

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN

In re:

Plasco Tooling & Engineering Corporation,

Debtor.

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Case No. 17-49638-mar

Chapter 11

Hon. Mark. A. Randon

**ORDER (A) ESTABLISHING BIDDING PROCEDURES FOR THE AUCTION SALE OF SUBSTANTIALLY ALL DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND TRANSFERRING LIENS TO PROCEEDS; (B) SCHEDULING A SALE HEARING TO CONSIDER APPROVAL OF SALE; (C) ESTABLISHING EXECUTORY CONTRACT ASSUMPTION AND ASSIGNMENT PROCEDURES; AND (D) APPROVING THE FORM AND MANNER OF SERVICE OF (1) THE STALKING HORSE PURCHASE AGREEMENT, (2) THE NOTICE TO EXECUTORY CONTRACT COUNTER-PARTIES, AND (3) THE NOTICE OF THE AUCTION AND SALE HEARING**

This matter having come before the Court upon the Debtor's Motion for Entry of an Order (A) Establishing Bidding Procedures for the Auction Sale of Substantially all Debtor's Assets Free and Clear of Liens, Claims and Encumbrances and Transferring Liens to Proceeds; (B) Scheduling a Sale Hearing to Consider Approval of Sale; (C) Establishing Executory Contract Assumption and Assignment Procedures; and (D) Approving the Form and Manner of Service of (1) the Auction Notice, (2) the Notice to Executory Contract Counter-parties, and (3) the Notice of the Sale Hearing (the "Motion")<sup>1</sup> [DN 78]; all objections to the relief requested in the Motion having been resolved as presented to the Court at the hearing; no further notice or hearing on Debtor's requested relief being necessary or required; and the Court being fully advised in the premises:

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have those meanings ascribed to them in the Motion.

**The Court finds that:**

A. This is a final order within the meaning of 28 U.S.C. § 158(a). To the extent any of these findings of fact constitute conclusions of law, they are adopted as such. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The statutory bases for the requested relief are §§ 105(a) and 363 of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* and Fed R. Bankr. P. 2002 and 6004.

D. The proposed procedures for the sale of the Purchased Assets are in accordance with the requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and this Court's Local Rules.

E. Debtor's efforts to sell the Purchased Assets, as set forth in the Motion, are in the best interests of Debtor, its creditors and the bankruptcy estate.

F. The Stalking Horse has negotiated the proposed Stalking Horse Purchase Agreement with the Debtor at arms-length and in good faith. Approval of the Stalking Horse Purchase Agreement on the terms set forth in the Motion, including the Break-up Fee, subject to higher and better Bids at the Auction, is in the best interests of Debtor, its creditors and the bankruptcy estate.

G. The Purchased Assets to be sold by Debtor pursuant to the Motion are all of the assets of the Debtor (other than the Excluded Assets) that constitute property of the Debtor's bankruptcy estate pursuant to Section 541 of the Bankruptcy Code, including, without limitation,

all accounts receivable, inventory, equipment, intellectual property and intangible assets, and certain contracts and equipment leases designated by Purchaser, computer hardware and software, files, records, and all other general intangibles related to the operation of the Debtor's business, in each case, other than the Excluded Assets.<sup>2</sup>

H. The Excluded Assets, which are not included in the definition of "Purchased Assets" are (a) all claims, rights of offset or causes of action against third Parties arising under and relating to Chapter 5 of the Bankruptcy Code, other than Assumed Contract Rights; (b) all Excluded Contracts, (c) all personnel records and other records that the Debtor is required by law to retain in its possession and any retained copies of any record or document included in the Purchased Assets; (d) all insurance proceeds, claims and/or causes of action solely with respect to or arising in connection with (i) any Excluded Contract, or (ii) any item of tangible or intangible property not acquired by Purchaser at the Closing, and (e) any other asset that Debtor and the Successful Purchaser agree in writing, in consultation with the Committee, are Excluded Assets. "Excluded Contract" means any Contract that is not an Assumed Contract.

