. There's just different valuation.

13 It's not changing the rules. It's

14 changing how you evaluate it. Just like Braven came
15 back with a \$25 million structured note, you guys went
16 and valued that. That's different. So I think the
17 debtor should be looking at this now.

18 MR. RYAN: We are going -- please let
19 me finish. Please, let's not interrupt. I've just
20 been interrupted once. We're not going to conduct an
21 auction where people talk over each other and
22 interrupt.

23 We acknowledge your position. There
24 have been values placed on components of bids in the
25 first round and in the second round. All I'm telling

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1 you is the debtors will examine the issue you have
2 raised. But I'm just letting you know that from the
3 debtor's perspective, we also need to make sure it's
4 fair to those who have participated and made decisions
5 based on the previously announced valuations of bids,
6 and that includes Braven's, someone who has

7 participated and has made decisions based on what
8 we've announced to be values.

9 So I hear your concern, and the debtors
10 are going to take it seriously. We will take a break
11 to discuss the concern. I see other people turning
12 their screens on. So while this is not going to turn
13 into oral argument, if people want to -- other bidders
14 want to weigh in on the issue briefly so that the
15 debtors have the perspective of the other two bidders
16 that remain, we will hear those perspectives.

17 This is not going to become a debate
18 among bidders, but we will hear if Brightmark Parent
19 and if UMB want to put their position on the record
20 with respect to whether valuation changed. And
21 frankly, we'll also let Braven weigh into, if that
22 would -- if they're going to say that that would have
23 affected their decision-making.

24 MS. BROWNSTEIN : This is Beth
25 Brownstein from ArentFox Schiff on behalf of UMB. We

1 want to consider the point, and we will reserve our
2 rights to weigh in when we revert back from a break.
3 Thank you.

4 MR. RYAN: Thank you.

5 MR. WORDEN : And just to be clear, if
6 I may, for Freepoint, our question is, why are the
7 post-petition expenses not being covered by the DIP
8 loan that seems to have availability? That's our
9 question.

10 MR. RYAN: Yeah, we understand the
11 point. Mr. Rosenblatt?

12 MR. ROSENBLATT: This is Paul
13 Rosenblatt for the Brightmark Parent. The \$2.8
14 million amount are expenses that would come due
15 post-closing, and the DIP expires on May 18th. So
16 there is no provision in the DIP to pay expenses that
17 occur after the DIP expires, even if there was
18 remaining availability under the DIP.

19 MR. RYAN: Thank you for your position.
20 I will now -- if Braven wants to offer a position on
21 this as well, we will entertain it -- or listen to it,
22 I'm sorry.

23 MR. SIMON: Yeah. This is Jim Simon
24 with Braven, and just to point to what Mr. Rosenblatt

25 just said, that's not how it was explained to us by

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1 the bankers. So we'd want clarity on just what that
2 straddle liability is truly meant to cover.

3 All the information communicated to us,
4 it was as the definition in the APA states. It was
5 for costs incurred from petition to closing, not
6 incurred after closing. So that's point one, and
7 point two, we'll have to talk amongst ourselves with
8 counsel before we give a final position.

9 MR. RYAN: I think, and I don't want to
10 speak for Mr. Rosenblatt too much. I think
11 Mr. Rosenblatt's point was -- your definition of
12 straddle is correct. Mr. Rosenblatt's point is that
13 after May 16th, we do not have a DIP facility. So to
14 the extent that things are due post May 16th, even if
15 there's availability, I no longer have a DIP loan. So
16 I think that was his point.

17 And I would ask Braven -- you know, we

18 will consider this, as the debtors. We will discuss
19 it. We hear everyone's positions. We will keep this
20 discussion on the record for clarity. And so we will
21 break for 30 minutes until --

22 UNASSIGNED: -- 30 minutes?

23 MR. SIMON: Yes. We'll break for 30
24 minutes, and we'll come back on the record. The
25 debtors will announce what their position is with

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1 respect to the issue that has been raised by
2 Freepoint.

3 (Off the record.)

4 MR. RYAN: Madam Reporter, this is
5 Jeremy Ryan. We are back on the record.

6 It is 1:52 p.m. The debtors have
7 considered the request of Freepoint to change the
8 method in which bids have been evaluated for the
9 auctions. The debtors also heard the viewpoints
10 expressed on the record prior to breaking of other

11 parties.

12 MS. BROWNSTEIN : Jeremy, I apologize
13 for interrupting you. It's Beth Brownstein from
14 ArentFox Schiff. We didn't have a chance to weigh in,
15 so I don't know if you want to hear our weigh-in
16 before you discuss it.

17 MR. RYAN: Happy to have it. But we're
18 not going to -- just so you know -- I mean, I'm not
19 trying to be -- we have made a decision, so we're not
20 going to break again. But we're happy to have you put
21 your position on the record.

22 MS. BROWNSTEIN : Okay. Thank you.
23 Again, this is Beth Brownstein from ArentFox Schiff on
24 behalf of UMB. Our position is that we do agree with
25 and support Freepoint's position as it was stated on

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1 the record prior to the break. And if their position
2 is adopted by the debtors, we do not believe that it
3 prejudices is UMB. Thank you.

