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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	:	Chapter 11
LandAmerica Financial Group, Inc., et al.,	:	Case No. 08-35994
Debtors.	:	Jointly Administered

OBJECTION TO DEBTOR'S MOTION FOR ORDER: (A) SCHEDULING EXPEDITED SALE HEARING TO CONSIDER APPROVAL OF SALE OF DEBTOR'S STOCK IN CERTAIN UNDERWRITING SUBSIDIARIES; (B) APPROVING RELATED STOCK PURCHASE AGREEMENT; (C) APPROVING FORM AND MANNER OF NOTICE OF SALE HEARING; AND (D) GRANTING RELATED RELIEF

Stewart Information Services Corporation ("Stewart"), a creditor and party-in-interest herein, hereby submits its objection (the "Objection") in opposition to the confirmation and

approval of the sale of the Debtor's stock in the Underwriting Companies[1] to Fidelity National Title Insurance Company and Chicago Title Insurance Company (collectively, "Fidelity"). In support of its objection, Stewart states as follows:

I.
INTRODUCTION

1. It is unfortunate that Stewart is required to pursue an objection in this matter at all. Quite candidly, it is fairly uncommon for a Debtor to seek to conduct a sale of such a significant business unit without at least establishing some form of bid and auction protocols so that competing bidders have some degree of assurance that their bids will be duly considered and presented to the Court, creditors and other and parties-in-interest. However, since the Debtor has not elected to establish the usual procedures in this case (and has not been willing to extend the deadline for this objection),[2] Stewart, a creditor and party-in-interest (as well as a competing bidder), has little choice but to preserve its rights and object to the Sale Motion principally on the grounds that Stewart's offer is a more valuable offer for certain of the Debtor's affiliates than that contemplated in the Sale Motion.

II.
BACKGROUND

2. On the Petition Date, the Debtor and Fidelity entered into the Stock Purchase Agreement (the "SPA") to effectuate the Sale. The SPA contains two significant contingencies to closing. First, it obligates the Debtor and Fidelity to "cause the expiration or termination of the applicable waiting periods, or receipt of required authorizations, as applicable, under the

[1] Capitalized terms not otherwise defined in this Opposition shall have the definitions ascribed to them in the Debtor's Motion for Order (a) Scheduling Expedited Sale Hearing to Consider Approval of Sale of Debtor's Stock in Certain Underwriting Subsidiaries; (b) Approving Related Stock Purchase Agreement; (c) Approving Form and Manner of Notice of Sale Hearing; and (d) Granting Related Relief (the "Sale Motion").

[2] Counsel for Stewart requested an extension of the objection deadline from the Debtor's counsel on the morning of Wednesday, December 10, 2008 which was denied by Debtor's counsel later that morning.

HSR Act or any other Regulatory Laws as soon as practicable." SPA, § 5.7(c). The SPA conditions the closing of the Sale on the expiration of this waiting period (SPA, § 6.1(b)) and the Sale may be terminated if this waiting period has not expired by the End Date or the Termination Date (both as defined in the SPA). SPA, § 7.1(iii). Second, the SPA conditions closing on obtaining all Regulatory Approvals (as defined in the SPA) required to complete the Sale including, among other Regulatory Approvals, the approval of the Sale by the Nebraska Department of Insurance (the "NEDOI"). SPA, § 6.1(b). The Sale may be terminated if, among other things, the NEDOI has denied approval of the Sale. SPA, § 7.1(iii). These conditions to closing and events of termination pose a significant, if not insurmountable, barrier to closing the Sale of the Shares to Fidelity.

3. Attached to this Objection, as Exhibit A, is the Form "A" filing (the "Form A")[3] that Stewart has made with the State of Nebraska seeking approval of the acquisition of the Debtor's stock in the two Underwriting Companies, Commonwealth Land Title Insurance Company ("Commonwealth") and Lawyers Title Insurance Corporation ("LTIC"), assignment of the software used in the operations of Commonwealth and LTIC, as well the assets of the Debtor known as Southland ("Southland") and One Stop ("One Stop" and, together with the Debtor's shares of Commonwealth and LTIC, and Southland, the "Assets"). The principal business terms by which Stewart would seek to acquire the Assets are set forth in the Form A, and are essentially comprised of: (i) a cash payment to the Debtor of $5 million; (ii) the delivery of shares of Stewart common stock valued at $20 million to the Debtor; and (iii) the mutual forgiveness of all inter-company obligations, comprised principally of a $134.1 million payable, as of September 30, 2008, from the Debtor to the Underwriting Companies. In addition, as set

[3] Stewart anticipates that, prior to the Sale Hearing, it will provide the Debtor with an executed stock purchase agreement that is (except for as set forth herein) on terms substantially similar to the Fidelity SPA.

forth in more detail herein, Stewart will be recapitalizing the Underwriting Companies with approximately $70 million in value as required by the NEDOI, an amount equal to the amount of cash shifted from the assets of Commonwealth and LTIC to the Debtor at the end of the third quarter. As of the filing of this Objection, upon information and belief, Stewart is confident that it will be able to timely receive all required governmental approvals, including those of the Federal Trade Commission and the NEDOI, within the closing deadline as contemplated in the Sale Motion.

