

Dura Ch. 11 Sale Plan Approved Without Tilton's Involvement

By **Vince Sullivan**

Law360, Wilmington (November 18, 2019, 7:21 PM EST) -- Bankrupt automotive parts maker Dura Automotive Systems received approval Monday during its first hearing in Delaware bankruptcy court for a Chapter 11 sale process that will be run by the company's independent managers without any direct involvement from CEO Lynn Tilton.

During a hearing in Wilmington, debtor attorney Gregory Pesce of Kirkland & Ellis LLP said the bidding procedures filed by Dura were largely unchanged from the sale plan submitted to a Tennessee bankruptcy court before the case was transferred to Delaware, except that Tilton's Patriarch Partners was eliminated as a stalking horse bidder.

Dura, whose Chapter 11 case is closely intertwined with the Tilton-affiliated Zohar Funds, originally filed for bankruptcy protection in the Middle District of Tennessee with an \$84 million post-petition loan being provided by Patriarch and a plan to sell the company to Patriarch. A Tennessee judge took issue with the multiple hats being worn by Tilton in the case and said he would not approve the debtor-in-possession loan.

The Zohar Funds, which invest in distressed companies like Dura and frequently place Tilton in a leadership position to pursue turnaround efforts, sought to have the cases transferred to Delaware for convenience and efficiency, and Dura eventually consented to the move.

Under the modified bidding procedures, Patriarch is no longer the stalking horse bidder and, along with Tilton and other parties, will not be permitted to directly communicate with potential bidders for Dura's assets, Pesce said.

"Our overriding goal is, to the extent there is any involvement from Ms. Tilton and any of her affiliates, that it is supervised in a way that is efficient and doesn't compromise the sale process," Pesce said.

The debtor will have the opportunity to name a new stalking horse bidder in the next month and will need to submit the identity of the bidder, the structure of its offer, and any bid protections being sought, Pesce explained. He added that the debtor is confident it will be able to come to terms with a baseline bidder in the coming weeks.

To date, the marketing efforts of Dura and its financial advisers have resulted in more than 40 potential bidders signing nondisclosure agreements and gaining access to due diligence materials, Pesce said.

The changes drew support from the official committee of unsecured creditors, particularly given the terms of a new DIP loan also granted approval Monday by U.S. Bankruptcy Judge Karen B. Owens.

Committee attorney Oscar N. Pinkas of Dentons US LLP said the timeline seeking a sale hearing in early February 2020 was still a concern for the unsecured creditors, but that the strong interest in the assets from potential buyers and the confidence of Dura's professionals led the committee to assent to the proposed procedures.

"With the level of confidence Your Honor sees and also with the revisions ... we thought that strategically it did not make sense at this point to lob an objection at the sale timeline and instead we rested on the comfort of the debtor's proposal that they believe this will result in the highest and best deal," Pinkas said.

Tilton moved the Zohar Funds into Chapter 11 in March 2018 in the midst of ongoing litigation over ownership rights to the equity in portfolio companies. After an initial conflict period among the parties, a settlement agreement allowed for the appointment of an independent director for the Zohar Funds, who would select a chief restructuring officer tasked with pursuing the monetization of the portfolio companies along with Tilton.

Judge Owens recently affirmed that even though the settlement agreement expired last month and the parties are free to resume litigating over ownership of the equity, Tilton is still bound by her obligation to participate in the monetization process.

Dura filed for Chapter 11 shortly after that decision in the Middle District of Tennessee, with Tilton and Patriarch Partners Agency Services LLC, which she controls, serving in several roles in the case. Patriarch was a prepetition lender, a proposed post-petition lender, the controlling shareholder overseeing the sale process, and the potential buyer of Dura's assets.

Dura is represented by William L. Norton III of Bradley Arant Boult Cummings LLP and James H.M. Sprayregen, Ryan Blaine Bennett, Gregory F. Pesce and Christopher Marcus of Kirkland & Ellis LLP.

The committee is represented by Jennifer R. Hoover and Kevin M. Capuzzi of Benesch Friedlander Coplan and Aronoff LLP and Oscar N. Pinkas and Lauren Macksoud of Dentons US LLP.

The case is In re: Dura Automotive Systems LLC, case number 1:19-bk-12378, in the U.S. Bankruptcy Court for the District of Delaware.

--Additional reporting by Rose Krebs and Jeff Montgomery. Editing by Janice Carter Brown.