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IT IS SO ORDERED.

Dated: May 16, 2018



John E. Hoffman, Jr.
John E. Hoffman, Jr.
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:) Chapter 11
)
AcuSport Corporation,) Case No. 18-52736
)
Debtor.) Honorable John E. Hoffman, Jr.

ORDER (I) ESTABLISHING BIDDING PROCEDURES FOR THE SALE OF CERTAIN OF DEBTOR’S ASSETS; (II) APPROVING BREAK-UP FEE; (III) ESTABLISHING PROCEDURES RELATING TO THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (IV) APPROVING FORM AND MANNER OF THE SALE, CURE, AND OTHER NOTICES; AND (V) ESTABLISHING AUCTION AND HEARING DATES

Upon the motion [Docket No. 19] (the “*Motion*”)¹ for entry of an order (this “*Order*” or the “*Bidding Procedures Order*”): (i) establishing bidding procedures, which are attached as Exhibit 1 hereto (the “*Bidding Procedures*”), to be employed in connection with the proposed sale (the “*Sale*”) of certain of Debtor’s assets (the “*Proposed Sale Assets*”); (ii) approving the form of Asset Purchase Agreement, dated as of April 30, 2018, by and between Debtor and Ellett

¹ Capitalized terms, unless otherwise defined herein, shall have the meanings ascribed to them in the Motion.

Brothers, LLC (“*Proposed Buyer*”), including the proposed break-up fee and expense reimbursement (as modified herein), together with all related documents and agreements as well as all exhibits, schedules, and addenda thereto (the “*Stalking Horse APA*”); (iii) establishing procedures relating to the assumption and assignment of executory contracts and unexpired leases (the “*Assumption and Assignment Procedures*”); (iv) approving the form and manner of the sale, cure, and other notices; and (v) establishing auction and hearing dates (collectively, the “*Bidding Procedures Relief*”); and the Court having considered the Motion and the arguments of counsel made at the hearing on the Motion (the “*Bidding Procedures Hearing*”); and due and sufficient notice of the Bidding Procedures Hearing and the relief sought therein having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion and all objections thereto (the “*Objections*”); and it appearing that the Bidding Procedures Relief requested in the Motion is in the best interest of Debtor, its estate, its creditors and other parties in interest; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby,

FOUND AND DETERMINED THAT:

A. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case and this Motion in the Southern District of Ohio is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested in this Motion are sections 105, 363, 364, 365, and 503 of title 11 of the United States Code (the “*Bankruptcy Code*”), rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and rule 6004-1 of the Local Rules of Bankruptcy Procedure for the Southern District of Ohio (the “*Local Rules*”).

B. The relief granted herein is in the best interests of Debtor, its estate and creditors, and other parties in interest.

C. Debtor has articulated good and sufficient business reasons for the Court to (i) approve the form of Stalking Horse APA and Proposed Buyer as the Stalking Horse Bidder (as modified by the terms of this Order), (ii) approve the Bidding Procedures, the Break-up Fee and Expense Reimbursement, the Assumption and Assignment Procedures, the form and manner of notice as set forth in the Motion, the Auction, and the Sale Hearing as set forth herein and as modified by this Order, (iii) set the date for the Auction, the Sale Hearing, and the other dates set forth herein, and (iv) grant the relief requested in the Motion as provided herein.

D. Due, sufficient and adequate notice of the Bidding Procedures Hearing and the relief granted in this Order has been given in light of the circumstances and the nature of the relief requested, and no other or further notice thereof is required. Debtor's notice of the Motion and the relief requested in the Motion for which approval was sought at the Bidding Procedures Hearing is appropriate and reasonably calculated to provide all interested parties with timely and proper notice under Bankruptcy Rules 2002, 4001, 6004, and 6006, and no other or further notice of, or hearing on, this Order and that portion of the Motion being approved hereby is required.

E. Debtor's proposed notice of the Sale, the Cure Notice, and other notices contemplated hereunder with respect to the Sale, the Auction, the Assumption and Assignment Procedures, and the Sale Hearing are appropriate and reasonably calculated to provide all interested parties with timely and proper notice thereof and no further notice of each is necessary or required.

F. The Bidding Procedures, substantially in the form attached hereto as Exhibit 1, and incorporated herein by reference as if fully set forth herein, and the Break-up Fee and Expense Reimbursement, each as modified herein, are fair, reasonable, and appropriate, were

negotiated in good faith by Debtor and Proposed Buyer and represent the best method for maximizing the value of Debtor's estates in connection with the Sale.

G. The Break-up Fee and Expense Reimbursement, as modified herein, and to the extent payable under the Stalking Horse APA, (i) shall be deemed an actual and necessary cost of preserving Debtor's estate within the meaning of section 503(b) of the Bankruptcy Code, (ii) are of substantial benefit to Debtor's estate, (iii) are reasonable and appropriate, including in light of the size and nature of the transactions and the efforts that have been and will be expended by Proposed Buyer, (iv) have been negotiated by the parties and their respective advisors at arm's length and in good faith, and (v) are necessary to ensure that Proposed Buyer will continue to pursue the proposed Sale of the Proposed Sale Assets. The Break-up Fee and Expense Reimbursement, as modified herein, are material inducements for, and a condition of, Proposed Buyer's entry into the Stalking Horse APA. Proposed Buyer is unwilling to commit to purchase the Proposed Sale Assets under the terms of the Stalking Horse APA unless Proposed Buyer receives the Break-up Fee and Expense Reimbursement, as modified herein.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED with the modifications and on the terms set forth herein.
2. The Objection of the United States Trustee to the Motion (Dkt. No. 98) concerning the superpriority status of the Break-up Fee is overruled for the reasons stated on the record. All other Objections to the Motion, to the extent not resolved, waived, or withdrawn, and all reservations of rights included therein, are hereby overruled and denied on the merits.
3. The Bidding Procedures attached hereto as Exhibit 1, including references therein to the Stalking Horse APA, are hereby APPROVED and shall apply with respect to the proposed Sale and the assumption and assignment of contracts and unexpired leases contemplated by the