I. Adequate and proper notice for request of the relief granted herein was given and no further notice is necessary.

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Motion is GRANTED to the extent of the relief contained herein. All objections in connection with the relief contained herein that have not been resolved are overruled.

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<sup>2</sup> In the event of any inconsistency between the description of the terms of the Stalking Horse Purchase Agreement and the Stalking Horse Purchase Agreement itself, the terms of the Stalking Horse Purchase Agreement shall govern.

### **Bidding Procedures**

2. The Auction is scheduled for Monday, September 11, 2017, at 11:00 a.m. at the offices of Wernette Heilman PLLC, 24725 W. 12 Mile Rd., Southfield, Michigan, 48034. Written notice of any adjournment or re-location of the Auction must be filed with the Court and noticed to the Committee, the Lenders, the United States Trustee, the Stalking Horse and all other Qualified Bidders, if any, no less than 24 hours before the scheduled commencement of the Auction. Once commenced, the Auction may be adjourned by Debtor with the agreement of the Committee and the Stalking Horse with notice to all individuals in attendance at the Auction.

3. All Qualified Bids (as defined below) must be actually received in writing by Matt Zwack of Angle Advisors at 101 Southfield Road, 2<sup>nd</sup> Floor, Birmingham, MI 48009, by no later than 5:00 p.m. (prevailing Eastern time) on Friday, September 8, 2017.

4. The Sale Hearing will be held on Tuesday, September 12, 2017, at 11:00 a.m., at 211 W. Fort St., Courtroom 1825, Detroit, Michigan 48226. An objections to the proposed sale of substantially all Debtor's assets free and clear of liens, claims and encumbrances as contemplated in the Motion and this Order must be filed with the Court by Tuesday, September 5, 2017 (the "Sale Objection Deadline"). Any party that does not file an objection by the Sale Objection Deadline shall be deemed to consent to the proposed sale substantially consistent with the terms set forth in this Order. However, objections relating solely to the conduct of the Auction or another issue that could not possibly have been raised earlier may be filed within 24 hours before the Sale Hearing.

5. The Successful Bidder (as defined below) is required to close on the sale of the Purchased Assets on or before September 30, 2017. Closing includes, but is not limited to, payment by the Successful Bidder of the Purchase Price.

6. Debtor will provide the Committee, the Stalking Horse and Lenders with updates

summarizing the status of the sale process, the identities of Potential Bidders and Qualified Bidders, and the material terms of each of the prospective Qualified Bids submitted pursuant to paragraph 8 below, and will confer with the Committee and Lender at least once per week to advise them of the status of the sale process. Upon the reasonable request of the Committee, the Stalking Horse or Lenders, Debtor will provide the requesting party with a complete copy of a Qualified Bid and other sale materials.

7. The form of Stalking Horse Purchase Agreement, attached as Exhibit 6.1 to the Motion, is approved for purposes of the Bidding Procedures as amended pursuant to the settlement placed on the record at the hearing on the Motion as reflected in the revised Stalking Horse Purchase Agreement filed with the Court and to be served on the Notice Parties.

8. The Bidding Procedures are approved as follows:

a. Potential Bidders must execute a confidentiality agreement reasonably acceptable to Debtor before being provided access to any confidential information regarding Debtor.

b. A “Qualified Bidder” means a Potential Bidder that submits a Qualified Bid, as defined below, and demonstrates, to the reasonable satisfaction of Debtor, in consultation with the Committee and Lenders, that it possesses the financial capability, business plan and management structure to close the acquisition of the Purchased Assets. Notwithstanding the foregoing, the Stalking Horse shall be a Qualified Bidder and the Stalking Horse Purchase Agreement shall be a Qualified Bid for all purposes.

c. Debtor will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from such Qualified Bidders and to provide Qualified Bidders with access to a “data room” populated with the due diligence information including that which was provided to the Stalking Horse and any other

Potential Bidder. Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline (as defined below). Debtor is not responsible for, and will bear no liability with respect to, the accuracy of any information obtained by any Qualified Bidder in connection with the sale of the Purchased Assets.

