

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: TRICIDA, INC., ¹ Debtor.	Chapter 11 Case No. 23-10024 (JTD) Re: Docket Nos. 72, 74, 100 & 104
--	--

**OMNIBUS OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO (I) DEBTOR’S PROPOSED SALE OF ASSETS; AND
(II) DISCLOSURE STATEMENT IN RESPECT OF
CHAPTER 11 PLAN OF LIQUIDATION**

The Official Committee of Unsecured Creditors (the “Committee”) of Tricida, Inc. (the “Debtor” or “Tricida”), the above-captioned debtor and debtor-in-possession, by and through its undersigned proposed counsel, hereby files this Omnibus Objection (the “Omnibus Objection”) to the: (I) the Debtor’s Proposed Sale Of Assets (Docket Nos. 100 & 104); and (II) Disclosure Statement in Respect of Chapter 11 Plan of Liquidation for Tricida, Inc. (Docket No. 72) (the “Disclosure Statement”), and to the Debtor’s Solicitation Motion (Docket No. 74) (the “Solicitation Motion”). In support of the Omnibus Objection, the Committee states as follows:

¹ The Debtor in this chapter 11 case, together with the last four digits of the Debtor’s federal tax identification number, is Tricida, Inc. (2526). The Debtor’s service address is 7000 Shoreline Court, Suite 201, South San Francisco, CA 94080.



PRELIMINARY STATEMENT

A. Objection to Proposed Sale

1. In what could be characterized as nothing short of a failed sale process and questionable auction² (the “Auction”) that remains open, the Debtor has unilaterally declared, without proper consultation with the Committee and Ad Hoc Noteholder Committee (the “Noteholders”), a Successful Bidder and Back-Up Bidder for the Debtor’s intellectual property assets. Unfortunately, neither bid (collectively the “Bids”): (i) generates any value for the Debtor’s estate,³ (ii) is sufficient or adequate (*i.e.*, not a fair sale price) and (iii) is not the product of a sound business purpose. Moreover, and perhaps fatal to the requested relief, the auction was not conducted in accordance with the Court’s approved bidding procedures (the “Bidding Procedures Order;” Docket No. 100), Indeed, the Auction was conducted in large part, over the objections and concerns of the Consultation Parties (as defined in the Bidding Procedures Order). *See* Transcripts of Auction, **Exhibits A and B** attached hereto. The proposed sale also raises more questions than answers that need to be answered before being approved (*e.g.*, the Successful Bidder’s financial wherewithal; the good faith of the Bidders; and the adequacy of the Debtor’s marketing and sale process).

2. In the absence of the Debtor sustaining its burden of proof, the relief requested should be denied. The Committee’s review of the sale process implemented by the Debtor, the differences between the competing bids, the contracts and agreements to be assumed by

² The Debtor proceeded with the auction over the objections of both the Committee and the Ad Hoc Noteholder Committee. (*See* February 16, 2023 Transcript of Auction and February 15, 2023 Transcript of Auction, **Exhibit A** and **Exhibit B**, respectively.)

³ In fact neither bid covers the Debtor’s investment banker’s \$1.4 million Sale Fee, or the fees, costs and expenses of the Auction.

the two bidders, the claims and causes of actions being purchased or transferred to the two bidders is ongoing and the Committee reserves the right to supplement this Omnibus Objection at or prior to the Sale Hearing. What is clear, in a liquidating case like the present case, where both major creditor constituencies (the Committee and Noteholders) spoke loudly and clearly⁴ and opposed the opening of the Auction or the Debtor's unilateral declaration of a Successful Bidder and Back-Up Bidder, the proposed sale should not go forward, especially at the dismal price obtained, \$250,000. Indeed, the Committee respectfully submits that other value accretive alternatives exist to the proposed sale such as transferring the Debtor's intellectual property to the liquidating trust contemplated by the Debtor's proposed plan of liquidation. In sum, the proposed sale is not in the best interest of the estate and should be denied.

B. Objection to Disclosure Statement

3. Given the numerous defects with the Auction and proposed Sale, it is premature, if not improper, to consider the Debtor's plan of liquidation at this time. To the extent the Court disagrees and considers the Disclosure Statement and Solicitation Motion, it is within this Court's discretion to deny them where, as here, the plan is unconfirmable on its face. *See In re Am. Capital Equip., LLC*, 688 F.3d 145, 154 (3d Cir. 2012) (concluding that “[i]t appears to be within the discretion of the bankruptcy court to withhold approval of a

⁴ With the Noteholder's counsel putting Debtor's counsel on notice that: “moving forward with that violates the restructuring support agreement you entered into [with] us, where you agreed not to compromise or settle claims against Patheon, except pursuant to the RSA and the support of the consenting Noteholders.” **Exhibit A**, p. 6, 14:18.

disclosure statement if the accompanying plan is unconfirmable”); *Alexander Props., LLC v. Patapsco Bank*, 883 F. Supp. 2d 552, 554, 560-61 (D. Md. 2012) (bankruptcy court correctly declined to approve debtor’s disclosure statement because plan was not confirmable); *In re Arnold*, 471 B.R. 578, 586 (Bankr. C.D. Cal. 2012) (appropriate to deny approval of disclosure statement where plan is unconfirmable on its face). Because the Plan is patently unconfirmable the Court should not approve the Disclosure Statement.