4 MR. RYAN: Thank you for that
5 perspective. For the debtors, their perspective is to
6 the participants of all parties in the process. And
7 the debtors do not believe it is appropriate, in
8 mid-round, to depart from the stated methods of
9 evaluating bids based on who may or may not be in
10 subsequent rounds of bids.

11 The valuation of bids was announced at
12 the outset. People did not object to the valuation of
13 bids at the outset. And we conducted the first round
14 based on that valuation, and the debtors will stick
15 with the valuations that they announced at the outset
16 of the auction.

17 We understand parties may disagree with
18 that, and we understand parties may have redressed to
19 the court. And if the court disagrees with the
20 debtor's decision and directs the debtors to reopen
21 the auction, the debtors will of course honor any
22 direction from the court. But the decision we have
23 made today in this moment is that process must be
24 respected, and we cannot change process or valuation
25 mid-round or mid-auction.

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1 So with that being said, I'll turn the
2 podium back over to Mr. Gupta. We have people's
3 positions on the record. If you want to put a further
4 bid in under protest, that's fine. I don't think we
5 need to -- you know, we have everyone's positions on
6 the record to date, so I don't think we need to
7 belabor the record to that.

8 So I'll turn the podium back over to
9 Mr. Gupta to go to the next round of the auction.

10 MR. GUPTA: All right. And I'll ask my
11 colleague, Nick, to open up round two on the
12 spreadsheet here. So with round two, the bidding goes
13 to Freepoint. The minimum bid would be \$7.75 million,
14 which would be a \$10.65 million cash offer from
15 Freepoint, or you could always assume the straddle
16 liabilities to reduce the cash.

17 Freepoint, would you like to bid?

18 MR. MCMAHON : Yes. It's Jeff McMahon
19 with Freepoint. We will agree to move our all-cash
20 offer to 10.65.

21 MR. GUPTA: All right. UMB, would you

22 like to increase your bid, which would -- similarly,
23 you could either help help with the credit bid
24 component of it by assuming straddle liabilities.
25 Otherwise, you'd have to increase your credit bid

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1 about up to \$10.55 million.

2 MS. BROWNSTEIN : This is Beth
3 Brownstein from ArentFox Schiff on behalf of UMB. We
4 would like to credit bid for 10.55 million.

5 MR. GUPTA: Okay. And now Brightmark
6 Parent, would you like to increase your cash bid to
7 \$7.75 million or higher? Is Mr. Rosenblatt on the
8 line?

9 MR. ROSENBLATT: Yeah. What is the
10 amount that we need to raise?

11 MR. GUPTA: \$7.75 million is the
12 minimum bid amount. Well, that would be to match what
13 Freepoint and UMB have done on a net basis.

14 MR. ROSENBLATT: Yes, we raise to 7.75.

15 MR. GUPTA: Thank you. All right.
16 We'll go to the next round of bidding, then. And the
17 minimum bid requirement is \$8 million, which for
18 Freepoint, that would require a \$10.9 million cash
19 offer, or you can reduce the cash amount by assuming
20 the straddle liabilities. Do you wish to bid?

21 MR. MCMAHON : Yes, we'll go to 10.9.

22 MR. GUPTA: All right.

23 MR. MCMAHON : Oh, sorry, this is Jeff
24 McMahan, Freepoint.

25 MR. GUPTA: Thank you, Jeff.

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1 UMB, would you like to bid? The
2 minimum bid requirement would be at least that \$10.8
3 million credit bid, or you could assume the straddle
4 liabilities to reduce some of that credit bid
5 requirement.

6 MS. BROWNSTEIN : I apologize. The
7 Freepoint bid was 10.9?

8 MR. GUPTA: That's correct. And it's
9 net \$8 million.

10 MS. BROWNSTEIN : Okay. Beth
11 Brownstein from ArentFox Schiff on behalf of UMB. We
12 are prepared to increase our bid to 10.8 million.

13 MR. GUPTA: All right. Thank you,
14 Brightmark Parent, would you like to
15 bid? The minimum requirement would be \$8 million

16 MR. ROSENBLATT: Brightmark Parent bids
17 \$8 million.

18 MR. GUPTA: Thank you, Paul.

19 All right. We'll move on to round
20 four, then. The minimum net bid requirement is 8.25
21 million in this round. So for Freepoint, that would
22 mean either an \$11.15 million cash bid or a reduced
23 cash bid and assuming the straddle liabilities. Do
24 you wish to bid?

25 MR. MCMAHON : Yes. Jeff McMahon for

1 Freepoint. We'll bid 11.150 million.

2 MR. GUPTA: Okay. So with that bid,
3 your net bid is \$8.25 million.

4 UMB, do you wish to bid? Your minimum
5 bid requirement would be a credit bid of \$11.05
6 million or a lower credit bid and assuming the
7 straddle liabilities.

8 MS. BROWNSTEIN : This is Beth
9 Brownstein from ArentFox Schiff. We are prepared to
10 credit bid 11.5 million -- 11.05 million.

11 MR. GUPTA: Okay. All right. With
12 that your net bid is 8.25 million.

13 Brightmark Parent, do you wish to bid?
14 Your minimum cash bid amount is 8.25 million?

15 MR. ROSENBLATT: Yes. Brightmark
16 Parent bids 8.25 million.

17 MR. GUPTA: Thank you.

18 Going on to round five now. So the
19 minimum net bid amount is \$8.5 million. Freepoint,
20 that would mean a \$11.4 million cash bid or a reduced
21 cash bid and assuming is straddle liabilities. Do you
22 wish to bid?

