IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

In re:	)	
	)	Chapter 11
ORECK CORPORATION, ET AL.	)	Case No. 13-04006
	)	
Debtors.	)	Judge Lundin
	)	(Jointly Administered)

OMNIBUS REPLY OF ORECK ACQUISITION HOLDINGS LLC TO RESPONSES AND OBJECTIONS TO THE MOTION BY DEBTORS PURSUANT TO 11 U.S.C. §§ 363(B), (F), (K), AND (M), AND 365 AND FED. R. BANKR. P. 2002, 6004, AND 6006, TO (I) APPROVE (A) THE SALE TRANSACTION PURSUANT TO THE ASSET PURCHASE AGREEMENT WITH ORECK ACQUISITION HOLDINGS LLC, FREE AND CLEAR OF CLAIM, LIENS, ENCUMBRANCES, AND OTHER INTERESTS; (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (II) (A) ESTABLISH SALE AND BIDDING PROCEDURES; AND (B) SCHEDULE A SALE APPROVAL HEARING

Oreck Acquisition Holdings LLC ("Purchaser"), by and through its undersigned counsel, hereby files its Omnibus Reply (the "Reply") to Responses and Objections filed by various parties (the "Objections") to the *Motion by Debtors Pursuant to 11 U.S.C. §§ 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (I) Approve (A) the Sale Transaction Pursuant to the Asset Purchase Agreement with Oreck Acquisition Holdings LLC, Free and Clear of Claim, Liens, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (II) (A) Establish Sale and Bidding Procedures; and (B) Schedule a Sale Approval Hearing*, filed by Oreck Corporation and its debtor affiliates (the "Debtors") in the above-captioned jointly administered Chapter 11 cases (the "Chapter 11 Cases") on May 16, 2013 [Docket No. 93] (the "Sale Procedures Motion"). For its Reply, Purchaser respectfully states as follows:

PRELIMINARY STATEMENT

1. While numerous parties have filed responses and objections to the Sale Procedures Motion for varying reasons, no party has objected to the need for the sale itself and to the key aspects of the Sale Procedures Motion. No party objects to a quick sale of substantially all of the Debtors' assets. No party objects to Purchaser serving as the Stalking Horse Bidder in a value maximizing auction in which Purchaser has already established a high bar, not only by the dollars it is willing to pay for the Debtors' assets, but also by its commitment to employees, suppliers, and landlords, and its credibility as a result of its knowledge of the Debtors' business and the fine reputation of the Oreck family. No party objects to Purchaser assuming millions of dollars in liabilities owed to suppliers, landlords, contract counterparties, customers, employees, and other unsecured creditors. No party objects to Purchaser keeping Debtors' Cookeville, Tennessee manufacturing facility open and providing continued employment to hundreds of Debtors' employees.

2. No party has objected to these fundamental aspects of the Sale Procedures Motion because they all inure to the benefit of the Debtors, their Chapter 11 estates, and the broad interests of all parties in interest in these Chapter 11 Cases. No party has objected to these aspects of the Sale Procedures Motion because Purchaser's proposed sale transaction (the "Sale"), as set forth in the Asset Purchase Agreement filed with the Sale Procedures Motion (the "APA"),[1] represents the highest and best chance of a meaningful recovery for parties in interest in these Chapter 11 Cases. Moreover, no party other than Purchaser has stepped forward and offered to provide these substantial benefits to the Debtors' estates.

[1] Capitalized terms used but not defined herein shall have the meaning set forth in the APA.

3. Consequently, rather than seeking to derail the proposed Sale, the Objections are largely aimed at forcing Purchaser to "sweeten" the deal. While these efforts are understandable, the Objections are not well-taken in a transaction that has already stretched the limits of Purchaser's willingness to continue to go forward as the Stalking Horse Bidder. Purchaser is not willing to serve as a Stalking Horse Bidder in a transaction where, if Purchaser is outbid by a higher offer, Purchaser will receive no compensation for its tremendous efforts in working with the Debtors to put together the Sale and the substantial fees and expenses incurred by Purchaser in connection therewith. Purchaser is not willing to provide $22 million in consideration for the Debtors' assets if the liabilities to be assumed by Purchaser are not subject to reasonable, negotiated caps. If the objections to the Bid Procedures made by the Objecting Parties were to be sustained, Purchaser would be unwilling to serve as the Stalking Horse Bidder. The Objecting Parties, in their zeal to sweeten the deal, risk losing the best and only hope of maximizing value in these Chapter 11 Cases. The Objections should be overruled.

4. The Objections may be grouped into roughly four categories: (1) the U.S. Trustee Objection; (2) the Committee Response; (3) the Gleacher/Black Diamond Objection; and (4) all other Objections.