Motion. Debtor is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

4. As it relates to the Proposed Sale Assets, the form of Stalking Horse APA is approved, except that (a) the amount of the “Break-up Fee” set forth therein shall be Three Hundred Thousand no/100 Dollars (\$300,000.00), and (b) the amount of the “Expense Reimbursement” set forth therein shall be limited to not more than Three Hundred Thousand no/100 Dollars (\$300,000.00). Proposed Buyer is approved as the Stalking Horse Bidder. With respect to the Expense Reimbursement, Proposed Buyer shall provide a written narrative to the Debtor, the Official Committee of Unsecured Creditors (“**Committee**”), the agent for the Debtor’s primary secured lender group, Wells Fargo Bank, National Association (“**Agent**”), and the Office of the United States Trustee for the Southern District of Ohio (the “**US Trustee**”) for those fees and expenses incurred by the professionals retained by Proposed Buyer prior to Closing, and include a statement from each such professional certifying the amount of fees and expenses incurred by such party with respect to the Sale and the Sale process. Neither Proposed Buyer nor its professionals shall be required to submit detail (including, *inter alia*, time statements or sheets) with respect to such Expense Reimbursement.

5. Proposed Buyer shall have an allowed superpriority administrative expense claim with respect to Debtor’s obligation to pay the Break-up Fee and Expense Reimbursement, pursuant to Sections 503(b) and 507(a)(2) of the Bankruptcy Code, without further order of the Court. Notwithstanding the foregoing, in the event the Break-up Fee and Expense Reimbursement become due and payable, payment thereof shall be made in accordance with, and at the times specified in, the Stalking Horse APA.

Auction and Bidding Procedures

6. All Proposed Bids (as defined in the Bid Procedures) shall be submitted by each Proposed Bidder (as defined in the Bid Procedures) on or before June 12, 2018 in the manner set forth in the Bid Procedures. Debtor is authorized (a) to conduct an auction (the “*Auction*”) with respect to the Proposed Sale Assets and/or particular lots of Debtor’s assets. The Auction, if any, shall be conducted on June 14, 2018 at 11:00 a.m. EDT, at the offices of Allen Kuehnle Stovall & Neuman LLP, 17 South High Street, Suite 1220, Columbus, Ohio 43215 (the “*Auction Site*”), or such other place and time as Debtor shall notify all Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction. Debtor is authorized, subject to the terms of this Bidding Procedures Order, to take all actions necessary, in the discretion of Debtor, to conduct and implement such Auction.

7. Debtor may, in consultation with the Committee and the Agent, (a) select, in its business judgment, pursuant to the Bidding Procedures, the highest or otherwise best offer(s) and the Successful Bidder or Bidders, and (b) reject any bid that, in Debtor’s business judgment, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules or the Bidding Procedures, or (iii) contrary to the best interests of Debtor and its estate, creditors, interest holders or parties in interest.

8. The failure to specifically include or reference any particular provision, section or article of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such procedures, it being the intent of this Court that the Bidding Procedures be authorized and approved in their entirety.

9. Proposed Buyer is deemed a Qualified Bidder, and the bid of Proposed Buyer for the Proposed Sale Assets is deemed a Qualified Bid. In the event there are no other Qualifying Bids, the Debtor shall accept the bid of the Proposed Buyer.

10. Debtor shall return the Deposit (as defined in the Stalking Horse APA) to Proposed Buyer and pay to Proposed Buyer the Break-up Fee and Expense Reimbursement, as applicable, and as modified herein, as and when provided for pursuant to the terms of the Stalking Horse APA.

Additional Notice Provisions

11. Within one (1) business day after the entry of this Bidding Procedures Order (the “*Mailing Date*”) or as soon thereafter as practicable, the Debtor shall serve a copy of this Bidding Procedures Order, along with the Bidding Procedures attached hereto as Exhibit 1, by first-class mail, postage prepaid, upon: (a) the US Trustee; (b) counsel for the Committee; (c) counsel for Agent; (d) all parties that were served with notice of the Motion (but not including the top-20 list of Debtor’s creditors); (e) all parties that have expressed interest in a purchase or acquisition of the Proposed Sale Assets; and (f) all other parties requesting notice in the Case (collectively, “*Sale Notice Parties*”). Except for the required notice expressly provided in this paragraph, Debtor shall not be required to provide any further notice of the Motion and/or the relief requested therein, the Bidding Procedures, this Bidding Procedures Order, the Auction, or the relevant dates and deadlines with respect to the foregoing.

Assumption and Assignment Procedures

12. The Assumption and Assignment Procedures are hereby APPROVED.

13. The form of notice of Cure Amounts (as defined below) attached hereto as Exhibit 2 is hereby APPROVED (the “*Cure Notice*”).