4. Even if the Court were to authorize the Debtor to move forward with its fatal plan, the disclosures in the Disclosure Statement are not adequate within the meaning of Bankruptcy Code section 1125(a) and should be corrected. *See In re E. Me. Elec. Coop.*, 125 B.R. 329, 333 (Bankr. D. Me. 1991).

OBJECTION TO SALE

I. THE DEBTOR FAILS TO SATISFY ITS BURDEN UNDER SECTION 363

5. Section 363(b) of the Bankruptcy Code provides that “the trustee, after notice and a hearing, may sell . . . other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). A debtor’s sale of assets outside the ordinary course of business requires proof that:

- (1) there is a sound business purpose for the sale;
- (2) the proposed sale price is fair;
- (3) the debtor has provided adequate and reasonable notice; and
- (4) the buyer has acted in good faith.

See In re Delaware & Hudson Railway Co., 124 B.R. 169, 176 (D. Del. 1991); *In re: Pursuit Cap. Mgmt., LLC*, No. BR 14-10610-LSS, 2016 WL 5402735, at *4 (D. Del. Sept. 26, 2016);

In re Exaeris, Inc., 380 B.R. 741, 744 (Bankr. D. Del. 2008). Here, as explained below, the Debtor has failed to meet its burden of proof.

A. No Sound Business Purpose Exist for the Sale

6. In the present case, the sale of the Debtor's IP assets, **at any price (apparently \$250,000)**, including at a price well below even the cost and expense of the auction, and approximately five (5) times less than the \$1.4 million Sale Fee payable to the Debtor's investment banker upon consummation of the proposed sale, plainly does not represent a sound business purpose. Indeed, a prudent course of action is to transfer the assets to the liquidating trust contemplated by the Debtor's proposed Plan of Liquidation and to allow the Liquidation Trust to maintain and dispose of the assets to the wishes of the beneficiaries of the liquidating trust—the real stakeholders in this liquidating case, not the directors, officers or managers, who have sought to benefit themselves ahead of creditors at every turn of this case.⁵

7. Courts have utilized a non-exhaustive list of factors to consider in determining if there is a sound business purpose for the sale, including: (i) the proportionate value of the asset to the estate as a whole; (ii) the amount of elapsed time since the filing; (iii) the likelihood that a plan of reorganization will be proposed and confirmed in the near future; (iv) the effect of the proposed disposition of the future plan of reorganization; (v) the amount of proceeds to be obtained from the sale versus appraised values of the property; and (vi) whether the asset is decreasing or increasing in value. *In re Delaware & Hudson Railway*

⁵ Indeed, in November, 2022, shortly before the Petition Date, the Debtor paid the Debtor's senior management approximately \$2.4 million in retention award payments. (The Committee does not yet know the total amount of retention payments to all of the Debtor's employees in November, 2022.) The November retention payments were in addition to retention payments paid to such executives in June, 2022, and, were in addition to the unusual and uncommon, payment of "Paid Time Off" paid to such employees in mid-December, 2022. Combined, these questionable payments aggregated millions of dollars.

Co., 124 B.R. 169, 176 (D. Del. 1991); *see also In re Lionel Corp.*, 722 F.2d 1063, 1068–69 (2nd Cir.1983); Collier on Bankruptcy § 363.02 (15th ed.1997).

8. Each of these factors militates in favor of denying the proposed sale and the relief requested. First, **the proportionate value of the assets to be sold**—intellectual property and estate claims and causes of action—are the Debtor’s primary asset. Hundreds of millions of dollars went into the development of the Debtor’s compound, veverimer, and proposed Chronic Kidney Disease Drug. The Debtor seeks to sell the assets on an extremely expedited timeline (basically in 3-4 months’ time, less than 2 months postpetition), when alternative disposition strategies exist, including transferring the assets to the liquidating trust where the asset can be maintained and eventually monetized through a more focused and specific disposition strategy. The Debtor’s estate, and liquidating trust, certainly have sufficient unencumbered cash (over \$45 million at the start of the Debtor’s case) to maintain the assets and pursue such a value accretive approach. Moreover, the book value of the intellectual property alone exceeds \$250,000, and the costs and expenses of the sale far exceeds the proposed sale price—and simply saying “the market has spoken” is not sufficient in this trouble case.

9. Second, **only a short period of time has lapsed since the filing of the case.** In fact, the time the Debtor has spent is less than 2 months in bankruptcy marketing its complex assets in the proposed sale. The Committee listened to the Debtor, but the process they implemented failed.

10. Third, **a strong likelihood of a plan of reorganization (in this case a plan of liquidation) exists.** The Debtor seeks to confirm a plan by April 6, 2023. Creditors could

vote on the plan and ultimately decide how to dispose of the assets through the liquidation trustee.

11. Fourth, **the effect of the proposed disposition of the plan of liquidation** weighs in favor of allowing creditors to vote on the disposition of the asset, rather than having those who failed to conduct a reasonable sales process dispose of the asset.

12. Fifth, **the amount of proceeds to be obtained from the sale versus appraised values of the property** favors a finding of no sound business purpose versus allowing the creditors to control the disposition of the asset.

13. Finally, **the asset is not decreasing or increasing in value.** The asset remains what it is—complex intellectual property assets and certain inventory—the cost of transferring and maintaining the assets is *de minimus* relative to the size of this case. The Liquidation Trust should have more than enough unencumbered case on hand following confirmation of any plan—more than \$30 million—to maintain and dispose of the assets in a timely and more efficient manner than what the Debtor has failed to achieve. More importantly, the creditors—not the Debtor—can and should decide their fate without scores of professionals and insiders taking care of themselves at the expense of creditors.