23 MR. MCMAHON : Yes. Jeff McMahon.
24 Freepoint moves our bid to \$11.4 million.

25 MR. GUPTA: All right. So the net bid

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1 amount from Freepoint is \$8.5 million.

2 UMB, do you wish to bid? The credit
3 bid amount would have to be \$11.3 million in order to
4 get to a net bid of 8.5 million.

5 MS. BROWNSTEIN : Beth Brownstein from
6 UMB. We are prepared to bid \$11.3 million in credit
7 bid.

8 MR. GUPTA: Okay. So UMB now has a net
9 bid of 8 and a half million.

10 Brightmark Parent, do you wish to bid?
11 Minimum cash bid of 8 and a half million.

12 MR. ROSENBLATT: Yes. Brightmark
13 Parentent bids 8.5 million.

14 MR. GUPTA: All right. Thank you.

15 All right. Going on to the next round
16 now. The minimum -- round six. Minimum bid amount is
17 \$8.75 million.

18 Freepoint, that would mean a cash bid

19 of \$11.65 million. Do you wish to bid?

20 MR. MCMAHON : Yes, we will -- Jeff

21 McMahon for Freepoint increases our bid to 11.65

22 million.

23 MR. GUPTA: Okay. Thank you, Jeff. So

24 net bid of 8.75 million from Freepoint.

25 UMB, do you wish to bid? Your credit

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1 bid amount would have to be \$11.55 million.

2 MS. BROWNSTEIN : Beth Brownstein from

3 ArentFox Schiff. We would like to credit bid 11.55

4 million.

5 MR. GUPTA: Great. So UMB'S net bid is

6 also 8.75 million.

7 Brightmark Parent, do you wish to bid?

8 Minimum cash amount of 875.

9 MR. ROSENBLATT: Yes. Brightmark

10 Parent bids 8.75.

11 MR. GUPTA: Thank you.

12 All right. We're going on to round
13 seven, then. Minimum bid amount is 9 million, which,
14 for Freepoint, would mean a minimum cash bid of \$11.9
15 million. Do you wish to bid?

16 MR. MCMAHON : Yes. Jeff McMahon.
17 Freepoint bids 11.9 million.

18 MR. GUPTA: Freepoint with a net bid of
19 \$9 million.

20 UMB, the credit bid amount would have
21 to be \$11.8 million to meet the minimum \$9 million net
22 bid amount. Do you wish to bid?

23 MS. BROWNSTEIN : Beth Brownstein from
24 ArentFox Schiff on behalf of UMB. We wish to credit
25 bid 11.8 million.

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1 MR. GUPTA: Okay. And Brightmark
2 Parent, do you wish -- minimum bid amount is \$9
3 million of cash. Do you wish to bid?

4 MR. ROSENBLATT: Yes. Brightmark

5 Parent bids \$9 million.

6 MR. GUPTA: All right. Thank you.

7 On to round eight. Minimum bid amount
8 is \$9.25 million, so for Freepoint, that would mean a
9 \$12.15 million cash offer. Do you wish to bid?

10 MR. MCMAHON : Yes. Jeff McMahon,
11 Freepoint, 12.15 million.

12 MR. GUPTA: Okay, thank you.

13 UMB, do you wish to bid? You would be
14 required a \$12.05 million credit bid to to meet the
15 minimum \$9.25 million net bid.

16 MS. BROWNSTEIN : Beth Brownstein for
17 UMB. We wish to credit bid at 12.05 million.

18 MR. GUPTA: All right. Thank you.

19 And Brightmark Parent, do you wish to
20 bid a minimum cash bid of 9.25?

21 MR. ROSENBLATT: Yes. Brightmark
22 Parent will bid 9.25 million.

23 MR. GUPTA: Thank you.

24 Onto Round 9. Minimum bid amount of
25 \$9.5 million. So for Freepoint, that would mean a

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1 \$12.4 million cash offer. Do you wish to bid?

2 MR. MCMAHON : Yes. Jeff McMahon.

3 Freepoint bids 12.4 million.

4 MR. GUPTA: Okay, thank you.

5 UMB, minimum credit bid amount would
6 have to be \$12.3 million. Do you wish to bid?

7 MS. BROWNSTEIN : Beth Brownstein for
8 UMB. We will credit bid 12.3 million.

9 MR. GUPTA: Thank you. And then
10 Brightmark Parent, minimum cash bid amount of 9 and a
11 half million dollars. Do you wish to bid?

12 MR. ROSENBLATT: Yes. Brightmark
13 Parent bids \$9.5 million.

14 MR. GUPTA: Thank you.

15 Moving on to Round 10 now. Minimum bid
16 amount of 9.75 million. So Freepoint, minimum cash
17 bid of 12.65 million. Do you wish to bid?

18 MR. MCMAHON : Yes. Jeff McMahon with
19 Freepoint bids \$12.65 million.

20 MR. GUPTA: Thank you.

21 UMB, minimum credit bid amount required
22 would be \$12.55 million. Do you wish to bid

23 MS. BROWNSTEIN : Beth Brownstein for
24 UMB. We will credit bid at 12.55 million.
25 MR. GUPTA: Thank you.

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1 And Brightmark Parent, minimum cash bid
2 of \$9.75 million. Do you wish to bid?