14. Within five (5) business days after the entry of this Bidding Procedures Order or as soon as practicable thereafter, Debtor will file with this Court and serve the Cure Notice on each counterparty to an executory contract or unexpired lease related to the Proposed Sale Assets (each a “*Proposed Buyer Designated Contract*”), which Cure Notice shall: (a) state the amounts

sufficient to cure defaults, if any, to assume such contracts or leases in accordance with Section 365 of the Bankruptcy Code (the “**Cure Amounts**,” including those amounts set forth in any supplemental notice provided pursuant Paragraph 18 hereof); (b) notify the non-Debtor counterparty that such party’s contracts or leases may be assumed and assigned to Successful Bidder of the Proposed Sale Assets at the conclusion of the Auction; (c) state the date of the Sale Hearing and that objections to any of the Cure Amounts or to assumption and assignment will be heard at the Sale Hearing, or at a later hearing, as determined by Debtor; and (d) state the deadline by which the non-Debtor counterparty shall file an objection to the Cure Amounts or to the assumption and assignment of applicable contracts or leases; provided, however, that the inclusion of a contract, lease, or agreement on the Cure Notice shall not constitute an admission that such contract, lease, or agreement is an executory contract or unexpired lease or that it will, in fact, be assumed and/or assigned. Debtor reserves all rights, claims, and causes of action with respect to the contracts, leases, and agreements listed on the Cure Notice.

15. Any objection to the Cure Amounts or the assumption and assignment of the applicable Proposed Buyer Designated Contracts (or any Additional Designated Contracts (as defined below)) must be filed with the Court on or before June 12, 2018, at 4:00 p.m. (Eastern Time) (the “**Cure Objection Deadline**”) and served so as to be actually received on or before the Cure Objection Deadline by: (a) the US Trustee; (b) counsel for the Committee; (c) counsel for the Agent; (d) counsel for Debtor; (e) counsel for the Proposed Buyer; and (f) all other parties requesting notice in the Case (collectively, “**Cure Notice Parties**”). Any such objection must also state (x) the basis for such objection and (y) with specificity what Cure Amount the non-Debtor counterparty to the relevant executory contracts or unexpired leases believes is required (in all cases with appropriate documentation in support thereof).

16. Any objection solely to the Cure Amounts, or any subset thereof, may not prevent or delay Debtor's assumption and assignment of assumed and assigned contracts or leases. If an entity objects solely to one or more Cure Amounts, Debtor may, with the consent of the relevant Successful Bidder, hold the total amounts claimed by such objecting non-Debtor counterparty in reserve pending further order of the Court or mutual agreement of the parties. So long as the applicable amount is held in reserve, and if there are no other unresolved objections to assumption and assignment of the applicable assumed and assigned contract or lease, Debtor may, without further delay, assume and assign such contract or lease. Under such circumstances, the objecting non-Debtor counterparty's recourse is limited to funds held in reserve.

17. If no objection to the Cure Amounts is timely received on or before the Cure Objection Deadline, the Cure Amounts set forth on the Cure Notice (and any supplemental Cure Notice served pursuant to Paragraph 18 hereof) shall be controlling notwithstanding anything to the contrary in any assigned contract or lease or other document as of the date of the Cure Notice.

18. On or before June 5, 2018, each Potential Bidder (as defined in the Motion and the Bid Procedures) shall provide to Debtor a list of those executory contracts and unexpired leases that such Potential Bidder desires to have assumed and assigned to such Potential Bidder at closing pursuant to Section 365 of the Bankruptcy Code (assuming such Potential Bidder becomes or is designated as both a Qualified Bidder and a Successful Bidder following the Auction). To the extent the Potential Bidder Designated Contracts includes additional executory contracts or unexpired leases (each an "***Additional Designated Contract***") in addition to Proposed Buyer Designated Contracts, Debtor shall provide preliminary and qualified notice (in substantially the same form as attached hereto as Exhibit 2), on or before June 7, 2018, to all counterparties to such Additional Designated Contracts as to the deadline to object to the

assumption and assignment of their Additional Designated Contract and the proposed cure amount to be paid to such counterparty. Debtor shall reserve all rights, depending on the results of the Auction, to withdraw such notice and elect not to assume and assign any Additional Designated Contract to the extent each Potential Bidder (or Potential Bidders) is not designated or approved as a Qualified Bidder (or a Successful Bidder).

19. On or before June 7, 2018, Debtor shall file with the Court: (a) the list of Additional Designated Contracts and Proposed Buyer Designated Contracts (to the extent applicable) designated by each Potential Bidder (or Potential Bidders), and (b) a description of each Potential Bidder and information as to each Potential Bidder's ability to perform Debtor's obligations under each Additional Designated Contract and each Proposed Buyer Designated Contract (to the extent applicable).

20. To the extent that any non-Debtor counterparty wishes to object to the adequate assurance of future performance by the Stalking Horse Bidder under any Proposed Buyer Designated Contracts (to the extent applicable), then such non-Debtor counterparty shall file a written objection with the Court and serve on the Cure Notice Parties so that such objection is received no later than the Cure Objection Deadline. Debtor shall promptly provide notice of all such objections to the Stalking Horse Bidder.

21. To the extent that any non-Debtor counterparty wishes to object to the adequate assurance of future performance by any Qualified Bidder other than the Stalking Horse Bidder under any applicable Additional Designated Contracts and Proposed Buyer Designated Contracts (to the extent applicable), then such non-Debtor counterparty shall file a written objection with the Court and serve on the Cure Notice Parties so that such objection is received no later than June 14, 2018 at 4:00 p.m. (Eastern Time). Debtor shall promptly provide notice of all such objections to each Successful Bidder (to the extent applicable).

22. To the extent that any non-Debtor counterparty does not timely file and serve an objection as set forth above herein, such counterparty will be: (a) deemed to have consented to the Cure Amounts, if any, set forth in the Cure Notice (or any supplemental Cure Notice provided pursuant to Paragraph 18 hereof); (b) barred, estopped, and enjoined from asserting any additional Cure Amounts under any assumed and assigned executory contracts or unexpired leases; (c) barred from objecting to the assumption and assignment of the applicable assumed and assigned executory contracts or unexpired leases to Successful Bidder; and (d) barred from objecting to adequate assurance of future performance by the assignee.