5. Both the U.S. Trustee Objection and the Committee Response are well-intentioned efforts to "sweeten the deal" for the benefit of creditors. The U.S. Trustee would like Purchaser to receive less of a breakup fee and expense reimbursement and objects to Purchaser acquiring the Debtors' avoidance actions. The Committee would like to see the transaction provide more money for unsecured creditors, for example, by removing the $3.8 million cap on "warranty claim" liabilities to be assumed by Purchaser as part of the Sale. These objections are not objections to the Sale Procedures Motion *per se*; they are pleadings asserted in an effort to

increase the amount of consideration to be paid by Purchaser under the APA. Any increase in the amount of consideration to be paid to the Debtors' estates ought to come through the competitive Auction that the Sale Procedures are designed to create, not through objections to the Sale Procedures themselves. Purchaser is not saying "my way or the highway"; Purchaser is asserting that it negotiated a thoughtful APA in which it made the best offer it felt it could in its business judgment.

6. Purchaser has already invested over $1 million in expenses and expended thousands of hours of effort in negotiating and structuring the proposed Sale transaction. In exchange for committing to provide $22 million in consideration to the estates and creating the conditions under which a value maximizing Auction can occur, Purchaser has negotiated reasonable bid protections and other customary transaction terms, such as caps on assumed liabilities. Without these protections, which, just like the Purchase Price, are a negotiated aspect of the APA, Purchaser is unwilling to go forward with the Sale. If the U.S. Trustee and Committee succeed in their protests and remove the significant, hard-fought concessions obtained by Purchaser in negotiating the APA, their well-intentioned efforts risk creating a freefalling liquidation of the Debtors' assets without a Stalking Horse Bidder, to the detriment of all parties in interest and to the going concern value of the Debtors' business.

7. With respect to the Gleacher/Black Diamond Objections, as the Court is aware, Black Diamond Commercial Finance, L.L.C. ("Black Diamond") controls the equity interests in the Debtors and therefore controls the Debtors. As an out of the money stakeholder in these Chapter 11 Cases, Black Diamond has had to find creative ways to divert value to its position. For instance, Black Diamond caused the Debtors to agree to attempt to enter into a DIP loan transaction with Black Diamond containing a $1 million up-front fee, 3% DIP fee, 12% interest

rate, and other draconian terms and conditions. See *Motion for Interim and Final Orders (I) Authorizing (A) The Debtors to Obtain Postpetition Financing on a Senior Secured Superpriority Basis Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364 (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to Prepetition Secured Lenders Pursuant to 11 U.S.C. §§ 361, 363, and 364; (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c); and (IV) Granting Related Relief*, filed by the Debtors on May 6, 2013 [Docket No. 10] (the "First Black Diamond DIP Motion") at 5-6. The Court rightly put a stop to this effort and Black Diamond was forced to make a DIP loan that matched the more reasonable, below-market terms of a competing DIP loan offered by Purchaser.[2] As an out of the money equity holder, DIP lender, and, now, holder of the first lien debt, Black Diamond's primary interests are satisfying the claims of prepetition lenders with its DIP loan and attempting to obtain consideration for Debtors' out of the money equity holders.

8. As explained herein, the positions taken by Gleacher Products Corp., in its capacity as agent under the Second Lien Credit Agreement ("Gleacher"), in these Chapter 11 Cases are inextricably intertwined with Black Diamond's interests due to the contractual relationship between Gleacher and Black Diamond. In its objection, Gleacher purports to be the "fulcrum security" holder in these Chapter 11 Cases based on the cash amount of Purchaser's bid and states that "every dollar spent during these cases, as part of the sale process or otherwise, is, in essence, funded by the Second Lien Lenders from their collateral." (Gleacher Objection (defined below) at 2). If this were the case, when Black Diamond attempted to make a DIP loan

[2] Purchaser submits that its willingness to make a DIP loan to the Debtors on reasonable, below market terms resulted in Black Diamond substantially matching those terms, to the benefit of all parties in interest, including Gleacher. This is another example of Purchaser's efforts and ability to maximize the benefits to the Debtors' estates, which weighs in favor of overruling the Objections and awarding Purchaser the reasonable, bargained for protections and terms contained in the APA and Bid Procedures.

to the Debtors that included a $1 million up-front fee and priming lien, one would have expected Gleacher to protest as it does now. Gleacher did not. The reason, as explained by Black Diamond in both its first and second DIP Motions, is that Gleacher and the Second Lien Lenders are subject to an Intercreditor Agreement dated March 19, 2010 whereby Gleacher and the Second Lien Lenders "waived all rights that it may have as a junior lien creditor." See First Black Diamond DIP Motion at 2-3; *Second Motion for Interim and Final Orders (I) Authorizing (A) The Debtors to Obtain Postpetition Financing on a Senior Secured Superpriority Basis Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364 (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to Prepetition Secured Lenders Pursuant to 11 U.S.C. §§ 361, 363, and 364; (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c); and (IV) Granting Related Relief*, filed by the Debtors on May 17, 2013 [Docket No. 117] (the "Second Black Diamond DIP Motion") at 2-3. To the extent Gleacher has lodged objections to the Sale Procedures Motion, those objections are made with the consent of Black Diamond and, not surprisingly, Black Diamond has joined the Gleacher Objection. Given the relationship between Gleacher and Black Diamond, whereby Black Diamond has well-documented control over Gleacher's actions in these cases, the Gleacher Objection should be viewed through the same motivational prism as the Black Diamond Objection.