3 MR. ROSENBLATT: Yes. Brightmark
4 Parent bids \$9.75 million.

5 MR. GUPTA: Thank you.

6 On to round 11. \$10 million net minimum
7 bid. For Freepoint, that would be aa \$12.9 million
8 minimum cash bid. Do you wish to bid?

9 MR. MCMAHON : Yes. Jeff McMahon for
10 Freepoint bids 12.9 million.

11 MR. GUPTA: Thank you.

12 UMB, minimum credit bid amount of \$12.8
13 million. Do you wish to bid?

14 MS. BROWNSTEIN : Beth Brownstein for
15 UMB. We will credit bid 12.8 million.

16 MR. GUPTA: All right. And Brightmark
17 Parent, minimum cash bid of \$10 million. Do you wish
18 to bid?

19 MR. ROSENBLATT: Yes. Brightmark
20 Parent bids \$10 million.

21 MR. GUPTA: Thank you.

22 Moving on to Round 12 now. Minimum net
23 bid of \$10.25 million. So Freepoint, that would mean
24 at \$13.15 million minimum cash bid. Do you wish to
25 bid?

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1 MR. MCMAHON : Yeah. Jeff McMahon from
2 Freepoint bids 13.15 million.

3 MR. GUPTA: All right. Thank you,
4 Jeff.

5 UMB minimum credit bid requirement
6 would be \$13.05 million. Do you wish to bid?

7 MS. BROWNSTEIN : Beth Brownstein from
8 ArentFox Schiff on behalf of UMB. We will bid 13.05

9 million for credit bid.

10 MR. GUPTA: And Brightmark Parent,
11 minimum cash bid of \$10.25 million, you wish to bid?

12 MR. ROSENBLATT: Yes. Brightmark
13 Parent bids \$10.25 million.

14 MR. GUPTA: Thank you.

15 Round 13. Minimum net bid of 10 and a
16 half million dollars. Freepoint, that would mean a
17 minimum cash bid of \$13.4 million. Do you wish to
18 bid?

19 MR. MCMAHON : Yes, Jeff McMahon with
20 Freepoint bids \$13.4 million.

21 MR. GUPTA: Thank you.

22 UMB, minimum credit bid amount of \$13.3
23 million. Do you wish to bid?

24 MS. BROWNSTEIN : Beth Brownstein for
25 UMB. We will credit bid 13.3 million.

1 MR. GUPTA: Thank you. And then

2 Brightmark Parent, minimum cash bid amount of \$10.5
3 million. Do you wish to bid?

4 MR. ROSENBLATT: Yes. Brightmark
5 Parent bids \$10.5 million.

6 MR. GUPTA: Moving on to the next
7 round. Minimum net bid of \$10.75 million. For
8 Freepoint, that means minimum cash bid of 13.65
9 million. Do you wish to bid?

10 MR. MCMAHON : Yes. Jeff McMahon with
11 Freepoint bids 13.65.

12 MR. GUPTA: UMB, minimum credit bid at
13 13.55 million. Do you wish to bid?

14 MS. BROWNSTEIN : Beth Brownstein for
15 UMB. We will credit bid 13.55 million.

16 MR. GUPTA: Brightmark Parent, minimum
17 cash bid of \$10.75 million. You wish to bid?

18 MR. ROSENBLATT: Yes. Brightmark
19 Parent bids \$10.75 million.

20 MR. GUPTA: Thank you.

21 All right. Round 15. Minimum net bid
22 of \$11 million. Freepoint, that's a minimum cash bid
23 of 13.9 million. Do you wish to bid?

24 MR. MCMAHON : Yes. Jeff McMahon with
25 Freepoint bids 13.9 million.

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1 MR. GUPTA: Thank you.

2 UMB, minimum credit bid of 13.8
3 million. Do you wish to bid?

4 MS. BROWNSTEIN : Beth Brownstein for
5 UMB. We will credit bid 13.8 million.

6 MR. GUPTA: Thank you.

7 And then Brightmark Parent, minimum
8 cash bid of 11 million. Do you wish to bid?

9 MR. ROSENBLATT: Yes. Brightmark
10 Parent bids \$11 million. Can we take a short recess?

11 MR. GUPTA: Yes, we can. How much time
12 do you need, Mr. Rosenblatt?

13 MR. ROSENBLATT: Ten minutes.

14 MR. GUPTA: Okay, sounds good. We'll
15 put everybody in breakout rooms.

16 (Off the record.)

17 MR. GUPTA: We're back on the record
18 now. There was a concern raised by one of the bidders
19 about the order of bidding. We've kept it consistent

20 throughout, and you know, I guess that the concern is
21 that maybe that some parties might have an advantage
22 for either being first, second, or third in the whole
23 thing. So debtors would like another few minutes to
24 discuss this.

25 MR. RYAN: Yeah. But if the party that

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1 raised the concern could raise the concern on the
2 record, please.

3 MR. ROSENBLATT: Hey, this is Paul
4 Rosenblatt. There's two issues I want to raise. The
5 first one is that there should be a difference in the
6 order of bidding each round. It shouldn't be the same
7 bidder that bids first, the same bidder that bids
8 second, and the same bidder that bids third each
9 round.