III.
OBJECTION

4. Distilled to its essence, Stewart's principal objection is simple; namely, that the Stewart proposal is the highest and best offer for the Assets because the Stewart proposal has a very high likelihood of actually closing, whereas the regulatory impediments facing the Fidelity offer would appear insurmountable, at least within the closing timeframe the Debtor is proposing. Accordingly, the Court should deny the Sale Motion in its current form and approve the sale of the Assets to Stewart.

5. A bankruptcy court generally is afforded wide latitude to decide whether to confirm and approve or deny a debtor's proposed sale of assets pursuant to section 363 of the Bankruptcy Code. In re Chung King, Inc., 753 F.2d 547, 549 (7th Cir. 1985). Generally, a debtor may sell assets outside the ordinary course of business when it has demonstrated that the sale of such assets represents the sound exercise of the debtor's business judgment. In re WBQ Partnership, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995); In re Delaware & Hudson Railway Co., 124 B.R. 169, 175-76 (Bankr. D. Del. 1991).

6. It is well established that the debtor has a duty to maximize the value obtained from a sale. In re Bakalis, 220 B.R. 525, 532 (Bankr. E.D.N.Y. 1998). In maximizing the value

obtained from such a sale, however, the debtor should not expose the assets subject to the sale to risk. Id. Thus, the Court may substitute its judgment for the business judgment of the Debtor "for the purpose of safeguarding the interest of parties concerned, such as creditors and bidders." In re Blue Coal Corp., 59 B.R. 157, 163 (Bankr. M.D. Pa. 1986).

A. It is Unlikely That the Debtor Will Be Able to Close the Transaction Contemplated by the SPA.

7. Certain of the SPA's conditions to close will likely never be met. Specifically, the closing of the SPA is conditioned upon the Debtor: (a) obtaining all appropriate Regulatory Approvals, including the approval of the NEDOI, that are required to sell the Shares to Fidelity; and (b) the expiration of the HSR Act waiting period. SPA, § 6.1(b) It appears highly unlikely that the Debtor will be able to meet both of these conditions to closing.

8. Two of the Underwriting Companies, Commonwealth and LTIC, are insurance companies organized under the laws of the State of Nebraska. The Debtor's proposed sale of the stock of both Commonwealth and LTIC to Fidelity thus requires Regulatory Approvals from the NEDOI. Indeed, the SPA requires that the NEDOI approve the sale of the Shares to Fidelity as a condition precedent to the closing of the Sale. As of the date of this Objection, the Debtor has been unable to obtain the requisite Regulatory Approvals from the NEDOI, and the NEDOI has informed Stewart that the NEDOI will not approve a sale of Commonwealth and LTIC as it is currently structured in the SPA. Stewart believes that the NEDOI's written objection to the Sale will be filed with the Court shortly. The Sale quite simply cannot close, both legally and pursuant to the terms of the SPA, over the NEDOI's objection.

9. Closing the sale of the Shares to Fidelity is also unlikely because there exists the very real possibility that the Department of Justice (the "DOJ") or the Federal Trade Commission (the "FTC") will seek to enjoin the Sale, arguing that Fidelity's acquisition of the Shares will

have an adverse effect on competition. Even if the DOJ or FTC do not enjoin the sale, however, the HSR Act's applicable waiting period may cause a rapid, significant, and permanent decline in the value of the Underwriting Companies.

10. Section 6.1(b) of the SPA conditions the closing of the Sale of the Shares to Fidelity on the expiration of the HSR Act's waiting period. SPA, § 6.1(b). In light of the size of the transaction contemplated by the SPA, the SPA requires that both the Debtor and Fidelity file a Notification and Report Form required under the HSR Act. SPA, § 5.7(c). The filing of this notification commences a 30-day waiting period before the Sale can close to enable the FTC or the DOJ to review the Sale to assess its competitive impact. 15 U.S.C. § 18a(b)(1)(B). This 30-day period is shortened to 15 calendar days if the acquired party is in bankruptcy. Bankruptcy Code § 363(b)(2)(B).

11. After they have reviewed the Notification and Report Form, the DOJ or the FTC may issue a written "second request" and require the Debtors and Fidelity to provide them with additional information and documents regarding the Sale and its potential competitive impact. 15 U.S.C. § 18a(e)(1)(A). The issuance of a "second request" will result in an additional waiting period until the Debtor and Fidelity certify that they are in substantial compliance with the voluminous demands for information typically contained in a second request. It is not uncommon for compliance with a second request to require months of additional work on the part of parties to a transaction.