d. Angle Advisors is directed to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and Qualified Bidders. Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline (as defined below). Angle Advisors is not responsible for, and will bear no liability with respect to, the accuracy of any information obtained by any Qualified Bidder in connection with the sale of the Purchased Assets.

e. Debtor will consider only Qualified Bids from Qualified Bidders. To be a “Qualified Bid,” the bid must, unless waived by Debtor, after consultation with the Lenders and the Committee, be received from a Qualified Bidder and:

i. be actually received in writing (bids submitted only by email, facsimile or other electronic means will be considered) by Matt Zwack of Angle Advisors at 101 Southfield Road, 2<sup>nd</sup> Floor, Birmingham, MI 48009, by no later than 5:00 p.m. (prevailing Eastern time) September 8, 2017 (the “Bid Deadline”);

ii. be accompanied by:

- A. a duly executed asset purchase agreement on the same terms as the Stalking Horse Purchase Agreement or that is marked to reflect variations from the Stalking Horse Purchase Agreement,
- B. a letter stating that the bidder’s offer is irrevocable until the conclusion of the Sale Hearing, agreeing that the bidder shall be bound by the terms of its proposed purchase and sale agreement, acknowledges a closing of the transactions comprising the Qualified Bid by not later than the Closing Date, and agreeing to be bound by the Stand-by Provision as set forth in paragraph 9 below,
- C. written evidence from a third party, reasonably satisfactory to the Debtor, in consultation with Lenders and the

Committee, of its financial ability to perform the obligations under the proposed purchase and sale agreement, without any financing or other contingency, by no later than the Closing Date, and

- D. an earnest money deposit of immediately available good funds (U.S.) in the amount of \$75,000, which deposit shall not be subject to any liens or encumbrances (which shall be deposited with Levene, Neale, Bender, Yoo & Brill L.L.P. ("Escrow Holder"), and which shall be applied to the purchase price if the bidder becomes a Successful Bidder (as defined below) or forfeited to Debtor if the bidder becomes a Successful Bidder or Stand-by Bidder and defaults under the terms of its proposed Purchase Agreement or this Order. The deposit of the Stand-by Bidder (as defined below) shall be returned by Escrow Holder on or before five (5) business days after the closing of a sale to the Successful Bidder (as defined below), and all other deposits shall be returned by Escrow Holder to all other Qualified Bidders promptly after the Sale Hearing;

iii. be on the same or better material terms and conditions as set forth in the Stalking Horse Purchase Agreement, or as the Bankruptcy Court may determine are in the best interests of creditors and the Debtor's bankruptcy estate, including, among other things, contingencies relating to due diligence, financing, environmental or labor issues, customer or supplier contracts, or any other material conditions precedent to the bidder's obligation to close must not be materially greater than those set forth in the Stalking Horse Purchase Agreement;

iv. designate the assets of Debtor subject to the Bid and the executory contracts and unexpired leases that the bidder will request Debtor to assume and assign to the bidder accompanied by evidence of adequate assurance of future performance as to any such executory contracts; and

v. a bid, or a combination of bids, for the assets that aggregate to a purchase price at least equal to \$150,000 more than the Purchase Price, *i.e.*, \$3,450,000.

f. Debtor, in consultation with the Committee and Lenders, will determine which Bid(s) constitute Qualified Bids and Debtor may inform any Potential Bidder of any deficiency in a bid and discuss methods to cure the deficiencies so that the bid may be considered a Qualified Bid.

g. If one or more Qualified Bids (other than that of the Stalking Horse) have been received by the Bid Deadline, Debtor shall conduct the Auction. Only the Stalking Horse

and Qualified Bidders may participate in the Auction. If there is no Qualified Bid (other than that of the Stalking Horse), Debtor shall not conduct the Auction and shall proceed with the sale to the Stalking Horse on the terms set forth in the Stalking Horse Purchase Agreement subject to the approval of the Court at the Sale Hearing.

h. Each Qualified Bidder must appear in person at the Auction. Lenders, the Committee, the United States Trustee, and their respective professionals may also attend the Auction.