10 That should be mixed up so that it
11 rotates evenly. Each bidder has an equal chance of
12 bidding first. Then the next round, that bidder would

13 bid second. Then the next round, that bidder would
14 bid third. So each party is in the mix of in what
15 order they bid.

16 The second issue I wanted to raise is
17 with regard to the Freepoint bid. The Freepoint --
18 we've had a chance now to review all the redlines
19 during the time that we've had during this auction,
20 and there's two provisions in the Freepoint bid that
21 we don't believe there's funding for under the DIP
22 loan to accomplish and that those provisions should be
23 moved to a post-closing obligation of that buyer so
24 that they should not be obligations of the debtor to
25 do prior to closing.

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1 And the first one is Section 3.07,
2 dealing with an EPA filing. And the second one is
3 Section -- I'm sorry, 3.04 dealing with an EPA filing,
4 and Section 5.07 with regard to delivering the plant
5 in an idle and clean state. Those are obligations

6 that should be completed by the purchasing entity post
7 -closing.

8 MR. RYAN: Thank you, Mr. Rosenblatt.

9 We will break for ten minutes to discuss with our
10 clients both issues you raised. While we're breaking
11 for issues, are there other issues that people want to
12 raise at this time that we should consider? All
13 right. Hearing none, we're going to take a ten-minute
14 break.

15 MR. MCMAHON : I'm sorry, I couldn't
16 get my microphone on. Just to be on the record, we
17 have no objection -- this is Jeff McMahon with
18 Freepoint -- on the order of the bidding.

19 MR. RYAN: Thank you, Mr. McMahon.
20 That is actually helpful.

21 Does UMB have a position on the order
22 of bidding?

23 MS. BROWNSTEIN : This is Beth
24 Brownstein. We don't have a preference on the order
25 of bidding.

1 MR. RYAN: Okay. Thank you. That's
2 very helpful to hear from all three parties. So we'll
3 take both of those points back under consideration.
4 We'll be back on in ten minutes.

5 (Off the record.)

6 THE REPORTER: Okay. On the record. I
7 am ready.

8 MR. GUPTA: Thank you.

9 MR. RYAN: Back on the record?

10 MR. GUPTA: Yes, she's already on the
11 record now.

12 MR. RYAN: Okay. The debtors had an
13 opportunity to confer with the representatives for
14 Freepoint regarding the issues raised by Brightmark
15 Parent before we went off the record last time.

16 The debtor's position on Section 3.04
17 is that this language that was included in the asset
18 purchase agreement is not an impediment to continuing
19 with the auction and not an impediment to closing,
20 should Freepoint end up being the successful bidder at
21 the conclusion of the auction. And that is because
22 this is a representation in warranty that would not
23 survive the closing, and it is not a condition to

24 closing.

25 As for Section 5.07 and as was stated

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1 and confirmed by Freepoint on the record of the
2 auction, when we opened the auction, the debtors
3 agreed to use commercially reasonable efforts to
4 deliver the facility and the purchased assets in the
5 condition as stated in Section 5.07, and there will be
6 a whole backup of the purchase price of \$250,000 that
7 would be available to Freepoint, were it to be the
8 successful bidder, if that were not to occur.

9 And I would ask representatives of
10 Freepoint to confirm their understanding of that as
11 well.

12 MR. MCMAHON : Yes. Jeff McMahon with
13 Freepoint confirming that's the understanding.

14 MR. ROSENBLATT: The commercially
15 reasonable language is not in the APA. Is that going
16 to be modified to reflect that?

17 MR. RYAN: Yes. And that was the
18 understanding from earlier in the day.

19 MR. ROSENBLATT: And that condition in
20 5.07 is not a closing condition; is that correct?

21 MR. RYAN: That's correct.

22 MR. ROSENBLATT: Thank you. The
23 Brightmark Parent reserves all rights with respect to
24 this issue.

25 MS. BROWNSTEIN : And this is Beth

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1 Brownstein from ArentFox Schiff on behalf of UMB.
2 From a fairness and process perspective, we would have
3 issues with modifying APAs that were previously agreed
4 to when we started, and our understanding is that the
5 APA is not being modified. Thank you.

6 MR. BOLAND : And this is Jason Boland,
7 Norton Rose Fulbright. We also share a view, from a
8 fairness standpoint, we don't believe it's appropriate
9 to be negotiating the terms of an APA mid-auction, ten

10 rounds in, so we prefer the auction to resume.

11 MR. RYAN: Understood, and thank you
12 all.

13 MR. GUPTA: Okay. With that, I think
14 we'll proceed with the auction now.

15 MR. RYAN: Changing orders?

16 MR. GUPTA: Yeah. If you could pull up
17 the spreadsheet, Nick, we can talk about the order of
18 of bidding now.

19 Pursuant to Brightmark Parents' request
20 to update the order or rotate the order, we are going
21 to be doing that going forward. So each party will
22 rotate in their order. For this next round, UMB will
23 go first, Brightmark Parent second, Freepoint third,
24 and then it'll continue to adjust. Brightmark Parent
25 will go first next round, and then Freepoint second,

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1 UMB third, and then it'll go back to Freepoint being
2 first, UMB second, Brightmark Parent third. And we'll

3 keep doing that for the remainder of the auction as
4 all three parties are participating.