9. The remaining miscellaneous objections are from QVC and various landlords. These objections are narrowly tailored and largely procedural. To the extent they can be accommodated, such accommodations by Purchaser are noted herein.

10. Purchaser's offer to acquire substantially all of the Debtors' assets for $22 million represents the highest, best, and currently only offer on the table. It is subject to competitive bidding and an auction and may potentially give rise to higher and better offers. It carries with it

numerous non-monetary benefits to the Debtors and other parties in interest, such as the continued employment of the Debtors' approximately 650 employees, the continued operation of Debtors' Cookeville manufacturing facility, and the existence of a continued customer or tenant for suppliers, landlords, and other contract counterparties. In exchange for the benefits Purchaser is conferring on the estates, creditors, and other parties in interest, Purchaser has bargained for certain protections, such as caps on certain Assumed Liabilities. If another party is willing to consummate the Sale without these protections, they should outbid Purchaser at the Auction. While the U.S. Trustee, the Committee, landlords, and other parties may not like each and every aspect of the Bid Procedures and APA, that is the transaction that Purchaser and the Debtors agreed to through intensive, expensive, and arms' length negotiations. To the extent the transaction materially changes as result of these parties' Objections, Purchaser may no longer desire to participate in it, to the detriment of all parties involved. For these reasons and for the reasons stated below, the Objections should be overruled and Sale Procedures Motion granted.

FACTUAL BACKGROUND

11. On May 6, 2013 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

12. Since the Petition Date, the Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. No Trustee or Examiner has been appointed in the Debtors' bankruptcy cases.

13. On May 16, 2013, the Office of the United States Trustee (the "U.S. Trustee") appointed the Official Committee of Unsecured Creditors pursuant to 11 U.S.C. § 1102 (the "Committee").

14. Also on May 16, 2013, the Debtors filed the Sale Procedures Motion. The Sale

Procedures Motion was heard and approved on an interim basis on May 21, 2013, subject to a continued hearing on final approval of the Sale Procedures Motion scheduled for June 11, 2013. See *Expedited Order Pursuant to 11 U.S.C. §§ 363, and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006 (I) Approving Procedures for Sale of Debtors' Assets and Breakage Fees Pursuant to Asset Purchase Agreement with Oreck Acquisition Holdings LLC; (II) Scheduling Bid Deadline and Sale Hearing Date; (III) Establishing Assumption and Assignment Procedures; and (IV) Fixing Notice Procedures and Approving Form of Notice*, entered on May 24, 2013 [Docket No. 199]. Various parties have objected to final approval of the Sales Procedures Motion, as set forth below.

REPLY TO THE OBJECTIONS

15. As noted above, the Objections may be grouped into roughly four categories: (A) the U.S. Trustee Objection; (B) the Committee Response; (C) the Gleacher/Black Diamond Objection; and (D) all other Objections. Each group is addressed separately below.

A. The U.S. Trustee Objection[3]

16. The U.S. Trustee's objections are that: (1) the Breakup Fee is excessive, should be limited to Purchaser's actual expenses, and should be paid only as a carve-out from the proceeds of a higher bid; and (2) Debtors' Avoidance Actions should not be transferred as part of the Sale. (U.S. Trustee Objection at 2-4). The U.S. Trustee Objection also states that: (1) a deadline should be set for secured creditors to file Section 506(b) claims for interest and costs; and (2) a statement should be provided regarding how the proceeds of the Sale will be allocated among the

[3] *The United States Trustee's Objection to the Motion by Debtors Pursuant to 11 U.S.C. §§ 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (I) Approve (A) the Sale Transaction Pursuant to the Asset Purchase Agreement with Oreck Acquisition Holdings LLC, Free and Clear of Claim, Liens, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (II) (A) Establish Sale and Bidding Procedures; and (B) Schedule a Sale Approval Hearing*, filed on June 4, 2013 [Docket No. 221] (the "U.S. Trustee Objection").

Debtors if the Debtors' Substantive Consolidation Motion is denied. Purchaser has no objection to the Sale Procedures Order being modified to accommodate the latter objections.