Additional Provisions

23. Debtor is authorized and empowered to take such actions as may be necessary to implement and effect the terms and requirements established under this Bidding Procedures Order.

24. A Sale Hearing to approve the Sale to any Successful Bidder, free and clear of all interests, shall be held on June 15, 2018 at 11:00 a.m. (Eastern Time), unless otherwise continued upon request of Debtor. To the extent no bidders (other than the Proposed Buyer) qualify as Qualified Bidders on or before June 12, 2018, then a Sale Hearing to approve the Sale to the Proposed Buyer, free and clear of all interests, shall be held on June 14, 2018 at 11:00 a.m. (Eastern Time) (unless otherwise continued upon request of Debtor). Debtor shall provide notice via overnight mail to (a) all Cure Notice Parties; (b) the US Trustee; (c) counsel for the Committee; (d) counsel for the Agent; (e) any party filing an objection to the Sale, if any; and (f) all parties specifically requesting notice of the June 14, 2018 Sale Hearing on or before June 13, 2018 to the extent no Proposed Bidder becomes a Qualified Bidder (and therefore Debtor cancels the Auction).

25. Objections, if any, to any Sale must be filed with this Court by 4:00 p.m. (Eastern Time) on June 12, 2018 and served by overnight mail upon the Sale Notice Parties and by electronic mail upon (a) the US Trustee (MaryAnne.Wilsbacher@usdoj.gov); (b) counsel for the Committee (tomf@goldmclaw.com); (c) counsel for Agent (jeremy.downs@goldbergkohn.com); and (d) counsel for Debtor (jason.dejonker@bclplaw.com and allen@aksnlaw.com).

Notwithstanding the foregoing, any objection to any designation of a Successful Bidder (other than the Proposed Buyer) can be raised by any party-in-interest prior to or during the Sale Hearing.

26. Nothing in this Order of the Bidding Procedures authorizes any particular sale or other use of a creditor's collateral. Such matters are subject to further order of this Court.

27. This Bidding Procedures Order shall be binding on and inure to the benefit of Debtor, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estate of Debtor.

28. This Bidding Procedures Order shall constitute the findings of fact and conclusions of law of this Court.

29. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014, or otherwise, this Court, for good cause shown, orders that the terms and conditions of this Bidding Procedures Order shall be immediately effective and enforceable upon its entry.

30. The requirement set forth in Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of Ohio that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

31. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Bidding Procedures Order, including, but not limited to, any matter, claim or dispute arising from or relating to the Bidding Procedures and the implementation of this Bidding Procedures Order.

IT IS SO ORDERED.

Submitted By:

/s/ Thomas R. Allen

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Copies to Default List.

EXHIBIT 1

Bidding Procedures

[attached]

Bidding Procedures

Set forth below are the bidding procedures (the “***Bidding Procedures***”) to be employed with respect to the sale (the “***Sale***”) of the assets (the “***Assets***”) of AcuSport Corporation, debtor and debtor in possession (“***Debtor***”) in the chapter 11 case pending in the U.S. Bankruptcy Court for the Southern District of Ohio (the “***Bankruptcy Court***”) under Case Number 18-52736.

On May 1, 2018, Debtor filed a *Motion for an Order (I) Establishing Bidding Procedures for the Sale of Certain of Debtor’s Assets; (II) Approving Break-up Fee; (III) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Approving Form and Manner of the Sale, Cure and Other Notices; and (V) Establishing Auction and Hearing Dates* (the “***Bidding Procedures Motion***”) (Dkt. No. 19). On May 14, 2018, the Bankruptcy Court entered an order approving the Bidding Procedures set forth herein (the “***Bidding Procedures Order***”). The Bidding Procedures Order also set June 15, 2018 as the date and time the Bankruptcy Court will conduct a sale hearing (the “***Sale Hearing***”). At the Sale Hearing, Debtor shall seek entry of an order from the Bankruptcy Court authorizing and approving the Sale of certain of the Assets to Ellett Brothers, LLC (“***Proposed Buyer***”), pursuant to the terms of that certain Asset Purchase Agreement, dated as of April 30, 2018, by and between Debtor and Proposed Buyer (as modified by the Bidding Procedures Order and together with all related documents and agreements as well as all exhibits, schedules, and addenda thereto, the “***Stalking Horse APA***”)² or another Qualified Bidder (as defined below) that Debtor determines to have made the highest or best offer for such Assets.

Assets to be Sold

Debtor is offering for sale the Assets, and Qualified Bidders may submit bids for substantially all or certain of the Assets.

The Bidding Process

Debtor and its advisors, in consultation with the Official Committee of Unsecured Creditors (the “***Committee***”) and the agent for the Debtor’s primary secured lender group, Wells Fargo Bank, National Association (“***Agent***”), shall (i) determine whether any person is a Qualified Bidder, (ii) coordinate the efforts of Qualified Bidders in conducting their due diligence investigations, (iii) receive offers from Qualified Bidders, and (iv) negotiate any offers made to purchase the Assets (collectively, the “***Bidding Process***”). Debtor, after consultation with the Agent and the Committee, shall have the right, in the exercise of its fiduciary duties, to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that will better promote the goals of the Bidding Process.

² For purposes of the Stalking Horse APA, the value of Debtor’s inventory as of the closing shall be calculated using the advance rate methodology as set forth on Debtor’s borrowing base certificate pursuant to its senior secured lending facility provided as of Closing, consistent with the calculation of the value of Inventory (as defined in the Stalking Horse APA) as set forth on the borrowing base certificate attached as Exhibit A to the Stalking Horse APA.