i. Each Potential Bidder and Qualified Bidder, as a consequence of submitting a bid, shall be deemed to represent, agree and acknowledge (i) that it understands and is bound by the Bidding Procedures and the other terms of this Order, including the Stand-By Provision; (ii) that it had an opportunity to inspect and examine the Purchased Assets and the existing contracts and to review all pertinent documents and information with respect to such Purchased Assets before making its offer or has waived inspection, and that each Qualified Bidder relied solely on that review and upon its own investigation and inspection in making its bid; (iii) that the Qualified Bidder is not relying upon any written or oral statements, representations, promises, warranties or guarantees of any kind whether express or implied, by operation of law or otherwise, made by any person or party, including Debtor, Lenders, the Committee, their respective agents or representatives including any information regarding Debtor, its business or its assets, these Bidding Procedures or the completeness of any information provided in connection therewith; (iv) that it submits its own bid of its own volition and with full knowledge of the potential consequences; (v) that, unless as disclosed to Debtor and the Committee at the time the bid is submitted, the bid is not made in with the involvement of or collusion with any other entity or person, and (vi) that, unless disclosed to Debtor and the Committee at the time the bid is submitted, the bid is not made by an insider or affiliate of (A)



the Debtor, an officer, director, employee or agent of the Debtor, (B) any member of the Committee, or (C) any other person or entity acting in a fiduciary capacity with respect to the Debtor-in-possession or any assets of the estate.

j. Debtor, in consultation with the Committee, may conduct the Auction in the manner they determine will result in the highest, best or otherwise financially superior offer. Bidding at the Auction will commence with the highest Qualified Bid determined by Debtor, after consultation with the Lenders and the Committee, which shall serve as the lead bid (the “Baseline Bid”), and will continue in minimum increments of \$50,000.00 or a multiple thereof (the “Incremental Bid Amount”). Qualified Bidders that have submitted a Qualified Bid, including the Stalking Horse, may submit bids at the Auction, and may increase or modify bids in accordance with the Incremental Bid Amount to make their bid more favorable to Debtor. Bidding will continue until such time as the Qualified Bidder with the highest and best offer for the purchase of the Purchased Assets (the “Successful Bid”) is determined by Debtor, in consultation with Lenders and the Committee (the “Successful Bidder”).

9. The Qualified Bidder submitting the second highest bid at the Auction (as determined by Debtor in consultation with Lenders and the Committee) or, at the option of the Stalking Horse, if the Successful Bid is the only Qualified Bid made at the Auction, the Stalking Horse shall be the “Stand-by Bidder.”

10. For the purpose of determining the Successful Bidder and the Stand-by Bidder, the full amount of the Break-Up Fee payable to the Stalking Horse shall be added to any overbid submitted by the Stalking Horse.

**Requirement to Seek Sale Approval and Transfer of  
Encumbrances to Net Proceeds**

11. At the conclusion of the Auction and prior to the Sale Hearing, the Successful Bidder and Debtor will enter into a purchase agreement reflecting the amount and terms set forth in the Successful Bid (the "Successful Bidder Purchase Agreement"), which shall be subject to Court approval at the Sale Hearing, and the Stand-by Bidder shall revise its Asset Purchase Agreement to reflect its most recent bid.

12. Debtor shall seek approval of the Successful Bidder Purchase Agreement at the Sale Hearing (or of the Stalking Horse Purchase Agreement if the Auction does not occur).

13. If the Successful Bidder Purchase Agreement is approved at the Sale Hearing, and the Successful Bidder fails to close on the sale of the Purchased Assets as required by this Order and the Successful Bidder Purchase Agreement, Debtor shall be authorized to consummate the sale with the Stand-by Bidder without further order of the Bankruptcy Court, and such Stand-by Bidder shall be required to consummate the sale on the terms of the Stand-by Bidders' most recent bid (the "Stand-by Provision") as soon as practical, provided, however, that Debtor shall provide the Stand-by Bidder with no less than ten days' prior written notice of the date set for the closing of the sale with respect to Stand-by Bidder's most recent proposed purchase agreement.