17. With respect to the Breakup Fee, Purchaser submits that the Breakup Fee is reasonable in light of the amount of Purchaser's bid for the Debtors' assets and the contributions made by Purchaser to date and to be made in the future in these Chapter 11 Cases. The Breakup Fee and Expense Reimbursement are only paid if the Purchaser is not the successful bidder. Prior to the Petition Date, Purchaser engaged in extended and frustrating negotiations with Black Diamond to purchase Debtors' business. Those negotiations were unsuccessful. When the Court rejected Black Diamond's first DIP financing proposal, although Purchaser is not the business of provide financing, Purchaser stepped up and made a DIP proposal on terms significantly more advantageous to the Debtors than those proposed by Black Diamond. Black Diamond met those terms, resulting in a significant benefit to the Estates. Further, the amount Purchaser is willing to pay for the Debtors' assets establishes a very high bar for another buyer to leap over. If that happens, then the Breakup Fee and Expense Reimbursement will be well worth it to creditors, the estates generally, employees, suppliers, landlords, and customers of the Debtors with warranties, as well as the State of Tennessee. The Breakup Fee and Expense Reimbursement are fair and, in the event of an overbid, will have been well earned by Purchaser. The negotiated Breakup Fee is $800,000.00. The Purchase Price under the APA, which includes liabilities to be assumed by Purchaser, is approximately $22 million. The Breakup Fee is therefore 3.6% of the Purchase Price. This percentage is wholly reasonable and consistent with breakup fees typically paid in Section 363 sales. In 2012, the average breakup fee awarded in 363 sales was 3.7%,[4] which is higher than the Breakup Fee negotiated for by Purchaser. Moreover, as set forth below,

[4] See *Bid Protections Study*, Recapitalization and Restructuring Quarterly: 1Q 2013, published by Morgan Joseph TriArtisan LLC, available at: mjta.com/media/MJTA_RR_1Q13_Newsletter.PDF.

Purchaser has already more than earned the Breakup Fee through its efforts in these Chapter 11 Cases to date, even prior to the commencement of the Auction process.

18. First, Purchaser's willingness to enter into a DIP loan transaction with the Debtors is the only reason that Black Diamond made a reasonable DIP loan offer to the Debtors. Black Diamond previously attempted to cause the Debtors to enter into a DIP loan transaction involving expensive terms, including a $1 million up-front fee, which loan was rejected by the Court. Thereafter, in order to preserve the continued going concern value of the Debtors until a sale could be consummated, Purchaser offered to make a DIP loan to Debtors at reasonable, below-market rates and terms. Black Diamond matched those terms and was then "selected" by the Debtors as its DIP lender (although Black Diamond increased the amount of the DIP Loan to permit repayment of the prepetition First Lien Debt, which Black Diamond had recently acquired). The DIP loan proposed by Purchaser did not include a $1 million up-front fee and other terms like the previously proposed Black Diamond DIP loan, and Black Diamond was required to match those terms. At the first hearing on the Sale Procedures Motion, Debtors' CRO testified that Purchaser was the only entity other than Black Diamond to offer to make a DIP loan. By forcing Black Diamond to concede the $1 million fee, Purchaser saved the Estates (and Gleacher) at least $1 million. These savings, which are in excess of the Breakup Fee, have already been realized, prior to the commencement of the auction process.

19. Moreover, Purchaser, through its efforts and willingness to enter into an APA with a $22 million Purchase Price subject to an Auction and overbids, has created an environment under which Debtors can hold a competitive, public auction process aimed at maximizing the value of the Debtors' estates. This fact also justifies payment to Purchaser of the Breakup Fee in the event that Purchaser's efforts result in a higher and better bid.

20. With respect to the U.S. Trustee's objection that Avoidance Actions should not be transferred as part of the Sale, the U.S. Trustee is seeking through an objection to remove from the APA an Acquired Asset without a concomitant reduction of the Purchase Price. The U.S. Trustee is essentially seeking to increase the Purchase Price. These efforts are not appropriate in connection with an objection to the Sale Procedures Motion. To the extent a higher Purchase Price can be achieved, it must be achieved through an auction and competitive bidding. Either the Avoidance Actions should be an Acquired Asset under the APA, or the value of the Avoidance Actions should be deducted from the Purchase Price, resulting in the same net benefit to the estates. The U.S. Trustee's objection in this regard is not a true objection to the Sale Procedures Motion; it is an effort to change the negotiated Purchase Price through objection rather than auction. For these reasons, the U.S. Trustee's Objections should be overruled.

B. The Committee Response[5]

(i) Purchaser is Not an Insider.