Participation and Bid Requirements

Any person that wishes to participate in the bidding and Auction process (a “*Potential Bidder*”) must become a “Qualified Bidder” (defined below). As a prerequisite to becoming a Qualified Bidder, a Potential Bidder must deliver (unless previously delivered) the following materials (a “*Bid*”) to the Debtor and to Debtor’s counsel at the addresses specified below, by the Bid Deadline (as defined below):

- i. Each Bid must include the amount of the proposed cash purchase price. Each Bid must also include an estimation of the total value ascribed to such Bid by the Potential Bidder, taking into account cash and, if applicable, any non-cash contributions to the value of such bid (the “*Proposed Bid Value*”); provided that no Proposed Bid Value shall be binding on Debtor, the Agent, the Committee, or any of their professional advisors in connection with their evaluation of the value provided to Debtor, its estate, and its constituents by such Bid.
- ii. Each Bid for all or substantially all of Debtor’s assets or for the Proposed Sale Assets as defined in the Stalking Horse APA must have a cash purchase price equal to or greater than \$7,750,000.00 plus the Estimated Inventory Purchase Price (as defined below) plus \$600,000 (representing the Break-Up Fee and Expense Reimbursement) plus \$100,000 (the “*Minimum Bid Amount*”).
- iii. Each Bid must be accompanied by a cash deposit in the amount of five percent (5%) of the Proposed Bid Value designated by such Potential Bidder (the “*Bid Deposit*”). The Bid Deposit shall be disbursed only as follows: (a) if the Qualified Bidder becomes the Successful Bidder, its Bid Deposit will be applied to the purchase price, or as otherwise provided under any letter of intent between Debtor and such Successful Bidder, and (b) if such Qualified Bidder is not the Successful Bidder at the Auction, then its Bid Deposit shall be returned to it (subject to the other provisions of these Bidding Procedures and the terms of its letter of intent with Debtor).
- iv. Each Bid must be based on the form of Stalking Horse APA attached to the Bidding Procedures Motion, and must include binding, executed transaction documents, signed by an authorized representative of such Potential Bidder, pursuant to which the Potential Bidder proposes to effectuate the purchase some or all of the Proposed Sale Assets. Each Bid must also include a copy of such Bidder’s proposed form of asset purchase agreement (including all exhibits thereto) (a “*Counter APA*”) marked against the Stalking Horse APA to show all changes requested by the Bidder (including those related to purchase price and to remove any provisions that apply only to a Stalking Horse Bidder, if applicable). Each Bidder’s Bid and Counter APA must clearly and specifically explain which of the Assets are included in such Bid.

- v. Each Bid must be for (a) all or substantially all of Debtor's Assets; (b) the Proposed Sale Assets as set forth in the Stalking Horse APA; or (c) other specifically identified assets or combinations of assets of Debtor. All lots shall be determined by Debtor (in consultation with the Agent, the Committee, and their professional advisors) and shall be announced to all Potential Bidders and other interested parties.
- vi. Each Bid must identify the executory contracts and unexpired leases with respect to which the Potential Bidder seeks assignment from Debtor, provided that to the extent that the Potential Bidder seeks assignment from Debtor of any executory contract or unexpired lease that is not a Proposed Sale Asset, such Potential Bidder must, on or before June 5, 2018, provide to Debtor a list of those executory contracts and unexpired leases that such Potential Bidder desires to have assigned to such Potential Bidder, should such Potential Bidder become or be designated as both a Qualified Bidder and a Successful Bidder following the Auction.
- vii. Each Bid must identify all liabilities that the Potential Bidder proposes to assume.
- viii. Each Bid must include written evidence demonstrating appropriate corporate authorization to consummate the proposed transaction; provided that, if the Potential Bidder is an entity specially formed for the purposes of effectuating the transaction, then the Bidder must furnish written evidence of the approval of the transaction by the equity holder or holders of such Potential Bidder.
- ix. Each Bid must fully disclose the identity of each entity that will be bidding on Debtor's assets, including any equity holders in the case of a Potential Bidder that is an entity specially formed for the purpose of effectuating the contemplated transaction, or otherwise participating in connection with such Bid, and the complete terms of any such participation, including any agreements, arrangements, or understandings concerning a collaborative or joint bid or any other combination concerning the proposed Bid. Each Bid must also fully disclose any connections or agreements with Debtor, the Stalking Horse Purchaser, or any other known, potential, prospective Potential Bidder, or any officer, director, or equity security holder of Debtor.
- x. Each Bid must include written evidence that Potential Bidder has the necessary financial ability to close the proposed transaction, including compliance with Section 365 of the Bankruptcy Code, including providing adequate assurance of future performance under all contracts and leases to be assumed and assigned.
- xi. Each Bid must set forth each regulatory and third-party approval required for the Potential Bidder to consummate the proposed transaction and the time period within which the Potential Bidder expects to receive such regulatory and third-party approvals.
- xii. Each Bid must provide the identity and contact information for the Potential Bidder and full disclosure of any affiliates of the Potential Bidder. The Potential Bidder submitting

the Bid must have complied with reasonable requests for additional information and due diligence access from Debtor to the reasonable satisfaction of Debtor.

- xiii. The Bid may not be conditioned on obtaining financing, internal approvals, or due diligence time or cost requirements of any kind, provided that a Bid may be subject to the satisfaction of specific conditions in all material respects at closing.
- xiv. Each Bid must be irrevocable until seven (7) business days after the Sale Hearing; provided that if the Potential Bidder submitting such Bid becomes a Successful Bidder or a Back-up Bidder, such Bid shall continue to remain irrevocable until after the closing of the proposed transaction.
- xv. The Bid must not entitle the Potential Bidder to any break-up fee or transaction fee, expense reimbursement, termination, or similar type of fee or payment. By submitting a Bid, a Potential Bidder waives the right to pursue a substantial contribution claim under Section 503 of the Bankruptcy Code related in any way to the submission of its Bid or participation in any Auction.
- xvi. Each Bid must include a commitment to close the proposed transaction by no later than July 6, 2018.