B. The Proposed Sale Price Is Not Fair

14. Selling potentially valuable assets at \$250,000, when the fees, costs and expenses to sell the assets far exceed the value received, makes no sense. Unfortunately, the Committee and Noteholders urged the Debtor not to open, or even proceed with, the Auction. Despite this, the Debtor did so. The Committee respectfully submits that merely because the Debtor continued with the failed auction process does not mean the sale price is fair. Indeed,

the Committee intends to present evidence at the Sale Hearing that it does not believe the universe of potential interested bidders (such as distressed intellectual property purchasers) were contacted in connection with the sale of the assets. Or that those who were contacted were fully apprised of the sale opportunity. The Committee will also present evidence demonstrating that a higher and better price—more than \$250,000—can be obtained through transferring the assets to the liquidating trust versus selling the assets today.

C. The Debtor Provided Adequate and Reasonable Notice

15. It appears that the Debtor has provided adequate and reasonable notice of the sale to its creditors. However, as discussed more fully below, the Debtor violated the Bidding Procedures Order, did not properly consult with the Committee and Noteholders and, as such, ignored the consulting parties for the sole purpose of selling the assets at any cost. The Debtor's failure to properly consult with the Committee and Noteholders should not be countenanced by the Court.

D. Whether the Bidders Acted in Good Faith Remains to be Determined

16. The element of “good faith” is of particular importance, as the Third Circuit made clear in *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 149–50 (3d Cir.1986) (explaining that “when a bankruptcy court authorizes a sale of assets pursuant to section 363(b)(1), it is required to make a finding with respect to the ‘good faith’ of the purchaser”). Unfortunately, the Committee lacks sufficient information at this time to verify that the Bidders acted in good faith and the Committee reserves the right to investigate both Bidders’ good faith in conjunction with the Auction and proposed Sale.

II. THE DEBTOR FAILED TO FOLLOW THE BIDDING PROCEDURES APPROVED BY THE COURT

17. A bid procedures order is enforceable like any other court order. *In re MTE Holdings LLC*, No. 19-12269 (CTG), 2021 WL 3743201, at *7 (Bankr. D. Del. Aug. 17, 2021). The details of how an auction is administered must come from either (a) the terms of the bid procedures order, or (b) perhaps in exceptional cases, a residual authority of the Bankruptcy Court to protect the fundamental integrity of the bankruptcy process. *Id.* In the present case, the Debtor failed to follow the Bidding Procedures Order.

18. First, the Debtor did not qualify bids by the February 14, 2023 deadline imposed by Section VI of the Bidding Procedures Order. (Docket No. 100-1). The Debtor did not qualify bids, if at all, until the second day of the Auction, February 16, 2023, at the start of the bidding. (See **Exhibit A.**) More importantly, the Debtor did not disclose the Starting Bids to the Qualified Bidders (or the Committee) on or before February 14, 2023, at 9:00 p.m. (prevailing Eastern Time) in violation of Section IX of the Bidding Procedures. (Section IX provides in relevant part: *The Starting Bid(s) will be provided to Qualified Bidders on or before February 14, 2023, at 9:00 p.m. (prevailing Eastern Time)*’.) As a result, neither Bidder knew what they were shooting against until the very start of the Auction, and even then, confusion ensued. (See **Exhibit A.**)

19. Second, the Debtor did not consult with the Committee or Noteholders prior to declaring the Successful Bidder or Back-Up Bidder at the Auction, in violation of Section IX of the Bidding Procedures Order. Specifically, pursuant to Section IX of the Bidding Procedures Order: “[p]rior to the conclusion of the Auction, the Debtor, *in consultation with*

the Consultation Parties, will, for the Assets (or subset thereof) that were subject to the Auction: (a) determine, consistent with the Bidding Procedures, which bid constitutes the highest or otherwise best bid (the “Successful Bid”); and (b) notify all Qualified Bidders at the Auction for the subject Assets, prior to its conclusion, of the name of the maker of the Successful Bid (the “Successful Bidder”) with respect to the subject Assets, and the amount and other material terms of the Successful Bid.” Bidding Procedures Order, Section IX (emphasis added). Rather, the Debtor simply plowed through the Auction, over the objections of the Committee and Noteholders, and announced the purported Successful Bidder and Back-Up Bidder. The Committee does not concede that the Successful Bidder was the “Successful Bid,” or that the Back-Up Bidder was the “Back-Up Bid.” Indeed, depending upon how value is attributable to the two bids, the Back-Up Bidder could, arguably, be the highest bid for the assets.

20. To the extent the Court determines, after the parties’ evidentiary presentations at the Sale Hearing, that the Debtor did comply with the terms of the Bidding Procedures Order, the Court may still, given the exceptional circumstances of this case, exercise its residual authority to protect the fundamental integrity of the bankruptcy process

III. THE SALE PROCESS IMPLEMENTED BY THE DEBTOR WAS FLAWED

21. In short, the Debtor did not adequately market its assets for sale. The evidence will show that the Debtor failed to canvass the “distressed” IP market that exist for companies like the Debtor who experienced a failed clinical trial; failed to contact potential buyers in the Asian market; failed to generate interest through creative approaches such as involving milestones or royalty “upside” arrangements; failed to present its assets appropriately for sale,

including clinical data, safety data that targeted specific geography and/or patient needs; and failed to perform a real valuation process or sufficiently consider repackaging of the IP to buyers.