12. Given the apparent market concentration that the contemplated transaction with Fidelity would create, it is likely that the DOJ or the FTC may issue a second request in the near term. Of course, the delay caused by the DOJ's or FTC's issuance of a second request will make the timely closing of the Fidelity transaction practically impossible. Indeed, as noted by the

Debtor, "time is of the essence. Each day that passes in which the Sale is not consummated increases exponentially the risk of loss of value at the Underwriting Companies." Motion, ¶ 18. "[I]t is urgent that the Underwriting Companies be sold now. If they are not . . . there will be a significant material degradation in value." Motion, ¶ 19. It is not in the best interest of the estate, its creditors, or the other parties-in-interest to allow the almost inevitable regulatory delays inherent in the Fidelity transaction to cause and exacerbate a significant and material further degradation in the value of the Underwriting Companies.

B. The Transaction Contemplated by the Stewart Proposal is the Highest and Best Offer for the Assets.

13. The Stewart proposal is the highest and best offer for the Assets. To recap, Stewart is offering a $5 million cash payment, the forgiveness of $134.1 million of inter-company debt (as of September 30, 2008), and the ability of the estate's creditors to participate in the success of the purchased companies via a substantial, $20 million equity stake in Stewart at a substantial discount to tangible book. By comparison, Stewart would respectfully suggest that Fidelity's competing offer, though impressive in the nominal magnitude of the compensation (approximately $298 million), must nevertheless be deeply discounted on a real basis given the tremendous regulatory hurdles facing its consummation. The value of the Shares has been described as a melting ice cube. There is no certainty that, even if all of the contingency hurdles in Fidelity's SPA were met, the transaction as proposed in the SPA would be achieved as the value of the asset would then be much lower. While the likelihood of the sale of the Shares to Fidelity actually closing appears miniscule, there is a near certainty that Stewart will be able close its proposed transaction within days of this Court's approval of the sale of the Assets to Stewart. In this regard, it should be noted that NEDOI has already informed Stewart that it will have no objection to Stewart's acquisition of the Assets, and that the much smaller market

concentration created by Stewart's potential acquisition of the Assets significantly decreases (if not eliminates) the possibility that the DOJ or FTC will issue a second request or that they will sue to enjoin the sale of the Assets.

C. The Court Should Accept and Confirm the Sale of the Assets as Proposed by Stewart.

14. Courts faced with competing bids for a debtor's assets have not hesitated to accept a bid, even a lower but more certain bid, in the face of an inherently riskier contingent bid. See In re Financial News Network, Inc., 980 F.2d 165, 169-70 (2d Cir. 1992) (where there are competing bids, the court has "broad discretion and flexibility" to determine the outcome, particularly where bids are complex and the determination which is the "highest" and/or "best" is not always clear); see also In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983) (bankruptcy courts should "consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor" and other constituencies in ruling on a sale of the debtor's assets pursuant to Section 363(b)); In re United Healthcare, Case No. 97-1159, 1997 WL 176574, * 5 (D.N.J. Mar. 26, 1997) ("the law allows the bankruptcy court to entertain higher and better offers, which means that the bankruptcy court may not focus solely on price."). For instance, in Bakalis, the court confirmed the sale of certain of the debtor's assets to the second highest bidder based on the court's evaluation of the risks inherent in the conditions attached to the highest dollar bid. Bakalis, 220 B.R. at 532-34. Similarly, in Broadmoor Place Investments, the bankruptcy court was confronted with two bids for the debtor's assets, one with a higher purchase price but which contained a number of contingencies, and one with a lower bid that did not contain these contingencies. The bankruptcy court awarded the sale to the purchaser who offered the lower purchase price for the assets because it contained no contingencies and could

close immediately. G-K Dev. Co. v. Broadmoor Place Invs., L.P. (In re Broadmoor Place Invs. L.P.), 994 F.2d 744, 745 (10th Cir. 1993).

15. As stated above, it is unlikely that the sale of the Shares to Fidelity as contemplated by the SPA will close timely, if at all. The regulatory impediments to the sale of the Shares to Fidelity, however, are simply not found in the sale of the Assets to Stewart. Stewart has received assurances from the NEDOI that it will not object to the sale of the Assets to Stewart, and Stewart is confident that its smaller market share will result in non-action by the FTC.

16. Stewart respectfully requests that this Court treat this Objection as a written memorandum of points and authorities or waive any requirement that this Objection be accompanied by a written memorandum of points and authorities as described in Rule 9013-1(H)(2) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Eastern District of Virginia.

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IV.
CONCLUSION

17. For these reasons, Stewart would respectfully request that: (i) the Motion be denied to the extent that it contemplates a sale of the Shares to Fidelity; (ii) the Court determine the Stewart proposal as the highest and best offer for the Assets; and (iii) the Court grant such further relief as it deems is just.

Dated: December 11, 2008
Richmond, Virginia

STEWART INFORMATION SERVICES CORPORATION

/s/ Henry (Toby) P. Long, III

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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2008, a true and complete copy of the foregoing Objection to Debtor's Motion for Order: (a) Scheduling Expedited Sale Hearing to Consider Approval of Sale of Debtor's Stock in Certain Underwriting Subsidiaries, (b) Approving Related Stock Purchase Agreement, (c) Approving Form and Manner of Notice of Sale Hearing, and (d) Granting Related Relief was filed and served on all persons receiving electronic notices in these cases and was sent by first class mail, postage prepaid, to the entities at the addresses indicated below.

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