

Dura Will Keep Legal Claims Against Tilton In Ch. 11 Sale

By **Rick Archer**

Law360 (May 12, 2020, 6:29 PM EDT) -- A Delaware bankruptcy judge gave Dura Automotive permission Tuesday to accept a credit bid for its North American and European assets after being told the deal has been revised to give the estate another \$10 million and allow it to keep claims against ex-manager Lynn Tilton.

U.S. Bankruptcy Judge Karen Owens approved the sale agreement after a telephone hearing in which she was told buyer Bardin Hill Investment Partners LP had agreed to sweeten the deal in response to objections filed by the unsecured creditors and that the auto parts maker will be administratively insolvent and moving into a Chapter 7 liquidation when the deal is done.

"These transactions here will preserve the jobs of thousands for employees at Dura," company counsel Gregory Pesce said.

Last week, Dura asked the court for quick action on proposed asset sales to affiliates of debtor-in-possession lender Bardin Hill and guarantor The Charlton Group Inc., saying its hopes for better options had been crushed by the COVID-19 pandemic and broader auto industry troubles.

The agreement called for Dura's North American affiliates to go to Bardin Hill for a \$5 million credit bid, or debt takeback, and payment of \$11.25 million in administrative claims. European assets would be transferred for a \$50 million credit bid, and Bardin Hill was also slated to acquire the rights to litigation for fraudulent conveyance or other causes of action, including against Tilton and her Patriarch Partners investment firm.

At the hearing, counsel for Dura and its unsecured creditors committee said they had reached a deal with Bardin to resolve the committee's objections to the deal by adding \$10 million to the credit bid, allowing the company to retain most of its legal claims and subordinating its claim to 10% of any recovery from those claims.

Bardin Hill would still acquire the fraudulent conveyance rights against what it considered "critical vendors," but with the intention of preventing suits from being filed against them to the detriment of ongoing business relationships, counsel for Bardin Hill said.

Under the deal, Dura will file to convert the case to a Chapter 7 and transfer the litigation claims to the trustee without a challenge period.

Pesce said it's expected the sale will leave Dura administratively insolvent, although how insolvent remains unknown.

Counsel for the unsecured creditors committee said the group still has "mixed feelings" about the sale terms but that the revised deal does create a path for possible recoveries by the creditors.

Pesce also said Dura had adjusted the language of the sale agreement to resolve objections filed by the U.S. Trustee's Office and the Pension Benefit Guaranty Corp.

Bardin Hill is among the bondholders in the Zohar Funds, collateralized debt ventures created by

Tilton and now involved in a legal battle with the corporate turnaround mogul.

Zohar filed a reservation of rights concerning the sale agreement alleging Tilton had mishandled Dura's bankruptcy, which prompted Tilton counsel Albert Hogan to ask to present evidence to rebut what he called "character assassination" of Tilton. After being told Zohar was not presenting evidence, Judge Owens denied the request, calling it irrelevant to the sale motions.

Judge Owens concluded the hearing by approving the sale motions, saying they were the "best we could do under the circumstances."

The 105-year-old Michigan-based company makes parts such as control systems and structural frameworks and had about 7,400 employees worldwide and \$1.1 billion in annual global sales at the time of its Chapter 11 filing.

Dura is represented by Erin R. Fay and Daniel N. Brogan of Bayard PA and James H.M. Sprayregen, Ryan Blaine Bennett, Gregory F. Pesce and Christopher Marcus of Kirkland & Ellis LLP.

Bardin Hill is represented by Brian J. Lohan of Arnold & Porter.

The unsecured creditors are represented by Jennifer R. Hoover, Kevin M. Capuzzi, John C. Gentile, Sven T. Nylen and Christopher J. Letkewicz of Benesch Friedlander Coplan & Aronoff LLP.

The Zohar lenders are represented by James L. Patton Jr., Robert S. Brady, Michael R. Nestor, Joseph M. Barry, Ryan M. Bartley and Jordan E. Sazant of Young Conaway Stargatt & Taylor LLP.

Patriarch and the Tilton-affiliated entities are represented by Carl T. Tullson, Ron E. Meisler and Albert E. Hogan III of Skadden Arps Slate Meagher & Flom LLP.

The Office of the U.S. Trustee is represented by Juliet M. Sarkessian.

The Pension Benefit Guaranty Corp. is represented by Paul Chalmers, Charles L. Finke, Lori A. Butler, Mai Lan Rodgers and Faheem Mahmooth of the PBGC's Office of the General Counsel.

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 Vince Sullivan and Jeff Montgomery. Editing by Jay Jackson Jr.