22. Adding insult to injury, the Debtor has achieved these failures while significantly depleting its coffers by engaging costly professionals and paying its directors and officers significant amounts, including retention bonuses and paid time off; and, as explained below, it now seeks to release these same parties through a plan of liquidation even though claims may exist against these parties.

OBJECTION TO DISCLOSURE STATEMENT

I. THE PLAN IS PATENTLY UNCONFIRMABLE

A. The Releases Under the Plan Fail as a Matter of Law.

23. Bankruptcy Code section 1129(a)(1) provides that a plan may be confirmed only if it “complies with the applicable provisions of this title.” 11 U.S.C. § 1129(a)(1). The Plan before the Court does not comply with the “applicable provisions” of the Bankruptcy Code found in section 524(e), which provides that “discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.” 11 U.S.C. § 524(e).

24. Here, the Plan releases non-Debtor parties in violation of that section, and accordingly, is patently unconfirmable. As one example, the Plan proposes to release the Debtor’s claims against its current and former directors and officers. The Plan provides:

As of the Effective Date, pursuant to section 1123(b) of the Bankruptcy Code and for good and valuable consideration, each Released Party is deemed released by the Debtor and its estate from any and all claims and

Causes of Action, whether known or unknown, including any claims and Causes of Action that the Debtor or its estate would have been legally entitled to assert in its own right including any claims or Causes of Action that could be asserted derivatively or on behalf of the Debtor (or its estate), that such Entity would have been legally entitled to assert (whether individually or collectively), based on, or relating to, or in any manner arising from, in whole or in part, the Debtor (including the management, ownership, or operation thereof, or otherwise), any securities issued by the Debtor and the ownership thereof, the Debtor's in- or out-of-court restructuring efforts, any avoidance actions, the Chapter 1 Case, the formulation, preparation, dissemination, negotiation, or filing of the Term Sheet, the RSA, the Disclosure Statement, the Sale Motion, the Plan, the Plan Supplement, or any other transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Plan, the Plan Supplement, the Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post Effective Date obligations of any party or entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan; (2) any obligations under or in respect of the Sale Order; or (3) the Retained Causes of Action

Plan § IX.A (emphasis in original).

25. "Releasing Parties" is defined under the Plan as follows:

[C]ollectively, and in each case, in their respective capacities as such, (a) the Debtor; (b) the Consenting Noteholder Releasing Parties; (c) all Holders of Claims deemed hereunder to have accepted the Plan that have not filed an objection to the release contained in Article IX herein prior to the Voting Deadline; (d) all Holders of a Claim or Interest that (i) vote to accept or reject the Plan and do not timely submit a Release Opt-Out, or (ii) do not vote to accept or reject the Plan and either do not timely submit a Release Opt-Out or do not file an objection to the releases contained in Article IX herein prior to the Voting Deadline; (e) to the maximum extent permitted by Law; each current and former Affiliate of each Person or Entity in clauses (a) through (d); and (f) to the maximum extent permitted by Law, each Related Party of each Entity in clauses (a) through (d).

Plan § I.A.87. (emphasis added).

26. Released Party” is defined under the Plan as follows:

“Released Party” means each of, and in each case in its capacity as such: (a) the Debtor; (b) the Consenting Noteholder Releasing Parties; and (c) each Related Party of the Debtor or the Consenting Noteholder Releasing Parties, including, for the avoidance of doubt, any professional retained by the Debtor or the Consenting Noteholders in connection with this Chapter 11 Case.

Plan § I.A.86. (emphasis added).

27. In addition, under the terms of the Plan, the Debtor’s creditors (to the extent that they purportedly consent) release their claims against the Debtor’s directors and officers, among others. Specifically, the Plan states:

As of the Effective Date, each Releasing Party is deemed to have released and discharged each Released Party from any and all claims and Causes of Action, whether known or unknown, including any claims and Causes of Action that the Debtor or its estate would have been legally entitled to assert in its own right including any claims or Causes of Action that could be asserted derivatively or on behalf of the Debtor (or its estate), that such Entity would have been legally entitled to assert (whether individually or collectively), based on, relating to, or in any manner arising from, in whole or in part, the Debtor (including the management, ownership or operation thereof, or otherwise), any securities issued by the Debtor and the ownership thereof, the Debtor’s in- or out-of-court restructuring efforts, any avoidance actions, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Term Sheet, the RSA, the Disclosure Statement, the Sale Motion, the Plan, the Plan Supplement, or any other transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Plan, the Plan Supplement, the Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post Effective

Date obligations of any party or entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan; (2) any obligations under or in respect of the Sale Order; or (3) the Retained Causes of Action.

Plan § IX.B (emphasis in original).

28. Further, the Plan proposes to release all of the Debtor's non-debtor affiliates by broadly defining a "Related Party" as follows:

"Related Party" means each of, and in each case in its capacity as such, current and former directors, managers, officers, committee members, members of any governing body, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, **Affiliates**, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity), accountants, investment bankers, consultants, representatives, and other professionals and advisors and any such Person's or Entity's respective heirs, executors, estates, and nominees.

Plan § I.A.84. (emphasis added).