5 Assuming no comments to that, we will
6 proceed. We're at round 16. Minimum net bid is
7 \$11.25 million.

8 UMB, the minimum credit bid you'd be
9 required, it would be \$14.05 million. Do you wish to
10 bid

11 MS. BROWNSTEIN : Beth Brownstein for
12 UMB. We will bid 14.05 million credit bid.

13 MR. GUPTA: All right. Thank you.

14 Brightmark Parent, minimum cash bid
15 would be \$11.25 million. Do you wish to bid?

16 MR. ROSENBLATT: Yes. Brightmark
17 Parent bids \$11.25 million.

18 MR. GUPTA: Thank you.

19 And Freepoint, minimum cash bid would
20 be \$14.15 million. Do you wish to bid?

21 MR. MCMAHON : Yes. Jeff McMahon for
22 Freepoint. We bid 14.150 million.

23 MR. GUPTA: All right. Thank you.

24 On to Round 17, minimum net bid of
25 \$11.5 million.

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1 Brightmark Parent, do you wish to bid
2 at that cash amount or higher?

3 MR. ROSENBLATT: Yes. Brightmark
4 Parent bids at \$11.5 million.

5 MR. GUPTA: All right. Thank you.

6 Freepoint, minimum cash bid of \$14.4
7 million. Do you wish to bid?

8 MR. MCMAHON : Yes. Jeff McMahon for
9 Freepoint. We bid 14.4 million.

10 MR. GUPTA: All right. And UMB,
11 minimum credit bid of \$14.3 million. Do you wish to
12 bid?

13 MS. BROWNSTEIN : Beth Brownstein for
14 UMB. We'll bid 14.3 credit bid.

15 MR. GUPTA: All right. Thank you.

16 Round 18, minimum net bid of \$11.75
17 million. Freepoint, that would be a minimum cash bid
18 of \$14.65 million. Do you wish to bid?

19 MR. MCMAHON : Yes. Jeff McMahon for
20 Freepoint. We bid 14.65 million.

21 MR. GUPTA: Thank you.
22 UMB, minimum credit bid of \$14.55
23 million. Do you wish to bid?
24 MS. BROWNSTEIN : Beth Brownstein for
25 UMB. We will credit bid 14.55 million.

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1 MR. GUPTA: Thank you.
2 And Brightmark Parent, minimum cash bid
3 of 11.75 million. Do you wish to bid?
4 MR. ROSENBLATT: Yes. Brightmark
5 Parent bids 11.75 million.
6 MR. GUPTA: Thank you.
7 Round 19, minimum net bid of \$12
8 million. UMB, that's a minimum credit bid of \$14.8
9 million. Do you wish to bid?
10 MS. BROWNSTEIN : Beth Brownstein from
11 UMB. We will credit bid 14.8 million.
12 MR. GUPTA: Thank you.
13 Brightmark Parent, minimum cash bid of

14 \$12 million. Do you wish to bid?

15 MR. ROSENBLATT: Yes. Brightmark
16 Parent bids \$12 million.

17 MR. GUPTA: Thank you.
18 And Freepoint, minimum cash bid of
19 \$14.9 million. Do you wish to bid?

20 MR. MCMAHON : Jeff McMahon for
21 Freepoint. We bid \$14.9 million, and we'd like to
22 request a brief intermission.

23 MR. GUPTA: All right. Can we keep it
24 to five minutes?

25 MR. MCMAHON : We're going to need

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1 longer than that. Can we go to maybe 15? Maybe the
2 half hour here?

3 MR. GUPTA: Yeah. Let's try for 15, if
4 that works. Yeah, so reconvene around 3:30 here. So
5 we'll put everybody in breakout rooms for 15 minutes.

6 (Off the record.)

7 MR. GUPTA: Chanyri, are you ready?

8 We're going back on the record?

9 THE REPORTER: Yes.

10 MR. GUPTA: All right. Thank you.

11 All right. We'll put the bid
12 spreadsheet back up. So we're on round 20 now, and BM
13 Parent is leading off this round. Minimum cash bid
14 of \$12.25 million.

15 Brightmark Parent, do you wish to bid?

16 MR. ROSENBLATT: Yes. Brightmark
17 Parent bids 12,250,000.

18 MR. GUPTA: All right. Thank you.

19 Freepoint, minimum cash bid requirement
20 of \$15.15 million. Do you wish to bid?

21 MR. MCMAHON : Yes. It's Jeff McMahon
22 with Freepoint. We bid 15.15 million.

23 MR. GUPTA: Okay. UMB, minimum credit
24 bid of \$15.05 million. Do you wish to bid?

25 MS. BROWNSTEIN : Beth Brownstein from

1 UMB. We credit bid 15.05 million.

2 MR. GUPTA: Thank you.

3 I'll go to round 21 now. Freepoint,
4 minimum net bid of \$12.5 million. That would be a
5 minimum cash bid of \$15.4 million. Do you wish to
6 bid?

7 MR. MCMAHON : Yes, Jeff McMahon with
8 Freepoint. Wwe bid 15.4 million cash portion, and
9 then we would add our NPI concept that we had in
10 original bid of a \$40 million cap, four zero.

11 MR. GUPTA: Okay. So Jeff, can you
12 expand on that? Would it be similar terms in terms of
13 payment in 2027 based off of net profit interest up to
14 40 million? Is that right?