A “**Qualified Bidder**” is a Potential Bidder that delivers the documents described in subparagraph (i) – (xvi) above, and that Debtor determines is reasonably likely (based on financial information submitted by the Bidder, the availability of financing, experience and other consideration deemed relevant by Debtor) to submit a *bona fide* offer and be able to consummate a sale if selected as the Successful Bidder for the Proposed Sale Assets or other assets subject to such Bid (such Bid, a “**Qualified Bid**”). Prior to the Auction, Debtor shall notify each Potential Bidder whether Debtor has determined that such Bidder is a Qualified Bidder. Notwithstanding anything herein to the contrary, the Stalking Horse Bidder shall be a Qualified Bidder.

Due Diligence

The Debtor will afford any Potential Bidder the time and opportunity to conduct reasonable due diligence; provided, however, that the Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline. The Debtor will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders. Neither the Debtor nor any of their respective representatives are obligated to furnish any information to any person other than a Potential Bidder.

Bid Deadline

A Potential Bidder that desires to make a Bid shall deliver written copies of its Bid to Huron Transaction Advisory, LLC and Bryan Cave Leighton Paisner LLP not later than 4:00 p.m. (Eastern Time) on June 12, 2018 (the “**Bid Deadline**”). Bids shall be provided by email to

Geoffrey Frankel, Huron Transaction Advisory, LLC, at gfrankel@hurontransactionadvisory.com, and Jason DeJonker, Bryan Cave Leighton Pasiner LLP, at jason.dejonker@bclplaw.com. Debtor shall promptly provide copies (by email) of all Bids received by it to counsel for the Agent and the Committee. In the event that a bid is determined to be a Qualified Bid, Debtor shall deliver a copy of any such Qualified Bid to the Stalking Horse Purchaser via email.

“As Is, With All Faults”

The Sale shall be on an “as is” and “with all faults” basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by Debtor, its agents, its representatives or its estate. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or the physical condition of the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or any letter of intent entered into with any respective Successful Bidder (defined below).

Free of Any and All Interests

All of Debtor’s right, title and interest in and to the Assets shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon (collectively, the “*Interests*”) to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the Sale of the Assets with the same validity and priority as such Interests applied against the Assets.

The Auction and Auction Procedures

If a Qualified Bid, other than that submitted by the Stalking Horse Purchaser, has been received by Debtor, Debtor may conduct an auction (the “*Auction*”) with respect to the Proposed Sale Assets and/or particular lots of the Assets. The Auction shall be conducted at the offices of Allen Kuehnle Stovall & Neuman LLP, 17 South High Street, Suite 1220, Columbus, Ohio 43215 (the “*Auction Site*”) on June 14, 2018 at 11:00 a.m. EDT, or such other place and time as Debtor shall notify all Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction as set forth above.

Except as otherwise provided herein, based upon the terms of the Qualified Bids received, the number of Qualified Bidders participating in the Auction, and such other information as Debtor determines is relevant, Debtor may conduct the Auction in any manner that it determines will achieve the maximum value for the Assets (upon consultation with the Agent and the

Committee). Debtor thereafter may offer the Proposed Sale Assets in such successive rounds as Debtor determines to be appropriate so as to obtain the highest or otherwise best bid or combination of bids for the Assets. Except as otherwise provided herein, Debtor also may set opening bid amounts in each round of bidding as Debtor determines to be appropriate.

If Qualified Bidders submit additional bids at the Auction (such bid, an “**Overbid**”), Debtor shall review each Overbid on the basis of the financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed transaction. Debtor may consult with Debtor’s professionals (and the professionals of the Agent and the Committee) with respect to the consideration of the value or other attribute or attributes of each Overbid.

As soon as practicable after the conclusion of the Auction, Debtor shall (x) review each Qualified Bid and Overbid on the basis of the financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed transaction, and (y) identify (in consultation with the professionals of the Agent and the Committee) the highest or otherwise best offers for the Proposed Sale Assets or relevant portions thereof (to the extent any such bid is acceptable to Debtor, each a “**Successful Bid**” and each Qualified Bidder making such bid, a “**Successful Bidder**”). At the Sale Hearing, Debtor may present any Successful Bids and Back-up Bids (as defined below) to the Court for approval. Debtor reserves all rights not to submit any bid which is not acceptable to Debtor for approval to the Court. Debtor acknowledges that the Bid of Stalking Horse Bidder, if applicable, is a Qualified Bid and shall be submitted to the Court for approval in the event that there are no other Successful Bids. Except as otherwise provided herein, Debtor, in the exercise of its fiduciary duties, may adopt rules for bidding at the Auction that, in its business judgment, will better promote the goals of the bidding process, the Bankruptcy Code or any order of the Court entered in connection herewith.

If an Auction is conducted, a Qualified Bidder other than the Successful Bidder that submits the next highest or otherwise best Bid at the Auction for the Proposed Sale Assets or relevant portions thereof, as determined by Debtor in the exercise of its business judgment and in consultation with its professional advisors (and with the professionals of the Agent and the Committee), shall be designated as a back-up bidder (a “**Back-up Bidder**” and such bid, a “**Back-up Bid**”). Each Back-up Bidder shall be required to keep its initial Bid (or if such Back-up Bidder submitted one or more subsequent bids at the Auction, the Back-up Bidder’s Overbid) open and irrevocable until after the closing of the relevant transaction with the Successful Bidder with respect to such assets.