29. Such broad releases against third parties, including the Debtor's present and former directors, officers, managers, attorneys, financial advisors, and other professionals are improper and violate Bankruptcy Code section 524(e). *See, e.g., Gillman v. Continental Airlines (In re Continental Airlines)*, 203 F.3d 203, 214 (3d Cir. 2000) (rejecting proposed release of debtor's directors and officers in plan); *In re Exide Techs.*, 303 B.R. 48, 73-75 (Bankr. D. Del. 2003) (rejecting proposed release in plan by debtor of lenders, directors, and officers, and rejecting proposed exculpation provision in plan that would effectuate release by non-consenting creditors of lenders, directors, and officers); *In re Genesis Health Ventures*,

Inc., 266 B.R. 591, 608-09 (Bankr. D. Del. 2001) (holding that plan’s provisions providing for third-party releases of senior lenders and directors and officers must be stricken); *see also In re Washington Mut., Inc.*, 442 B.R. 314, 349-50 (Bankr. D. Del. 2011) (finding no basis for debtors to release directors and officers or any professionals, current or former, because there was no showing of a substantial contribution having been made by them to obtain such releases); *In re Zenith Elecs. Corp.*, 241 B.R. 92, 110-11 (Bankr. D. Del. 1999) (holding that releases of non-derivative third-party claims against a non-debtor cannot be confirmed without satisfying a five part test which considers the necessity of the release).

30. Because the Plan violates the provisions of the Bankruptcy Code it is not confirmable and the Court should deny the relief requested—approval of the Disclosure Statement.

B. The Court Should Deny the Debtor’s Proposed Solicitation Procedures and Form of Ballot Because the “Opt Out” Provision Improperly Imposes Deemed Consent to the Releases.

31. The Debtor’s proposed Solicitation Procedures and the form of Ballot should require that creditors and other parties-in-interest specifically “opt in” to the proposed releases in Article IX of the Plan to ensure that such releases are consensual, especially for those creditors and other parties-in-interest that reject (or are deemed to reject) the Plan or otherwise abstain from voting on the same. *See, e.g., Washington Mut.*, 442 B.R. at 355 (Bankr. D. Del. 2011) (ruling “opt out” mechanism was neither consensual nor acceptable, and concluding that third party release was effective only as to those affirmatively consenting by voting for plan and not opting out of release); *In re Mallinckrodt*, 639 B.R. 837, 879 (Bankr. D. Del. 2022) (recognizing division and controversy using an “opt-out” mechanism for obtaining

consent but allowing it under unique facts and circumstances of “mass tort” case,” stating that “the use of opt outs is not appropriate in every case”); *see also In re SunEdison, Inc.*, 576 B.R. 453, 461 (Bankr. S.D.N.Y. 2017) (concluding, despite plan provision to the contrary, that non-voting releasors’ silence did not constitute consent to release); *In re Chassix Holdings, Inc.*, 533 B.R. 64, 79-80 (Bankr. S.D.N.Y. 2015) (explaining, at disclosure statement hearing, that the proposed “opt out” requirement “would have been little more than a Court-endorsed trap for the careless or inattentive creditor. In response, the [d]ebtors agreed to modify the proposed Ballots so that creditors who rejected the Plan would be given the ability to ‘opt in’ to the proposed releases by checking a box indicating their desire to do so.”).

32. Similarly, the Plan should not be approved in this case because it provides that creditors who, among others, fail to vote on the Plan or those who accept or reject the Plan and fail to “opt out” of the releases, are deemed to accept the releases and are Releasing Parties. *See, e.g.*, Solicitation Motion (Ballots), Exhibits 3-5; *see also* Plan, Art. IX. “Failing to return a ballot is not a sufficient manifestation of consent to a third party release.” *See Chassix*, 533 B.R. 80-81 (concluding, “as to creditors who were entitled to vote, but who chose to take no action at all: under the circumstances of this case it would be inappropriate to treat such inaction as a ‘consent’ to third party releases”); *SunEdison*, 576 B.R. at 460-61; *Washington Mut.*, 442 B.R. at 355. Accordingly, the Solicitation Procedures and proposed form of Ballots should be amended to require creditors and parties-in-interest to specifically “opt in” to releases, not “opt out.”

II. THE PLAN IMPERMISSIBLY EXCULPATES CERTAIN THIRD PARTIES.

33. The Plan also exculpates numerous parties, by providing as follows:

As Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is exculpated from any Cause of Action for any Claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Debtor's in-court restructuring efforts, the Term Sheet, the RSA, the Disclosure Statement, the Sale Motion, the Plan, the Plan Supplement, or any restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Plan, the Plan Supplement, the Chapter 11 Case, the filing of the Chapter 11 Case, the pursuit of the Confirmation Order, the pursuit of the Sale Order, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place between the Petition Date and the Effective Date, except for claims related to any act or omission that is determined in a final order by a court of competent jurisdiction to have constituted actual intentional fraud, willful misconduct, or gross negligence of such Person, but in all respects such Entities shall be entitled to reasonably rely upon the written advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

Plan § IX.C. In this regard, an "Exculpated Party" exculpated by the terms of the Plan are defined to include: "the Debtor's directors and officers during the Chapter 11 Case" and "to the fullest extent permitted by law, such Person's Related Parties." Plan § I.A.42. Thus, even the Debtor's former officers and directors, are proposed to be exculpated under the Plan.