15 MR. MCMAHON : Yes. That's our
16 expectation.

17 MR. GUPTA: But it would first be --
18 your purchase price would be credited first before any
19 of that could be paid out?

20 UNASSIGNED: Right. So the first 15 --
21 in this case, if 15.4 was the winner, first 15 million
22 would come to Freepoint, and then 100 percent of the
23 waterfall would then go to the NPI holder until they
24 reach their cap of 40 million.

25 MR. GUPTA: Okay. Got it. Take a five

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1 minute break?

2 MR. RYAN: Yeah. Yeah. Yeah, we
3 should take a five minute break.

4 MR. GUPTA: Okay. I'll put everybody
5 into breakout rooms. We'll be right back.

6 (Off the record.)

7 MR. GUPTA: Chanyri, we're going back
8 on the record again now.

9 So the debtor's had a chance to discuss
10 Freepoint's offer, and our view in terms of the net
11 profit interest has not changed from the beginning of
12 the auction even. Even though the magnitude of the,
13 the cap of it has increased, the hurdle to get to any
14 of the net -- to realize any of the net profit
15 interest has increased as the purchase price has
16 increased. And so we're still not assigning any value
17 in the bid to the net profit interest.

18 That said, Freepoint's cash bid did
19 meet the minimum requirement for this round, so we
20 will continue with the other bidders now.

21 So UMB, minimum credit bid of \$15.3
22 million. Do you wish to bid?

23 MR. SLADE : Beth Brownstein -- this is
24 Michael Slade from UMB. And yes, we wish to bid.

25 MR. UNRAD : Yes. Beth stepped away

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1 for a minute. But thank you, Michael.

2 MR. GUPTA: Oh, I'm sorry. I thought
3 she was on.

4 MR. UNRAD : She was. She had to step
5 away. But Michael's bid is affirmative for UMB.

6 MR. GUPTA: Okay. Thank you, \$15.3
7 million credit bid for UMB.

8 Brightmark Parent, minimum cash bid of
9 \$12.5 million?

10 MR. ROSENBLATT: Brightmark Parent bids

11 \$12.5 million.

12 MR. GUPTA: Thank you.

13 So for Round 22, UMB will be the first
14 bidder. Minimum credit bid at \$15.5 million to get to
15 the net bid of 12.75 million. For this round, UMB, do
16 you wish to bid?

17 MR. SLADE : Yes, this is UMB. We wish
18 to bid.

19 MR. GUPTA: Confirming that you wish to
20 bid the minimum 15.55 million --

21 MR. SLADE : That's correct. Yes,
22 that's correct.

23 MR. GUPTA: Thank you.

24 Brightmark Parent, minimum cash bid of
25 \$12.75 million. Do you wish to bid?

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1 MR. ROSENBLATT: Yes. Brightmark
2 Parent bids \$12,750,000.

3 MR. GUPTA: All right. Thank you.

4 Freepoint minimum cash paid of \$15.65
5 million. Do you wish to bid?

6 MR. MCMAHON : We do not intend to
7 increase our cash offer at this stage, but we'd like
8 to make the statement for the record.

9 Jason, if you want to --

10 MR. BOLAND : And again for the record,
11 Jason Boland with Norton Rose. As Jeff mentioned, we
12 don't intend to increase our bid. We just want to
13 state on the record that we do still believe that our
14 bid has been undervalued by \$2.8 million. We believe
15 there's unsecured DIP financing that is available to
16 cover these costs and that those costs are being
17 unfairly shifted onto a bidder, namely Freepoint.

18 We believe our bid, as we sit here
19 today, at this point, is the highest and best bid out
20 there. We appreciate the debtors and their advisors
21 have a different view, which we respect. So with
22 that, we won't be making an additional offer. Thank
23 you.

24 MR. GUPTA: Noted. Thank you.

25 Sorry, I may have gotten out of order

1 on that round.

2 MR. RYAN: I think we're moving on to
3 the next round; right?

4 MR. GUPTA: Yeah, I just didn't -- I'm
5 sorry.

6 Did Brightmark Parent already confirm
7 their bid of 12.75 million?

8 MR. RYAN: They did.

9 MR. GUPTA: Okay. Sorry. We just
10 didn't populate it on the spreadsheet.

11 MR. SLADE : This is UMB. Are we -- is
12 this round clear?

13 MR. GUPTA: Yes, it is. So this round
14 is clear. So now we have two bidders remaining, UMB
15 and Brightmark Parent. As we discussed at the
16 beginning in terms of protocol, at this point, we'll
17 just be going to back and forth bids, and each bid
18 would have to be increased at the \$250,000 bid
19 increment. Just give us one minute to update our
20 spreadsheet for, for the the new protocol.

21 MR. ROSENBLATT: Can we take five

22 minutes while you do that?

23 MR. GUPTA: Yes.

24 MR. RYAN: We can go off the record for
25 five minutes, please.

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1 (Off the record.)

2 MR. GUPTA: We've updated the
3 spreadsheet accordingly where we are going to stick at
4 the \$250,000 bid increments, and the order as we
5 discussed at beginning the auction will be UMB in each
6 round and Brightmark Parent going after that. And
7 each bid will have to be at that \$250,000 increment at
8 this point as opposed to each round settling out at a
9 a specific number.

10 So Round 23, starting, the minimum bid
11 from UMB would have to be net \$13 million, so a \$15.8
12 million credit bid. UMB, would you like to bid?