21. At the outset of addressing the Committee Response, Purchaser is compelled to address the Committee's concerns that Purchaser may be an "insider" of the Debtors. The Committee States that "[t]he Debtors propose to sell substantially all of their assets to an entity that is or may be controlled by one of the Debtors' insiders." (Committee Response at 2). The only support for this concern is the statement that "[t]he Principal of the Stalking Horse Bidder maintains an ownership interest in the Debtors, including owning and operating approximately

[5] *The Official Committee of Unsecured Creditors' Response to the Motion by Debtors Pursuant to 11 U.S.C. §§ 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (I) Approve (A) the Sale Transaction Pursuant to the Asset Purchase Agreement with Oreck Acquisition Holdings LLC, Free and Clear of Claim, Liens, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (II) (A) Establish Sale and Bidding Procedures; and (B) Schedule a Sale Approval Hearing*, filed on June 5, 2013 [Docket No. 240] (the "Committee Response").

16 Oreck retail stores." (Id. at 3). Because the Committee's concerns in this respect are unfounded, they should be put to rest now.

22. As fully and publicly disclosed by Purchaser in its *Disclosure of Connections between the Debtors and Oreck Acquisition Holdings LLC*, filed with the Court on May 23, 2013 [Docket No. 183] (the "Disclosure of Connections"), Tom Oreck, the principal of Purchaser, operates 16 of the more than 500 retail store locations using the "Oreck" name and purportedly owns between 0.5% to 1% of the common stock of one of the Debtors. Neither of these connections establishes that Purchaser is an "insider" of the Debtors as defined by the Bankruptcy Code. Section 101(31)(E) of the Bankruptcy Code provides that a party is an insider if it is an "affiliate, or insider of an affiliate if such affiliate were the debtor." 11 U.S.C. § 101(31)(E). The term "affiliate" means: (i) a person or entity that owns or controls more than 20% of the outstanding voting securities of the debtor; (ii) a corporation who is itself more than 20% owned or controlled by the debtor; (iii) a person whose business or property is operated under a lease or operating agreement by the debtor; or (iv) an entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement. 11 U.S.C. § 101(2).

23. Mr. Oreck's ownership of between 0.5% and 1% of the equity interests of only one of the Debtors does not come close to this 20% threshold. Mr. Oreck waived this interest at the May 21 hearing and in the Disclosure of Connections. Likewise, Mr. Oreck's operation, as a retailer and customer of the Debtors through entities owned by Mr. Oreck, of 16 of the Debtors' more than 500 retail locations, does not make Purchaser an entity that is controlled by or that controls the Debtors. The Committee's concern that Purchaser may be an insider of the Debtors is completely unsupported in both law and fact.

24. The connections between Purchaser, its principal, and the Debtors, all of which have been candidly and publicly disclosed by Purchaser, are all natural and customary consequences of the fact that, prior to selling it to the Debtors' predecessor in interest in 2003, the Oreck family previously owned and operated the business now owned and operated by the Debtors. Since 2008, neither David Oreck, Tom Oreck, nor Purchaser has been involved in the operation or management of the Debtors or their business. They are not insiders and the Sale was negotiated between the Debtors and Purchaser at arm's length and in good faith.

25. Having addressed the "insider" concerns, Purchaser now addresses the Committee's substantive responses. As relevant to Purchaser, the Committee's protests are that: (1) Purchaser should designate the active employees of Debtors who Purchaser wishes to hire prior to the Auction; (2) Purchaser should make final designations as to assumption or rejection of executory contracts or unexpired leases prior to the Auction; (3) Section 1.4(a) of the APA places a cap on the amount of the Debtors' Warranty Obligations that Purchaser is willing to assume as part of the Sale; (4) certain of the Acquired Assets, such as tail coverage, should not be transferred; (5) the Debtors' avoidance actions should be released rather than transferred to Purchaser; and (6) the Breakup Fee and Expense Reimbursements are unreasonable.[6]

ii. Purchaser Desires to Employ all of Debtors' Employees.

26. The Committee's objection that Purchaser should designate those of Debtors' employees who Purchaser will hire sooner rather than later is well-taken. Purchaser negotiated in the APA for the right to have up until the Closing Date to select the employees that Purchaser

[6] The Committee Response raises other, less substantive issues that can be resolved by simply clarifying certain aspects of the Bid Procedures and APA. Because all of these issues can likely be resolved through good faith negotiations and the exchange of mark-ups of the APA and Bid Procedures between the Debtors, Purchaser, and Committee prior to the final hearing on the Sale Procedures Motion, these issues are not addressed in this Reply. Purchaser will make its best efforts to resolve these issues with the Committee prior to the Sale hearing.

wishes to hire in order to maintain maximum flexibility. Purchaser understands, however, the concerns of Debtors' employees (and their families) regarding the Sale process and appreciates the fact that the Committee has a duty to protect the interests of those employees. Purchaser wishes to make the following point clear: **it is Purchaser's desire to hire each and every one of the Debtors' employees, to grow and expand Debtors' business, and to hire even more employees in the future**. In that regard, Purchaser concedes the Committee's point and agrees to designate those of Debtors' employees who Purchaser will hire on or before the Auction Date.