34. Such broad exculpation is not appropriate. An exculpation clause at most "must be limited to the fiduciaries who have served during the chapter 11 proceeding: estate professionals, the committee and its members, and the debtor's current directors and officers." *Washington Mut.*, 442 B.R. at 350-51; accord *In re Tribune Co.*, 464 B.R. at 126, 189 (Bankr. D. Del. 2011) (holding that exculpation clause "must exclude non-fiduciaries"); *In re PTL Holdings LLC*, Case No. 11-12676 (BLS), 2011 WL 5509031, at *12 (Bankr. D. Del. Nov.

10, 2011) (sustaining U.S. Trustee’s objection to the exculpation clause, stating that “the exculpation clause here must be reeled in to include only those parties who have acted as estate fiduciaries and their professionals”); *compare In re PWS Holding Corp.*, 228 F.3d 224, 246 (3d Cir. 2000) (the committee, its members, and estate professionals may be exculpated under a plan for their actions in the bankruptcy case, except for willful misconduct or gross negligence). Moreover, there is no requirement that even such estate fiduciaries receive exculpation.

35. Thus, the Plan is not confirmable on this basis as well, and the Court should deny approval of the disclosure statement.

III. THE PLAN IMPROPERLY CLASSIFIES GENERAL UNSECURED CLAIMS IN SEPARATE CLASSES.

A. The Patheon Rejection Claim and Noteholder Claims Are Improperly Classified Separately from General Unsecured Claims.

36. Bankruptcy Code section 1123(a)(4) requires that a plan “provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest.” *See John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.*, 987 F.2d 154, 158-59 (3d Cir. 1993) (citations omitted) (explaining that separate classification of similar claims permitted in cram-down case only when classes receive materially differing treatment); *see also Phoenix Mut. Life Ins. Co. v. Greystone III Joint Venture (In re Greystone III Joint Venture)*, 995 F.2d 1274, 1278 (5th Cir. 1991), *cert. denied*, 506 U.S. 821 (1992) (stating that “[claims] which share common priority and rights against the debtor’s estate, should be placed in the same class”). Under the Plan, the Debtor proposes to separately classify three classes of general

unsecured claims. In particular, the Plan provides for Class 3 Noteholders Claims, Class 4 Patheon Rejection Claim and Class 5 General Unsecured Claims. *See* Plan, § III.B. It appears that all three of these classes stand to receive the same “*pro rata* right to recovery from the Liquidating Trust pursuant to the Liquidating Trust Waterfall.” *Id.* Accordingly, there appears no basis for separately classifying these claims and, thus, the Debtor’s attempt to do so constitutes impermissible gerrymandering which renders the Plan patently unconfirmable; as a result, the Court should reject the Disclosure Statement.⁶ *See, e.g., In re Boston Post Rd. Ltd. P’ship*, 21 F.3d 477, 483 (2d Cir. 1994) (holding “separate classification of unsecured claims solely to create an impaired assenting class will not be permitted; the debtor must adduce credible proof of a legitimate reason for separate classification of similar claims”).

IV. THE DISCLOSURE STATEMENT CONTAINS INADEQUATE DISCLOSURES

37 Not only did the Debtor propose a patently unconfirmable plan, as set forth above, the Disclosure Statement fails to provide “adequate information” within the meaning of Bankruptcy Code section 1125(a), and therefore the Disclosure Statement should not be approved. A chapter 11 debtor may only solicit votes to accept or reject a chapter 11 plan once the court has approved the debtor’s written disclosure statement for that plan as containing “adequate information.” 11 U.S.C. § 1125(b). Section 1125(a) of the Bankruptcy Code defines “adequate information” as follows:

⁶ Further, to the extent the Plan provides disparate treatment, because the claims in these classes are of the same priority, any such treatment would violate Bankruptcy Code section 1129(b)(2)(B), further rendering the Plan patently unconfirmable.

[I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information[.]

11 U.S.C. § 1125(a).

38. Because creditors and courts place great weight on disclosure statements, it is critically important that the Disclosure Statement in this case provide adequate disclosures. *See, e.g., In re Oneida Motor Freight, Inc.*, 848 F.2d 414, 417 (3d Cir. 1988) (stating that “we cannot overemphasize the debtor’s obligation to provide sufficient data to satisfy the Code standard of adequate information’); *In re Crowthers McCall Pattern Inc.*, 120 B.R. 279, 300 (Bankr. S.D.N.Y. 1990) (emphasizing that “[g]iven the necessity for adequate information in the Disclosure Statement and the paramount position section 1125 occupies in the Chapter 11 process, there is little, if any, room for harmless error”); *see also In re E. Me. Elec. Coop.*, 125 B.R. 329, 333 (Bankr. D. Me. 1991) (explaining that Bankruptcy courts have an independent obligation to determine whether a disclosure statement contains adequate information).

39. Although courts assess adequacy on a case-by-case basis, a disclosure statement must contain “simple and clear language delineating the consequences of the proposed plan on [creditors’] claims and the possible Code alternatives so that they can intelligently accept or reject the Plan.” *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 981

(Bankr. N.D.N.Y. 1988). In essence, a disclosure statement “must clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution.” *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991).

40. Here, the Disclosure Statement lacks a “liquidation analysis” and, thus, fails to address an important and fundamental question as to whether creditors are better off under the Plan or, instead, in a Chapter 7 liquidation. *See* Disclosure Statement, Exhibit B, Liquidation Analysis, “To be Provided.”