If no Qualified Bids other than the Qualified Bid of the Stalking Horse Bidder are submitted by the Bid Deadline, Debtor shall cancel the Auction and shall accept the bid of the Stalking Horse Bidder (in which case, the Qualified Bid of the Stalking Horse Bidder shall be the Successful Bid and the Stalking Horse Bidder shall be the Successful Bidder).

Minimum Bid Increment

There shall be a minimum bid increment of at least \$100,000.00 for all bids made by Qualified Bidders in respect of Bids for the Proposed Sale Assets as a whole (the “*Minimum Bid Increment*”). Debtor reserves the right to set similar Minimum Bid Increments for portions or lots of the Proposed Sale Assets, as may be appropriate under the circumstances, in Debtor’s discretion. All overbids must be made in cash, provided that the value of any overbid not made in cash (but via, *inter alia*, the assumption of debt obligations of Debtor) shall be determined by Debtor in its sole discretion (in consultation with its professional advisors and the professionals of the Agent and the Committee).

Initial Overbid Amount

There shall be an initial overbid amount that a Qualified Bidder for the Proposed Sale Assets as a whole (other than the Stalking Horse Bidder) must bid in excess of the Stalking Horse Purchase Price to exceed the Stalking Horse Purchase Price (the “*Initial Overbid Amount*”), defined as the sum of (i) the amount of the Break-up Fee and Expense Reimbursement; plus (ii) the Minimum Bid Increment. No later than two business days prior to the Bid Deadline, Debtor shall (in consultation with the Agent and the Committee and professional advisors) circulate the then-current amount of the Inventory Value (as defined in the Stalking Horse APA) by writing to each Potential Bidder. The amount set forth in such notice shall be the “*Estimated Inventory Value*” for purposes of those parties wishing to be a Qualified Bidder.

Acceptance of Qualified Bids

Debtor shall sell the Assets to any Successful Bidder only upon the approval of a Successful Bid by the Bankruptcy Court after the Sale Hearing. Debtor’s presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute Debtor’s acceptance of the bid. Debtor will be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing.

Sale Hearing

A Sale Hearing is scheduled for June 15, 2018 with Objections to the Sale of the Property to be filed on or before 4:00 p.m. (prevailing Eastern time) on June 12, 2018, provided that in the event no bidders qualify as Qualified Bidders on or before June 12, 2018, then a Sale Hearing shall be held on June 14, 2018. Following the approval of the Sale of the Assets to any Successful Bidder at the Sale Hearing other than the Proposed Buyer, if the Successful Bidder fails to consummate an approved Sale within ten (10) days following the Sale Hearing, Debtor shall be authorized, but not required, to deem the Back-up Bid as the Successful Bid, and Debtor shall be authorized, but not required, to consummate the Sale of the Assets with the Back-up Bidder without further order of the Bankruptcy Court. Debtor, in the exercise of its business judgment, reserves its right to change the date of the Sale Hearing in order to achieve the maximum value for the Assets.

Modifications

Debtor may (a) determine which Qualified Bid, if any, is the highest or otherwise best offer; and (b) reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of Debtor, its estate and creditors.

Miscellaneous

The Auction and Bidding Procedures are solely for the benefit of Debtor, its estate, and the Stalking Horse Bidder and nothing contained in the Bidding Procedures Order or Bidding Procedures shall create any rights in any other person or bidder (including without limitation rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Bidding Procedures Order.

By submitting a Proposed Bid, each Proposed Bidder shall be deemed to have accepted these Bidding Procedures and the Bidding Procedures Order, including, without limitation, Debtor's right, in consultation with the Agent and the Committee and professional advisors, to identify and designate the highest or otherwise best offers for the Proposed Sale Assets or relevant portions thereof.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Bankruptcy Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Bidding Procedures Order.

EXHIBIT 2

Form of Cure Notice

[attached]

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	Chapter 11
)	
AcuSport Corporation,)	Case No. 18-52736
)	
Debtor.)	Honorable John E. Hoffman, Jr.

**NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES
AND PROPOSED CURE AMOUNTS**

PLEASE TAKE NOTICE that AcuSport Corporation, the above-captioned debtor and debtor in possession (“*AcuSport*” or “*Debtor*”)³ filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”), in the United States Bankruptcy Court for the Southern District of Ohio (the “*Bankruptcy Court*”) on May 1, 2018.

PLEASE TAKE FURTHER NOTICE that on May 1, 2018, in connection with the proposed sale (the “*Sale*”) of certain of Debtor’s assets (the “*Purchased Assets*”) to Ellett Brothers, LLC (“*Stalking Horse Bidder*”) or any other successful bidder (a “*Successful Bidder*”) at an auction for the Purchased Assets (the “*Auction*”), Debtor filed a motion [Docket No. 19] (the “*Bidding Procedures Motion*”) in Debtor’s above-captioned bankruptcy case (the “*Case*”) seeking, among other things, the entry of an order: (i) establishing bidding procedures for the sale of certain of Debtor’s assets (the “*Bidding Procedures*”); (ii) approving the proposed break-up fee and expense reimbursement to be paid to Stalking Horse Bidder in certain instances; and (iii) establishing procedures relating to the assumption and assignment of executory contracts and unexpired leases in connection with the Sale (the “*Assumption Procedures*”).

PLEASE TAKE FURTHER NOTICE that on [May 15], 2018, the Bankruptcy Court entered an order [Docket No. ___] (the “*Bidding Procedures Order*”) granting certain of the relief sought in the Bidding Procedures Motion, including, among other things, approving (a) the Bidding Procedures, and (b) the Assumption Procedures.