(iii) Purchaser Will Use its Best Efforts to Designate Contracts Prior to the Auction.

27. The Committee's argument that Purchaser should make final designations as to assumption or rejection of executory contracts or unexpired leases prior to the Auction is also well-taken, although at this juncture, out of necessity rather than desire, Purchaser cannot concede the point. Purchaser negotiated for the right under the APA to have up until the Closing Date to designate assumed contracts and unexpired leases. Purchaser is continuing its intensive due diligence efforts and is working diligently to review Debtors' executory contracts and unexpired leases, determine appropriate cure costs, and make informed and intelligent business decisions regarding assumption and rejection. Purchaser's initial decisions regarding the assumption and rejection of executory contracts and unexpired leases will be transmitted to concerned parties via the Assumption and Assignment Notice (and filed on the Docket as discussed below in response to the Landlord Objections) within three (3) days of the Court's entry of an order providing final approval to the Sale Procedures Motion. The Assumption and Assignment Notice will initiate the process of negotiation and reconciliation of assumption terms and cure costs between Purchaser and hundreds of landlords and contract counterparties.

28. It is Purchaser's sincere hope that this process can be substantially completed prior to the Auction. Given the sheer number of contract counterparties and landlords and the difficulty and time associated with negotiating assumption terms and cure costs with each of them, however, it is possible that, despite Purchaser's best efforts, not all issues regarding the assumption and assignment of executory contracts and unexpired leases will be resolved by the time of the Auction. While Purchaser understands and shares the Committee's desire that the process be completed prior to the Auction, the issue is a matter of feasibility, not desirability. Purchaser has made and will continue to make its best efforts to finalize assumption and rejection decisions prior to the Auction.

(iv) Purchaser is Not Willing to Re-Negotiate the Basic Terms of the APA.

29. With respect to the Committee's protests regarding the cap on assumed Warranty Obligations, the inclusion of certain items as Acquired Assets under the APA, and Committee's desire that avoidance actions be released rather than transferred, Purchaser cannot accommodate the Committee. The reason for Purchaser's refusal has been stated above in response to the U.S. Trustee Objection – while Purchaser is willing to accommodate reasonable procedural objections to the Sale Procedures Motion, Purchaser is not willing to re-negotiate the consideration Purchaser is paying for the Debtors' assets. The limit on Assumed Liabilities in the APA is a material, negotiated term of the Sale that was considered by Purchaser in agreeing to the Purchase Price. If the cap on Assumed Liabilities is to be lifted, the Purchase Price needs to be revisited. Likewise, if Avoidance Actions and other assets are to be excluded from the Acquired Assets, then other material terms of the Sale should be changed in favor of Purchaser, including the Purchase Price.

30. The Committee is understandably seeking to increase the consideration Purchaser is paying for Debtors' assets. This is not the place for doing so. If the Committee wishes for the Debtors to receive more value for the Acquired Assets, the Committee should work with Purchaser to obtain swift approval of the Sale Procedures Motion so that the Auction can occur and should seek out other bidders to participate in the Auction.

(vi) The Breakup Fee and Expense Reimbursement are Reasonable and Appropriate.

31. Finally, the Committee objects to the reasonableness of the Breakup Fee and Expense Reimbursement. Purchaser has addressed the reasonableness of the Breakup Fee in light of the Purchase Price, as well as why Purchaser is entitled to the Breakup Fee, in response to the U.S. Trustee Objection above. With respect to the Expense Reimbursement, which is subject to a cap of $1.2 million, the Expense Reimbursement is simply a reimbursement to Purchaser of its actual fees and expenses incurred in connection with the Sale. Reimbursement of the actual fees and expenses of a Stalking Horse Bidder in a 363 Sale is typical in large Chapter 11 cases. See, e.g., In re Integrated Resources, Inc., 147 B.R. 650, 660-61 (S.D.N.Y. 1992). Here, Purchaser has already expended over $875,000.00 in legal fees and over $125,000.00 in consulting and other fees in performing due diligence, negotiating the APA, and positioning itself as Stalking Horse Bidder. In the event Purchaser is outbid at the Auction, Purchaser should be compensated for its out of pocket fees and expenses incurred in creating the value maximizing Auction that produced the higher bid.

C. The Gleacher/Black Diamond Objection[7]

32. As stated in the Preliminary Statement, the Black Diamond Objection should be viewed through the prism of the motivations of Black Diamond as an out of the money equity holder, DIP lender, and now the holder of the first lien debt. Black Diamond is attempting to use its influence and control over the Debtors to divert value to its positions as an equity interest holder, lienholder, and DIP lender at the expense of creditors and other parties in interest.

