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Hertz Approved For Ch. 11 Donlen Bid Plans Over Objection

By **Vince Sullivan**

Law360 (December 16, 2020, 6:05 PM EST) -- Bankrupt car rental giant Hertz received court approval Wednesday in Delaware for procedures governing the sale of its fleet financing affiliate Donlen Corp. after a judge overruled objections to the bidding timeline and stalking horse protections from bondholders.

During a virtual hearing, U.S. Bankruptcy Judge Mary F. Walrath said Hertz had made some changes to its proposal that satisfied concerns raised by the official committee of unsecured creditors in the case, and that the specific circumstances of the case justified other issues raised by an ad hoc group of bondholders that pursued its objection Wednesday.

The bidding procedures selected Freedom Acquirer LLC — an affiliate of prepetition secured lender and post-petition lender Apollo Management Holdings — as the stalking horse bidder in the sale process for the Donlen assets, with a baseline offer of at least \$825 million. The committee and the ad hoc group has opposed approval of the procedures over concerns that the timeline to submit competing bids was too short, the proposed bid protections were too high, and the assets had not been adequately marketed to strategic buyers before the stalking horse deal was signed.

But Judge Walrath said Hertz's agreement to extend the bid deadline by 10 days and to reduce the bid protections by \$3.5 million had allayed the concerns of the committee and that the changes justified the bid protections given the size of Freedom's baseline price.

"The selection of the stalking horse is not a determination that it is going to win the auction," Judge Walrath said. "A total break-up fee in the \$30 million-plus range for assets being sold that should realize \$900 million to the debtor is in the range of reasonableness."

The bid protections originally included a \$24.75 million break-up fee owed to Apollo if Hertz closed with another buyer, but that was cut by \$1 million under the agreement with the committee. An originally proposed \$5 million minimum overbid for competing bidders was cut in half to \$2.5 million as well, reducing the overall bid protection amount to about \$33.75 million, including an expense reimbursement, to which the committee and U.S. trustee can now object to.

During arguments, debtor attorney Thomas Lauria of White & Case LLP said the objecting group of bondholders were tempting fate by seeking significant reductions to or elimination of certain bid protections because there was no certainty the stalking horse would stay engaged in the process without them.

"The ad hoc group is playing with fire," Lauria said. "They feel certain that Apollo ... will not walk. There is no evidence to that fact."

He said the protections and the rights for the bidder to terminate the stalking horse offer were important elements of Apollo's negotiations.

Ad hoc group attorney Rachel C. Strickland of Willkie Farr & Gallagher LLP said since Apollo is so intimately involved with Hertz as an affiliate of both pre- and post-petition lenders, the bidding protections weren't necessary to induce it to bid on the Donlen assets. Including them in the bidding

procedures will chill bidding by making the bar to enter the auction too high as competing bidders have to cover the protections and the overbid amount, she said.

"We believe the court should not approve a process that will chill rather than induce bidding," Strickland argued.

After hearing her argument, Judge Walrath said the support of the committee and of existing equity holders for the amended bidding procedures helped sway her decision to approve them over the objections of the ad hoc group.

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 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 ad hoc group is represented by Rachel C. Strickland, Daniel I. Forman and Agustina C. Berro of Willkie Farr & Gallagher LLP, and Edmon L. Morton, Matthew B. Lunn and Joseph M. Mulvihill of Young Conaway Stargatt & Taylor LLP.

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 Adam LoBelia.