41. Further, given the Plan’s proposed broad releases of the Debtor’s “insiders,” including its current and former directors and officers, the Disclosure Statement remarkably fails to provide any information about potential claims against such parties. According to the Debtor’s schedules and statements, the Debtor has paid “insiders” approximately \$6,000,000 in the one year prior to the Petition Date. *See* Schedules & Statements, Doc. No. 111, Attachment 4.

42. In this regard, at the meeting of creditors held under § 341 of the Bankruptcy Code (the “341 Meeting”) on February 15, 2023, the Debtor testified that it made significant payments to certain former directors and officers prior to the Petition Date, including for retention bonuses and paid time off. Based on the Debtor’s testimony it does not appear that such payments were made in the ordinary course of its business, further underscoring that significant claims may exist against the Debtor’s directors and officers, which claims are not being disclosed in the Disclosure Statement.

43. Further, the Committee understands that the Debtor's former director David Bonita sold the majority of his stock in the Debtor in the weeks prior to the Petition Date. In doing so, Mr. Bonita's actions appear to have triggered a "change in ownership," causing the Debtor to lose most if not all of its net operating losses ("NOLs"), valued potentially in the millions (and perhaps hundreds of millions) of dollars. The Debtor testified at the 341 Meeting that its NOLs were lost but it has failed to provide any information in the Disclosure Statement concerning the NOLs generally or, in particular, the potential claims that may exist against Mr. Bonita for his actions.

44. Finally, the Debtor has also failed to disclose any—let alone substantial—consideration or contribution received or to be received by its estate in connection with the releases and exculpation offered under the Plan. *Continental*, 203 F.3d at 215 (finding "no evidence that the non-debtor D&Os provided a critical financial contribution to the Continental Debtors' plan that was necessary to make the plan feasible in exchange for receiving a release of liability . . ."); *Washington Mut.*, 442 B.R. at 354 (concluding "there is no basis for granting third party releases of the Debtors' officers and directors, even if it is limited to their post-petition activity. The only 'contribution' made by them was in the negotiation of the Global Settlement and the Plan. Those activities are nothing more than what is required of directors and officers of debtors in possession (for which they have received compensation and will be exculpated); they are insufficient to warrant such broad releases of any claims third parties may have against them. . . .").

45. For all of these reasons the Committee respectfully requests that the Court deny the Disclosure Statement and Solicitation Motion.

RESERVATION OF RIGHTS

The Committee expressly reserves all objection to the proposed sale, Disclosure Statement and proposed Plan of liquidation and expressly reserves the right to supplement and amend this Omnibus Objection, seek discovery with respect to the same, and introduce evidence at any hearing relating to this Omnibus Objection

Dated: February 17, 2023
Wilmington, Delaware

WOMBLE BOND DICKINSON (US) LLP

/s/ Donald J. Detweiler

Donald J. Detweiler (DE Bar No. 3087)

Todd A. Atkinson (DE Bar No. 4825)

Elazar A. Kosman (DE Bar No. 7077)

1313 North Market Street, Suite 1200

Wilmington, Delaware 19801

Telephone: (302) 252-4320

Facsimile: (302) 252-4330

Email: don.detweiler@wbd-us.com

Email: todd.atkinson@wbd-us.com

Email: elazar.kosman@wbd-us.com

*Proposed Counsel to the Official Committee
of Unsecured Creditors*

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN RE: . Chapter 11
. Case No. 23-10024 (JTD)
TRICIDA, INC., .
Debtor. .
.

TRANSCRIPT OF CONTINUED AUCTION OF ASSETS
Thursday, February 16, 2023

APPEARANCES:

For the Debtor: Allison S. Mielke, Esquire
YOUNG CONAWAY STARGATT & TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801

-and-

Samuel A. Newman, Esquire
SIDLEY AUSTIN, LLP
555 West Fifth Street
Suite 4000
Los Angeles, California 90013

(APPEARANCES CONTINUED)

Transcription Company: Reliable
The Nemours Building
1007 N. Orange Street, Suite 110
Wilmington, Delaware 19801
Telephone: (302)654-8080
Email: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 APPEARANCES (CONTINUED):

2 For the Debtor: Charles M. Persons, Esquire
3 Jeri L. Miller, Esquire
4 SIDLEY AUSTIN, LLP
5 2021 McKinney Avenue
6 Suite 2000
7 Dallas, Texas 75201

8 Lanna Lan, Esquire
9 Jerry Ford II, Esquire
10 787 Seventh Avenue
11 New York, New York 10019

12 -and-

13 Alex Rohan, Managing Director
14 Chris Jandora, Analyst
15 MILLER BUCKFIRE & CO, LLC
16 787 7th Avenue
17 5th Floor
18 New York, New York 10019

19 -and-

20 Sean Corwen, Director
21 SIERRACONSTELLATION PARTNERS, LLC
22 805 3rd Avenue
23 Suite 29
24 New York, New York 10022

25 For the Official
Committee of
Unsecured Creditors:

Donald J. Detweiler, Esquire
WOMBLE BOND DICKINSON (US) LLP
1313 North Market Street
Suite 1200
Wilmington, Delaware 19801

Todd A. Atkinson, Esquire
811 Main Street
Suite 3130
Houston, Texas 77002

1 APPEARANCES (CONTINUED):

2 For the Noteholders: Darren S. Klein, Esquire
3 Abraham Bane, Esquire
4 DAVIS POLK & WARDWELL, LLP
450 Lexington Avenue
New York, New York 10017