33. With respect to the Gleacher Objection, as stated in the Preliminary Statement, Gleacher and the Second Lien Lenders are subject to an Intercreditor Agreement with Black Diamond dated March 19, 2010 whereby Gleacher and the Second Lien Lenders "waived all rights that it may have as a junior lien creditor." Given the relationship between Gleacher and Black Diamond, the Gleacher Objection ought to be viewed in context.

34. Gleacher objects that: (1) the Breakup Fee and Expense Reimbursement are too high; (2) the cap on Assumed Liabilities contained in the APA, specifically the amount of Cure Payments to be paid by Purchaser as opposed to Debtors, should be lifted; (3) Purchaser should be required to provide a deposit to be a Qualified Bidder; and (4) Gleacher should have broad consent rights with respect to the Sale process. Gleacher also states in its objection that:

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[7] *Objection of Second Lien Holders to Motion by Debtors Pursuant to 11 U.S.C. §§ 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (I) Approve (A) the Sale Transaction Pursuant to the Asset Purchase Agreement with Oreck Acquisition Holdings LLC, Free and Clear of Claim, Liens, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (II) (A) Establish Sale and Bidding Procedures; and (B) Schedule a Sale Approval Hearing*, filed on June 5, 2013 [Docket No. 247] (the "Gleacher Objection"); *Joinder of Black Diamond Commercial Finance, L.L.C. to Objections of (A) United States Trustee for the Middle District of Tennessee, (B) the Official Committee of Unsecured Creditors and (C) Prepetition Second Lien Lenders with Respect to the Motion by Debtors Pursuant to 11 U.S.C. §§ 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (I) Approve (A) the Sale Transaction Pursuant to the Asset Purchase Agreement with Oreck Acquisition Holdings LLC, Free and Clear of Claim, Liens, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (II) (A) Establish Sale and Bidding Procedures; and (B) Schedule a Sale Approval Hearing*, filed on June 5, 2013 [Docket No. 253] (the "Black Diamond Objection").

(1) secured creditors should be recognized as Qualified Bidders; and (2) the APA does not address the allocation of the cash proceeds of the Sale between the secured lenders. Purchaser has no objection to the Sale Procedures Order or APA being modified to accommodate the latter objections.

35. The reasonableness of the Breakup Fee and Expense Reimbursement have been addressed above in Purchaser's replies to the U.S. Trustee Objection and Committee Response. With respect to Gleacher's objection to the cap on Cure Payments to be paid by Purchaser rather than Debtors, just like the objection to the cap on assumed Warranty Claims raised by the Committee, Gleacher's objection is simply an effort to increase the Purchase Price paid by Purchaser under the APA. The cap on assumed cure liabilities is a negotiated aspect of the APA that was taken into account when determining the Purchase Price. If the cap is to be lifted, then the Purchase Price (and the corresponding Purchaser Price floor) must be decreased. Lifting the cap and leaving the Purchase Price static amounts to an increase in the Purchase Price. If the amount of consideration paid for the Debtors assets is to increase, then any increase must come through a competitive Auction, not an objection to the Sale Procedures.

36. With respect to Gleacher's objection that Purchaser should provide a deposit in order to be a Qualified Bidder, Purchaser has already expended over $1 million in fees and expenses, not to mention thousands of hours of effort, creating the Sale and opportunity for a competitive Auction in order to liquidate Gleacher's collateral. In light of these efforts, requiring that Purchaser provide an additional cash deposit is completely unreasonable.

37. Finally, Gleacher complains that it does not have broad consent rights with respect to the Sale. Gleacher is not the Debtors. Purchaser submits that providing Gleacher with broad consent rights over the Sale process would be inappropriate under Section 363 of the

Bankruptcy Code. To the extent Gleacher does not agree with the results of the Auction or other matters pertaining to the Sale, Gleacher's remedy should be to object, to the extent it has a right to do so.

D. **The Remaining Objections**[8]

38. The Remaining Objections are comprised of the QVC Objection and the Landlord Objections.

i. The QVC Objection

39. QVC is critical customer of the Debtors and will be a critical customer of Purchaser following consummation of the Sale. QVC objects to the entry of an order approving the Sale Procedures Motion to the extent such order does not provide that the winning bidder will honor certain warranty and return obligations for sales to QVC customers, maintain products liability insurance with respect to products sold during those sales, and indemnify and hold harmless QVC in connection with QVC's sale of Oreck products to its customers. (QVC Objection at 3).

