

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	) Chapter 11
	)
Eastern Outfitters, LLC, <i>et al.</i> , <sup>1</sup>	) Case No. 17-10243 (LSS)
	)
Debtors.	) (Jointly Administered)
	) <b>Objection Deadline: February 27, 2017 at 4:00 p.m. (EST)</b>
	) <b>Related to Docket No. 76</b>

**LIMITED OBJECTION OF CVS PHARMACY, INC. TO DEBTORS’  
MOTION FOR APPROVAL OF PROPOSED BID PROCEDURES**

CVS Pharmacy, Inc. (“CVS”) hereby files this limited objection (the “Limited Objection”) to *Debtors’ Motion for Order (A)(I) Authorizing and Approving Bidding Procedures, Break-Up Fee and Expense Reimbursement; (II) Authorizing and Approving the Debtors’ Entry into the Stalking Horse APA; (III) Approving Notice Procedures; (IV) Scheduling a Sale Hearing; and (V) Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases and Determining Cure Amounts and (B)(I) Authorizing the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances; (II) Approving the Stalking Horse APA; and (III) Authorizing the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases [D.I. 76]* (the “Bid Procedures Motion”).<sup>2</sup> In support of this Limited Objection, CVS respectfully states as follows:

**INTRODUCTION**

1. CVS, a party-in-interest in these cases, is pleased that the Debtors have entered into a stalking horse agreement for a going concern sale of their businesses that will preserve

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four (4) digits of each Debtor’s federal tax The Debtors and the last four digits of their respective federal taxpayer identification numbers, where applicable, are as follows: Eastern Outfitters, LLC (9164); Subortis Retail Financing, LLC (9065); Eastern Mountain Sports, LLC (9553); Subortis IP Holdings, LLC; Bob’s Stores, LLC (4389); and Bob’s/EMS Gift Card, LLC (9618). The Debtors’ executive headquarters are located at 160 Corporate Court, Meriden, CT 06450.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bid Procedures Motion.



jobs, provide for the assumption of a number of liabilities and avoid further claims that would otherwise arise from the rejection of contracts and leases. For these reasons, CVS generally supports the proposed sale and Bid Procedures (as defined below), provided that the proposed sale, and the proposed buyer, are real. As detailed below, however, certain changes are required to the proposed Bid Procedures so that the true nature of the proposed stalking horse bid can be understood and so that CVS and non-debtor contract and lease parties can effectively protect their interests.

### **BACKGROUND**

2. On February 5, 2017 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United State Code (the "Bankruptcy Code") in the United State Bankruptcy Court for the District of Delaware (the "Court"). The Debtors are authorized to continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has yet been appointed in these cases.

3. As described in the Bid Procedures Motion, the Debtors are comprised of two multi-channel retailers engaged in the apparel, footwear, and sporting goods lines of business: (i) Bob's Stores, LLC ("Bob's"); and (ii) Eastern Mountain Sports. Moreover, as of the Petition Date, the Debtors managed approximately 86 retail stores in the Northeast.

4. It has been alleged that CVS guaranteed the Debtors' obligations under certain of the Bob's non-residential real property leases (individually, a "Lease," and collectively, the "Leases").<sup>3</sup> To the extent CVS is, in fact, a guarantor of any or all of the Leases, it maintains an

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<sup>3</sup> Nothing set forth in this Limited Objection should be construed as an admission by CVS that it is a guarantor for any particular Lease. CVS reserves all rights, claims and defenses with respect to any such alleged liability in connection with the Leases, including, but not limited to, that the assignment of any Lease pursuant to proposed Bid Procedures operates as a novation of CVS's liabilities under any guaranty.

interest in the Debtors' proposed sale process and, in particular, the identity, and ability to provide adequate assurance, of any entity to which any such Leases are to be assigned.

**LIMITED OBJECTION**

5. Pursuant the Bid Procedures Motion, the Debtors seek approval of, *inter alia*, (i) certain proposed bidding procedures with respect to a potential sale of substantially all of the Debtors' assets to Sportsdirect.com Retail Ltd. or its assigns ("Sportsdirect" or the "Stalking Horse"), subject to higher and better bids, and (ii) procedures for the assumption and assignment of executory contracts and unexpired leases (together, the "Bid Procedures").

6. While the Debtors have suggested that the Stalking Horse is acquiring substantially all of the Debtors' assets and that the proposed sale is saving 1,900 jobs, the Stalking Horse has not committed to accept assignment of any particular non-residential real property lease and CVS is concerned that the suggestion of a "going concern" sale may be illusory.

