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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Hertz Committee Says Ch. 11 Sale Plan Won't Net Best Value

By **Vince Sullivan**

Law360 (December 14, 2020, 6:47 PM EST) -- The official committee of unsecured creditors in car rental juggernaut Hertz's Chapter 11 case objected to the company's proposed plan for an $825 million sale of its fleet financing arm in filings made public Monday, telling a Delaware judge that the process will leave potential value on the table.

In the filing, the committee said that stalking horse bidder Freedom Acquirer LLC — an affiliate of prepetition secured creditor and debtor-in-possession lender Apollo Management Holdings — would be given onerous bid protections under the proposed sale procedures that would deter others from submitting competing offers.

The stalking horse bid would see Freedom Acquirer pay $825 million for the equity in Hertz's fleet financing affiliate Donlen Corporation.

"The sale process proposed by the debtors contains defects that, if not corrected, could chill bidding and prevent the debtors from receiving the best market price for the Donlen assets for the benefit of all Hertz stakeholders," the committee said in its objection.

The bid protections include termination fees and expense reimbursements that could top $40 million, and the committee argued that these payments exceed normal market rates for such protections and are unnecessary to induce Freedom to bid on the Donlen assets.

"Apollo already knows these assets," the committee said. "It has been an investor across the debtors' capital structure for several months, has prepetition liens on certain of the assets that will be sold, and already had the opportunity to perform diligence when it decided to offer DIP lending secured by Donlen's assets."

The objection claims that Freedom has "every incentive" to bid on the assets because the proceeds from the sale will be used to pay down the debt it holds against Hertz and that the bid protections are not needed to encourage it to make an offer.

The proposed marketing timeline and bid deadline are also too tight, the committee argued, given that Freedom has had several months to conduct due diligence on assets with which it is already familiar, while potential strategic bidders have much less time ahead of a Feb. 10 deadline. The period during which these parties have to conduct their diligence and prepare bids is broken up by the holidays and occurs during a worsening COVID-19 pandemic, the objection said.

Representatives for the parties could not immediately be reached late Monday for comment.

The Hertz Corp. filed for Chapter 11 protection in May with about $20 billion of debt, citing a major downturn in business as the COVID-19 pandemic ravaged the travel industry. The company said its business declined by 75% almost immediately after widespread business and travel restrictions were implemented in March.

Hertz did not originally seek DIP financing, instead financing its operations with income and existing cash. However, in August, the company told the court that without a waiver of upcoming lease payments on its European vehicle fleet or a significant uptick in business, it would need a DIP to continue operating past the end of the year.

The court approved its $1.6 billion DIP loan in late October to help the debtor fund its operations through 2021 and finance fleet expansion transactions.

Hertz and its affiliates are represented by Thomas E. Lauria, Matthew C. Brown, J. Christopher Shore, David M. Turetsky, Andrew T. Zatz, Andrea Amulic, Jason N. Zakia, Ronald K. Gorsich, Aaron Colodny, Andrew Mackintosh and Doah Kim of White & Case LLP, and Mark D. Collins, John H. Knight, Brett M. Haywood, Christopher M. De Lillo and J. Zachary Noble of Richards Layton & Finger PA.

The committee is represented by Jennifer R. Hoover, Kevin M. Capuzzi and John C. Gentile of Benesch Friedlander Coplan & Aronoff LLP, and Amy Caton, Natan M. Hamerman, David E. Blabey Jr., Alice J. Byowitz and Erin V. Klewin of Kramer Levin Naftalis & Frankel LLP.

The case is In re: The Hertz Corp. et al., case number 20-11218, in the U.S. Bankruptcy Court for the District of Delaware.

--Editing by Steven Edelstone.