40. Assuming Purchaser is the winning bidder, it is Purchaser's intention to assume the Debtors' contractual relationship with QVC immediately after the closing of the Sale and to continue to do significant business with QVC following the Sale, including by honoring the QVC warranty and return obligations, maintaining products liability insurance acceptable to QVC, and indemnifying QVC as appropriate. Purchaser is willing to modify the Bid Procedures

[8] The "Remaining Objections" are comprised of the *Objection of QVC, Inc. to Motion by Debtors Pursuant to 11 U.S.C. §§ 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (I) Approve (A) the Sale Transaction Pursuant to the Asset Purchase Agreement with Oreck Acquisition Holdings LLC, Free and Clear of Claim, Liens, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (II) (A) Establish Sale and Bidding Procedures; and (B) Schedule a Sale Approval Hearing*, filed on June 4, 2013 [Docket No. 224] (the "QVC Objection"); and the Objections and Joinders to Objections of various landlords [Docket Nos. 248-249, 254-257] (the "Landlord Objections").

and APA to accommodate QVC's valid concerns, subject to documentation in form and substance acceptable to Purchaser.

ii. The Landlord Objections

41. With respect to the Landlord Objections, the Landlords would like notice of the "actual" assumption of their leases prior to their deadline to object to such assumption. While this is understandable, Purchaser cannot decide whether it will "actually" assume a given contract or lease until Purchaser can confirm the agreed upon cure cost for that particular contract or lease. Purchaser's initial decisions regarding the assumption and rejection of executory contracts and unexpired leases, including proposed cure costs, will be transmitted to concerned parties via the Assumption and Assignment Notice within three (3) days of the Court's entry of an order granting the Sale Procedures Motion. The Assumption and Assignment Notice will initiate the process of negotiation and reconciliation of assumption terms and cure costs between Purchaser and hundreds of landlords and contract counterparties. If the Landlords do not agree with the proposed cure cost or the assumption and assignment of their leases, they must object in order to begin the process of negotiation and reconciliation. To the extent that reconciliation results in a cure cost that is prohibitive of Purchaser's assumption of the contract or lease, Purchaser will not assume the contract or lease. Purchaser therefore cannot provide the "actual" and "final" notice of which leases it will assume or reject prior to the objection deadline because landlord objections to the Assumption and Assignment Notice are an essential element of Purchaser making its final decision regarding assumption or rejection.

42. As previously stated with respect to the Committee Response, Purchaser is continuing in its intensive due diligence efforts and is working diligently to review Debtors' executory contracts and unexpired leases, determine appropriate cure costs, and make informed

and intelligent business decisions regarding assumption and rejection. It is Purchaser's sincere hope that this process can be substantially completed prior to the Auction. Purchaser has made and will continue make its best efforts in finalizing assumption and rejection decisions prior to the Auction.

43. The Landlords would also like: (1) for the Assumption and Assignment Notice to be filed publicly on the Court's Docket; (2) to receive notice if it is determined that the Auction will not go forward; (3) if the Auction does go forward, to receive notice as to the winner of the Auction; and (4) additional information regarding adequate assurance of future performance from the winning bidder. Purchaser views these requests as reasonable and has no objection to the Sale Procedures being modified to accommodate the Landlords' reasonable requests.

CONCLUSION

44. Purchaser's offer to acquire substantially all of the Debtors' assets for $22 million represents the highest, best, and currently only offer on the table. It is subject to competitive bidding and an auction and may potentially give rise to higher and better offers. It carries with it numerous non-monetary benefits to the Debtors and other parties in interest, such as the continued employment of approximately 650 of the Debtors' employees, the continued operation of the Debtors' Cookeville factory, and the existence of a continued customer or tenant for suppliers, landlords, and other contract counterparties. In exchange for the benefits Purchaser is conferring on the estates and its creditors, Purchaser has bargained for certain protections, such as caps on certain assumed liabilities and the like. If a party is willing to consummate the Sale without these protections, they should outbid Purchaser at the Auction next month. The Sale process should not, however, be derailed by parties not acting the best interests of the Debtors and the estates.

WHEREFORE, For the reasons stated in this Reply and in the Sale Procedures Motion, the Objections should be overruled and Sale Procedures Motion granted.

Respectfully submitted this 10th day of June, 2013:

By: /s/David W. Houston, IV_____
David W. Houston, IV (#020802)
Faisal Delawalla (#029126)
BURR & FORMAN LLP
700 Two American Center
3102 West End Avenue
Nashville, TN 37203
Telephone: (615) 724-3215
Facsimile: (615) 724-3315
Email: dhouston@burr.com
fdelawalla@burr.com

and

MCKENNA LONG & ALDRIDGE LLP

/s/ Christopher F. Graham_____
Christopher F. Graham
David E. Gordon
230 Park Avenue
New York, New York 10169
Telephone: (212) 905-8348
Facsimile: (212) 922-1819
Email: cgraham@mckennalong.com
dgordon@mckennalong.com

Attorneys for Oreck Acquisition Holdings LLC

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2013, a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

/s/ David W. Houston, IV
David W. Houston, IV