**I. All Proposed Sale-Related Notices Should be Sent to CVS**

7. The proposed Bid Procedures include several deadlines by which the Debtors must provide certain notices to contract parties. These notices include the Sale Notice, the Cure Notice, the Assumption Notice and the Rejection Notice. See Bid Procedures Motion, at ¶¶ 18, 29, 31. In addition, "upon request," the Debtors will provide to counterparties evidence of adequate assurance of future performance under executory contracts or unexpired leases by the Stalking Horse Bidder and each Qualified Bidder ("Adequate Assurance Information"). See id. at ¶ 29(b).

8. Because, as explained above, CVS is an alleged guarantor of certain Leases that the Debtors may seek to assume and assign or reject, it has an active interest in understanding the

Debtors' intentions with respect to such Leases and whether the proposed assignee for any such Leases can uphold its obligations thereunder. The Debtors should therefore send any sale-related notices to CVS, including but not limited to the Sale Notice, the Cure Notice, the Assumption Notice and the Rejection Notice, so that it can remain apprised of the status and outcome of the sale process and take any steps necessary to protect its interests. CVS objects to the Bid Procedures Motion to the extent CVS is not included as a notice party for such notices.

9. In addition, to the extent Adequate Assurance Information is available only upon request, CVS hereby requests that such Adequate Insurance Information for the Stalking Horse and any Qualified Bidders be sent to CVS's counsel identified herein, in accordance with the deadlines ultimately approved by this Court.

**II. The Proposed Sale Timeline is Too Aggressive and Does Not Provide Sufficient Time to Review Adequate Assurance Information**

10. The proposed Bid Procedures set forth the following aggressive schedule with regard to the potential assumption and assignment of unexpired leases:

<b>Date</b>	<b>Description</b>
<b>March 2, 2017</b>	Deadline to Serve Cure Notice
<b>March 17, 2017</b>	<ul style="list-style-type: none"> <li>• Bid Deadline</li> <li>• Deadline for Assumption and Assignment/Cure Objections</li> <li>• Deadline for Sale Objections</li> </ul>
<b>March 20, 2017</b>	Auction
<b>March 22, 2017</b>	Deadline for Adequate Assurance Information. See <i>id.</i> at ¶ 29(b) (providing that '[n]o later than two business days after the Bid Deadline, the Debtors shall serve on affected counterparties and their respective known counsel that request it . . . the adequate assurance information provided by each Qualified Bidder)
<b>March 24, 2014</b>	<ul style="list-style-type: none"> <li>• Outside Sale Hearing Date</li> <li>• Deadline to Object to Adequate Assurance of Prevailing Bidder (if not Sportsdirect).</li> </ul>
<b>3 Days Prior to Closing</b>	Deadline for Stalking Horse To Determine Leases To Be Assigned

11. Under the proposed schedule, CVS and the non-debtor Lease parties will not receive notice of the identity of potential assignees and/or Adequate Assurance Information until

March 22, 2017, which is only two days before the proposed Sale Hearing. This is a woefully insufficient time period for CVS and others to assimilate and evaluate the Adequate Assurance Information for both the Prevailing Bidder and the Back Up Bidder and, if necessary, prepare and present an objection. CVS has a vested interest in ensuring that Sportsdirect, Newco, or any other Prevailing Bidder is adequately capitalized so as to uphold its obligations under any assumed and assigned Leases, and requires a meaningful opportunity to review Adequate Assurance Information in advance of the Sale Hearing to ensure that its rights and interests are protected.

12. Moreover, this proposed timeline effectively (i) precludes any possibility of negotiations to resolve concerns and (ii) denies counterparties' rights to take adequate assurance discovery of any proposed assignees who are the Prevailing Bidder.

13. Because the proposed Bid Procedures deprive CVS and others of any real opportunity – meaningful or otherwise – to review Adequate Assurance Information and oppose the assumption and assignment of leases based on such information, such Bid Procedures both deprive CVS and the non-debtor Lease counterparties of their right to due process.

14. CVS respectfully requests that the Court require at least seven (7) days between the date upon which Adequate Assurance Information is provided and the Sale Hearing in order to provide CVS and the non-debtor Lease counterparties with a meaningful opportunity to review the information, attempt to work with the Debtors to negotiate the resolution of valid concerns and if, necessary, prepare an objection. This proposed modification will better balance the Debtors' need to move quickly with the due process rights of CVS and the non-debtor counterparties to the Debtors' executory contracts and unexpired leases.