14. Subject to Court approval in the Sale Order, in the event the sale to the Successful Bidder is not closed within the time established in the Successful Bidder Purchase Agreement and, in the event a sale to the Stand-by Bidder is not timely closed, Debtor may accept any other Qualified Bid with the consent of the Qualified Bidder and consummate the sale with the maker of the next Qualified Bid after consultation with Lenders and the Committee and without further order of this Court.

15. In the event that (i) the Court approves the sale of substantially all of the Purchased Assets to a person or persons other than the Stalking Horse and such sale is ultimately

consummated to a purchaser which is not affiliated with the Stalking Horse, and (ii) the Stalking Horse is not in breach of the Stalking Horse Purchase Agreement, Stalking Horse shall be entitled to receive a breakup fee in an amount equal to three (3%) percent of the Purchase Price paid by the Qualified Bidder (the "Breakup Fee"), paid directly to Purchaser at the Closing from the proceeds of the sale to the successful Qualified Bidder.

16. Subject to approval of the Sale Order by the Bankruptcy Court, all liens, security interests, claims and encumbrances shall be transferred to the net proceeds from the sale of the Purchased Assets, subject to (i) the rights provided to object to claims under the Final Cash Collateral Order and (ii) all other rights to object to claims; provided, however, that the Committee agrees that notwithstanding anything to the contrary in the Final Cash Collateral Order, the time period to provide any notification to First State Bank of any objections to their claims or liens pursuant to the Final Cash Collateral Order shall be seven (7) days after First State Bank provides the Committee with their set of loan documents related to their claims against the Debtor.

17. Subject to approval of the Sale Order by the Bankruptcy Court, in addition to the payment of the Break Up Fee if applicable pursuant to paragraph 15 above, \$300,000, plus 25% of the difference between \$3,300,000 and the Successful Bidder Purchase Price but only in the event that the Successful Bidder Purchase Price exceeds \$3,600,000, will be paid from proceeds of the Purchase Price into to the Debtor's Estate at Closing, to be earmarked to pay the costs and fees incurred in conducting the sale process (including but not limited to the success fee to the investment banker and the costs and fees of Debtor's and Committee's professionals), any unpaid allowed administrative expense claims not assumed by the Winning Bidder, any fees owed or to be owed to the United States Trustee, and the anticipated costs, fees and expenses of conducting the Chapter 11 case after the Closing, including but not limited to costs, fees, and

expenses related to a proposed Chapter 11 Plan of Liquidation. To the extent any costs and fees require Bankruptcy Court approval, Debtor shall reserve an estimated amount for payment of such costs and fees, including investment banking fees, attorneys' fees and fees incurred by other professionals and United State United States Trustee fees, in a segregated account to be held for the benefit of such parties.

**Procedures for Assumption and Assignment  
of Executory Contracts and Objection Deadline**

18. Debtor will provide all Qualified Bidders with a list and a copy of all contracts and leases related to the Purchased Assets, along with proposed cure amounts owing on each contract and lease (the "Cure Schedule"). Each Qualified Bidder must provide with their Qualified Bids to Debtor a list (the "Contract Lists") of the executory contracts and unexpired leases that it would like Debtor to assume and assign to the Qualified Bidder (the "Assumed Contracts and Assumed Leases").

19. The following procedures are hereby approved for the assumption and assignment of executory contracts and unexpired leases ("Assumption and Assignment Procedures"):

a. Three (3) business days after the entry of this Order, Debtor shall serve on the counterparties to the contracts on the Contract Lists a notice (the "Assumption and Assignment Notice") in the form attached as Exhibit 6.2 to the Motion, which is hereby approved, containing the following information:

(i) Notice that Debtor may, subject to Court approval, assume and assign the executory contracts and unexpired leases to the Stalking Horse or a Successful Bidder, and opportunity to object;