13 MS. BROWNSTEIN : This is Beth
14 Brownstein from ArentFox Schiff on behalf of UMB. We

15 would request -- we're actually on the phone with our
16 client right now, and we would request a 30-minute
17 break to confer with our client.

18 MR. GUPTA: Okay. We'll put everybody
19 in breakout rooms for 30 minutes. Thank you.

20 (Off the record.)

21 MR. GUPTA: Back to bidding now. We'll
22 put up the spreadsheet again. All right. So where we
23 left it, the bid is to UMB, minimum net bid of \$13
24 million, which would be a minimum credit bid of \$15.8
25 million. UMB, would you like to bid?

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1 MS. BROWNSTEIN : Yes. Beth Brownstein
2 for UMB. We will credit bid 15.8 million.

3 MR. GUPTA: All right. Thank you.

4 And now with the \$250,000 increments on
5 each bid now, Brightmark Parent, \$13.25 million cash
6 is the minimum. Would you like to bid?

7 MR. ROSENBLATT: One second. So

8 they're at 13 million net?

9 MR. GUPTA: Correct.

10 MR. ROSENBLATT: So we're at --

11 Brightmark Parent will bid 13,250,000.

12 MR. GUPTA: Thank you.

13 Now to Round 24. UMB, minimum credit

14 bid of \$16.3 million. Do you wish to bid?

15 MS. BROWNSTEIN : Beth Brownstein for

16 UMB. We will bid 16.3 million credit bid.

17 MR. GUPTA: Thank you.

18 And Brightmark Parent, minimum cash bid

19 of \$13.75 million. Do you wish to bid?

20 MR. ROSENBLATT: It's 13.75?

21 MR. GUPTA: That's correct. The net

22 bid from UMB was 13.5 million, so the minimum net bid

23 for Brightmark Parent is 13.75.

24 MR. ROSENBLATT: Okay. Just give me

25 two seconds.

1 MR. GUPTA: Sure.

2 MR. ROSENBLATT: Brightmark Parent bids
3 13.75 million.

4 MR. GUPTA: Thank you.

5 Now on to Round 25. To UMD, minimum
6 net bid of 14 million, which would be a minimum credit
7 bid of \$16.8 million. Do you wish to bid?

8 MS. BROWNSTEIN : Beth Brownstein for
9 UMB. We will credit bid 16.8 million.

10 MR. GUPTA: Thank you.

11 And Brightmark Parent, minimum cash bid
12 of \$14.25 million. Do you wish to bid?

13 MR. ROSENBLATT: I need to take two
14 seconds. Hold on.

15 MR. GUPTA: Okay.

16 MR. ROSENBLATT: I need ten minutes,
17 but I'll keep it to ten.

18 MR. RYAN: That's fine. We'll be back
19 at 5:26.

20 (Off the record.)

21 MR. GUPTA: Let's go back on the
22 record, then. And where we left off the bid is to
23 you, Brightmark Parent, minimum cash bid of \$14.25
24 million. Do you wish to bid?

25 MR. ROSENBLATT: Yeah, I've reached my

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1 authority, so I'm making my last bid. So if -- the
2 bond holders know what to do, if they want to do it.
3 My last bid is \$14.25 million.

4 MR. GUPTA: Okay, understood.

5 The bid is to UMB, then. Minimum
6 credit bid of \$17.3 million would get you to a \$14.5
7 million net bid. UMB, do you wish to bid?

8 MS. BROWNSTEIN : Can I just have one
9 minute to confer?

10 MR. GUPTA: Sure.

11 MS. BROWNSTEIN : UMB will bid 17.3
12 million credit bid.

13 MR. GUPTA: Mr. Rosenblatt, I know you
14 mentioned that that was your last bid, but I'll still
15 give you the opportunity again. Minimum bid of \$14.75
16 million cash. Do you wish to bid?

17 MR. ROSENBLATT: Give me two seconds.

18 Brightmark Parent has no further bids.

19 MR. GUPTA: Okay -- agree with that. I

20 guess we --

21 MR. RYAN: Declare the bidders and

22 backup bidders.

23 MR. GUPTA: The winning bidders is UMB

24 with a net bid of 14 point -- dollars on a credit bid

25 of 17.3 million. And Brightmark Parent is the backup

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1 bidder at a cash bid of \$14.25 million. And anything

2 else in closing we need to do here?

3 MR. RYAN: No, that's it. I think --

4 MS. BROWNSTEIN : I think -- yeah, just

5 that we reserve all of our rights with respect to the

6 backup bid and which is the highest and best for the

7 backup bid based on the discussions we had earlier

8 today about the Freepoint bid and where it left off.

9 So I just want to put that on the record that we

10 reserve our rights.

11 MR. RYAN: Okay. We expect you to

12 close on your bid and that to be irrelevant, but
13 that's --

14 MS. BROWNSTEIN : Understood. Just
15 putting it on the record.

16 MR. RYAN: On the record. Understood.
17 So we'll work with UMB on their form of sale order.

18 MR. GUPTA: Well, thank you everybody.
19 I know there were a lot of stops and starts today, but
20 I appreciate everybody's patience and perseverance
21 here. With that, the auction is closed and we're off
22 the record.

23 (Whereupon, at 5:30 p.m., the proceeding was
24 concluded.)

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