**III. The Stalking Horse and All Bidders Must Irrevocably Identify All Contracts and Leases to be Assumed and Assigned Prior to the Auction.**

15. Next, for reasons similar to those described above, the Bid Procedures (and Stalking Horse Agreement) must be modified to require (i) the Stalking Horse to irrevocably identify the contracts and leases sought to be assumed and assigned at least one week prior to the Bid Deadline; and (ii) any other Qualified Bidders to irrevocably identify the contracts and leases sought to be assumed and assigned by the Bid Deadline.

16. As noted above, the proposed Designation Deadline by which the Stalking Horse must, *inter alia*, identify the Designated Contracts is three (3) business days prior to the Closing Date. See Stalking Horse APA, at 5. Thereafter, “[i]n connection with the Closing,” the Debtors will serve the Assumption Notice on the relevant non-debtor counterparties to the Designated Contracts. See id. at § 2.6(b); Bid Procedures Motion, at 11.

17. Based on this timing, CVS and the non-debtor counterparties to executory contracts and leases will not receive any indication as to whether their executory contracts or unexpired leases are intended to be assumed and assigned until *after* the sale has already been approved and, more specifically, after the deadline to object to the Prevailing Bidder’s Adequate Assurance Information has expired.

18. Bankruptcy Code section 361 defines “adequate assurance” as “relief . . . as will result in the realization by such entity of the indubitable equivalent of such entity’s interest in such property.” 11 U.S.C. § 361(3). Courts have further determined that adequate protection in the context of section 363(e) of the Bankruptcy Code “can be achieved only through continued possession of the leased premises.” Dishi & Sons v. Bay Condos LLC, 510 B.R. 696, 711 (S.D.N.Y. 2014).

19. Without any sense, in advance of the Sale Hearing, as to what contracts and leases will be assumed and assigned, it is impossible for CVS and other parties-in-interest to understand the go-forward business of any bidder and know whether the Adequate Assurance Information provided demonstrates the bidder's ability to perform under such contracts and leases in the future.

20. Moreover, without the Stalking Horse identifying the exact contracts and leases to be assumed and assigned, it is impossible for other bidders to fully understand what is necessary to top the Stalking Horse bid. There is similarly no way for the Debtors to determine the value of the Stalking Horse's bid as compared to any other bids received without an understanding of what contracts and leases may be rejected and what rejection damage claims may be left behind.

21. For these reasons, CVS respectfully requests that the Court modify the Bid Procedures to require that (a) the Stalking Horse irrevocably identify all contracts and leases to be assumed and assigned at least one week prior to the Bid Deadline, and (b) all other Qualified Bidders irrevocably identify all contracts and leases to be assumed and assigned no later than the Bid Deadline.

**IV. The Complete Asset Purchase Agreement and Related Schedules Must be Filed Prior to the Approval of Any Sale**

22. Lastly, in order to provide CVS and other parties in interest with a "complete picture" of the terms of any propose sale, the Bid Procedures should be modified to require that a complete version of the asset purchase agreement with the Prevailing Bidder, including all disclosure schedules, be filed by a date certain prior to the Court's approval of any sale, so that creditors and parties in interest have sufficient time to analyze such documents and, if appropriate, object.

**RESERVATION OF RIGHTS**

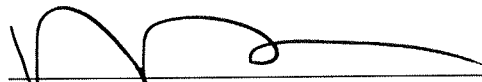
23. CVS reserves the right to raise additional objections to the Bid Procedures Motion and the Bid Procedures at the hearing on the same.

24. CVS joins in any and all objections to the Bid Procedures Motion and the Bid Procedures to the extent such objections are consistent with this Limited Objection.

WHEREFORE, CVS respectfully requests that the Court enter an Order: (i) clarifying, denying or modifying, as requested herein, the proposed Bid Procedures; and (ii) granting to CVS such other and further relief as the Court deems just and proper.

Dated: February 27, 2017

SAUL EWING LLP



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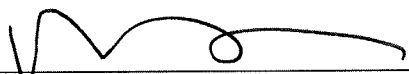
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**CERTIFICATE OF SERVICE**

I, Mark Minuti, hereby certify that on February 27, 2017, I caused a copy of the **Limited Objection of CVS Pharmacy, Inc. to Debtors' Motion for Approval of Proposed Bid Procedures** to be served on the parties on the attached service list in the manner indicated therein.

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\_\_\_\_\_  
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Dated: February 27, 2017

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