(ii) The cure amount Debtor proposes to pay to each counterparty in compliance with the key requirements of Section 365 of the Bankruptcy Code (the "Pre-Petition Cure Amount");

(iii) That the counterparties to the executory contracts and unexpired leases may file and serve objections to the assumption and assignment of the executory contracts and unexpired leases or the Pre-Petition Cure Amount, and that any such objections must be filed and served on or before the Assumption/Assignment Objection Deadline, as described below; and

(iv) That for each executory contract and unexpired lease for which an objection is timely received, a hearing will be held at the Sale Hearing to resolve all objections.

b. The counterparties to the Assumed Contracts and Assumed Leases must file any objections to the assumption and assignment of the Assumed Contracts and Assumed Leases or the Pre-Petition Cure Amount at least three business (3) days prior to the Auction (the “Assumption/Assignment Objection Deadline”) and shall serve such objection so that the objection is actually received on or before the Assumption/Assignment Objection Deadline by counsel for: (i) Debtor; (ii) Stalking Horse, (iii) Lenders, (iv) the Committee, and (v) the Office of the United States Trustee.

c. Any party who fails to object by the Assumption/Assignment Objection Deadline shall be forever barred from objecting to the assumption and assignment of its respective executory contract or unexpired lease;

d. The Successful Bidder or, if the Successful Bidder does not close, the Stand-by Bidder or other Qualified Bidder that actually closes on the sale of the Purchased Assets (the “Successful Purchaser”) shall provide a notice to each counter-party of assumption and assignment and shall pay the Pre-Petition Cure Amount within thirty (30) days after the date of the closing of the sale of the Purchased Assets. The executory contract or unexpired lease shall be deemed assumed upon receipt of the notice and payment of the Pre-Petition Cure Amount. No executory contract or unexpired lease shall be deemed assumed under these procedures unless and until the Successful Purchaser provides the notice and pays the Pre-Petition Cure Amount.

e. The Successful Purchaser may choose to not assume any of the executory contracts and unexpired leases notwithstanding any authorization to assume and assign such contracts and leases obtained by Debtor at the Sale Hearing. In such event, the Successful Purchaser shall file a notice with the Court and serve upon the respective counter-parties, within thirty (30) after closing on the Purchased Assets, listing all executory contracts and unexpired leases that Debtor was authorized to assume and assign at the Sale Hearing, but which the Successful Purchaser elects to not assume. Each such executory contract and unexpired lease will not be assumed and neither the Debtor nor the Successful Purchaser shall be responsible to pay the Pre-Petition Cure Amount.

f. These procedures shall not prejudice Debtor's right to assume or reject any executory contract or unexpired lease not assumed as set forth in these procedures. Among other things, Debtor may seek via motion to assume and assign any additional executory contracts or unexpired leases as requested by the Successful Purchaser, and Debtor may seek an expedited hearing on such motion for good cause.

#### **Notice of Auction and Sale Hearing**

20. Within three (3) business days of the entry of this Order, Debtor shall give notice of this Order, the Bidding Procedures, the Auction, and the Sale Hearing, by mailing a copy of the Auction and Sale Notice which is attached to the Motion as Exhibit 6.3 and is hereby approved, by first class mail, to the following (collectively, the "Notice Parties"):

- a. The Office of the United States Trustee;
- b. Committee counsel;
- c. Counsel for Lender;
- d. All other parties known by Debtor to assert a security interest or lien on Debtor's assets;
- e. All parties to contracts and leases with Debtor;

- f. All applicable federal and state taxing authorities;
- g. All parties who have requested notice in the case; and
- h. All interested parties who expressed any interest in the Purchased Assets.

14. This Court will retain jurisdiction over any and all disputes arising or otherwise relating to the construction, performance, and enforcement of the terms of this Order and all activities and transactions contemplated in this Order, including, but not limited to, the marketing and sale of Debtor's assets, the Auction, and the assumption and assignment of executory contracts and unexpired leases.

**Signed on August 09, 2017**

15.



**/s/ Mark A. Randon**

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**Mark A. Randon**  
**United States Bankruptcy Judge**