PLEASE TAKE FURTHER NOTICE that upon the closing of the Sale, Debtor intends to assume and assign to Stalking Horse Bidder or any other Successful Bidder the executory contracts and unexpired leases set forth on Exhibit 1 hereto (each, an “*Assigned Contract*,” and collectively, the “*Assigned Contracts*”). In addition, the cure amounts (the “*Cure Amounts*”), if any, that Debtor believes are required to satisfy all amounts and obligations due and owing under

³ Capitalized terms used in this notice and not immediately defined have the meanings given to such terms in the Bidding Procedures Order (as defined herein).

each Assigned Contract by Debtor, including any monetary defaults and compensation for pecuniary losses, are set forth on **Exhibit 1**.⁴

PLEASE TAKE FURTHER NOTICE that a hearing to approve the Sale (the “*Sale Hearing*”), including the assumption and assignment of the Assigned Contracts, will be held on **June 15, 2018, at 11:00 a.m. (Eastern Time)**, in **Courtroom A** in the United States Bankruptcy Court at 170 North High Street, Columbus, Ohio 43215, provided that in the event that an Auction shall not be held, then a Sale Hearing shall be held on **June 14, 2018, at 11:00 a.m. (Eastern Time)**. Objections, if any, to any of the Cure Amounts or to the assumption and assignment of any Assigned Contract shall be heard at the Sale Hearing, or at a later hearing, as determined by Debtor, from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a notice on the docket of Debtor’s Case.

YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

PLEASE TAKE FURTHER NOTICE that the deadline to file an objection to the assumption and assignment of the Assigned Contracts and the respective Cure Amounts for each Assigned Contract (collectively, “*Cure Objection*”) is **June 12, 2018, at 4:00 p.m. (Eastern Time)** (the “*Cure Objection Deadline*”). Cure Objections, if any, must be filed with the Bankruptcy Court and served, so as to be received on or before the Cure Objection Deadline, upon: (a) the Office of the United States Trustee for the Southern District of Ohio; (b) the agent for Debtor’s primary secured lender group, Wells Fargo Bank, National Association; (c) counsel for Debtor; (d) counsel for Stalking Horse Bidder; (e) counsel for the Official Committee of Unsecured Creditors; and (f) all other parties requesting notice in the Case (collectively, “*Cure Notice Parties*”).

PLEASE TAKE FURTHER NOTICE that any such Cure Objection must state (a) the basis for such objection and (b) with specificity what Cure Amount the non-Debtor counterparty (the “*Non-Debtor Counterparty*”) to the relevant executory contract or unexpired lease believes is required (in all cases with appropriate documentation in support thereof).

PLEASE TAKE FURTHER NOTICE that any objection solely to the Cure Amounts, or any subset thereof, may not prevent or delay Debtor’s assumption and assignment of the Assigned Contracts. If an entity objects solely to one or more Cure Amounts, Debtor may, with the consent of the relevant Successful Bidder, hold the total amounts claimed by such objecting Non-Debtor Counterparty in reserve pending further order of the Bankruptcy Court or mutual

⁴ Debtor may modify the list of Contracts that will be assumed and assigned in connection with the Sale. In addition, the inclusion of any contract, lease, or agreement on **Exhibit 1** shall not constitute an admission by Debtor that any such Assigned Contract is an executory contract or unexpired lease within the meaning of Section 365 of the Bankruptcy Code and Debtor reserves all rights with respect thereto.

agreement of the parties. So long as the applicable amount is held in reserve, and if there are no other unresolved objections to assumption and assignment of the applicable Assigned Contract, Debtor may, without further delay, assume and assign such contract or lease. Under such circumstances, the objecting Non-Debtor Counterparty's recourse is limited to funds held in reserve.

PLEASE TAKE FURTHER NOTICE that any objection to the adequate assurance of future performance by Stalking Horse Bidder under the applicable Assigned Contract must be filed with the Court and served on the Cure Notice Parties and the Stalking Horse Bidder so that such objection is received on or before the Cure Objection Deadline.

PLEASE TAKE FURTHER NOTICE that any objection to the adequate assurance of future performance by any Successful Bidder other than the Stalking Horse Bidder under the applicable Assigned Contract must be filed with the Court and served on the Cure Notice Parties and the applicable Successful Bidder so that such objection is received on or before **June 14, 2018, at 4:00 p.m. (Eastern Time)** (the "*Additional Adequate Assurance Objection Deadline*").

PLEASE TAKE FURTHER NOTICE that unless a Cure Objection or an objection to adequate assurance of future performance, as applicable, is filed and served by a Non-Debtor Counterparty to any Assigned Contract on or before the Cure Objection Deadline or the Additional Adequate Assurance Objection Deadline, as applicable, such Non-Debtor Counterparty will be: (a) deemed to have consented to the Cure Amounts, if any, set forth in the attached **Exhibit 1**; (b) barred, estopped, and enjoined from asserting any additional Cure Amounts under any assumed and assigned executory contracts or unexpired leases; (c) barred from objecting to the assumption and assignment of the applicable assumed and assigned executory contracts or unexpired leases to the Successful Bidder; and (d) barred from objecting to adequate assurance of future performance by the Successful Bidder.

PLEASE TAKE FURTHER NOTICE that the hearings with respect to any Cure Objection or objection to the adequate assurance of future performance may be held (a) at the Sale Hearing, or (b) at such other date as the Bankruptcy Court may designate.

Obtaining Additional Information

Copies of the Bidding Procedures Motion, the Bidding Procedures Order, and any other related documents are available free of charge by visiting the case website located at <https://www.donlinrecano.com/Clients/acusp/> or by calling the restructuring information hotline (212) 771-1128. Inquiries may also be submitted via e-mail to acusportinfo@donlinrecano.com.

Dated: May 15, 2018

By:

/s/ _____

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EXHIBIT 1

CURE SCHEDULE

Assigned Contract or Lease	Name And Contact Information Of Counterparty	Cure Costs
[To be Determined]		

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