5 For Patheon Austria
6 GmbH & Co. KG: William P. Hodges, Esquire
7 THOMPSON HINE, LLP
335 Madison Avenue
12th Floor
New York, New York 10017

8
9 APPEARING VIA ZOOM:

10 For Patheon Austria
11 GmbH & Co. KG: Louis F. Solimine, Esquire
12 THOMPSON HINE, LLP
312 Walnut Street
Suite 2000
Cincinnati, Ohio 45202

13 For Renibus
14 Therapeutics: Ted A. Dillman, Esquire
15 LATHAM & WATKINS, LLP
355 South Grand Avenue
Suite 100
Los Angeles, California 90071

16
17 -and-

18 Frank Stonebanks, Chief Executive
Officer and Chairman
19 Jamie Donadio, Chief Financial
Officer
20 RENIBUS THERAPEUTICS, INC.
181 Grand Avenue
21 Suite 225
Southlake, Texas 76092

22 For the Official
23 Committee of
24 Unsecured Creditors: Brian Ayers, Managing Director
ROCK CREEK ADVISORS, LLC
1738 Belmar Boulevard
25 Belmar, New Jersey 07719

1 (Proceedings commenced)

2 MR. NEWMAN: All right. I think we're ready to
3 get underway.

4 All the mics in the room are live now. We're on
5 the record and this proceeding is being recorded. We're back
6 on the record in the auction of Tricida, Inc., Lot Two.

7 Pursuant to the order of the United States
8 Bankruptcy Court for the District of Delaware approving
9 certain bidding procedures in the former manner of notice
10 thereof, scheduling and auction and hearing on the approval
11 of the sale of all, or substantially all of the assets,
12 establishing certain assumption and assignment procedures,
13 and approving the manner and notice thereof and granting
14 related relief. And we are prepared to proceed with the
15 auction, pursuant to the Rules.

16 As an initial manner, as required by the bidding
17 procedures, I'll ask each qualified bidder present to confirm
18 that incorporated in their bid, they agree to proceed,
19 pursuant to the bid procedures and, specifically, pursuant to
20 paragraph 31. Each qualifying bidder who will participate in
21 the auction will be required to confirm on the record that it
22 is not engaged in any collusion with respect to the bidding
23 process and that its bid is a good faith, *bona fide* offer
24 that it intends to consummate, pursuant to the bid procedure
25 rules, if selected as the successful back-up bidder.

1 Renibus, will you so confirm?

2 MR. DILLMAN: Yes.

3 MR. NEWMAN: All right. We, then, determine that
4 you are a qualified bidder to participate in this auction.

5 Will Patheon so confirm?

6 MR. SOLIMINE: Yes.

7 MR. NEWMAN: And we determine that Patheon is a
8 qualified bidder and can proceed at this auction.

9 MR. DETWEILER: For the record --

10 MR. NEWMAN: I don't need to be interpreted, but I
11 will call on creditor parties so they can make statements.

12 Thank you.

13 Before we proceed, I want to afford the creditor
14 parties an opportunity to make any statement.

15 MR. DETWEILER: For the record, Don Detweiler,
16 proposed counsel to the Official Committee of Unsecured
17 Creditors.

18 We contest whether or not they have been qualified
19 bidders. We believe the consideration that's being proposed
20 in both of the bidders' asset purchase agreement is
21 insufficient and adequate. It's not in the best interests of
22 the estate. It's not in compliance with the bid procedures.
23 The Committee does not agree to any releases or sale of the
24 claims or causes of action.

25 MR. NEWMAN: Darren, on behalf of the Noteholders,

1 do you have any preliminary statement you'd like to make or
2 reservation of rights?

3 MR. KLEIN: Yeah, thanks, Sam.

4 This is Darren Klein at Davis Polk for the
5 Noteholders and I am on Zoom today.

6 I echo and join in the objections that Don just
7 made; in addition, I would just say that for the level of
8 consideration and the question of the debtor's business
9 judgment on moving ahead on these levels, I question, fully,
10 the inclusion of Patheon being allowed to buy claims against
11 itself because it's an appropriate end, runaround Bankruptcy
12 Rule 9019.

13 And, Sam, I feel the need to put you on notice
14 that we think moving forward with that violates the
15 restructuring support agreement you entered into us, where
16 you agreed not to compromise or settle claims against
17 Patheon, except pursuant to the RSA and the support of the
18 consenting Noteholders.

19 MR. NEWMAN: And we appreciate that reservation of
20 rights. We, also, as the debtor, reserve all rights under
21 the bidding procedures, with respect to evaluation of the
22 presentation of the bids after the auction.

23 So, we hope that we will continue an open dialogue
24 with all creditor constituencies in an effort to try to move
25 this process forward. But I think it is our determination

1 that proceeding with the auction at this time will allow us
2 to determine the highest and, otherwise, best bid and we
3 would like to proceed on that basis, but thank you both for
4 attending.

5 Before we move forward, just for the record, since
6 we're being recorded, I would like to go through and just
7 have a quick roll call so we're aware of who's present at the
8 auction. We'll start to my immediate left.

9 MR. HODGES: William Hodges from Thompson Hine for
10 Patheon.

11 MR. JANDORA: Chris Jandora, Miller Buckfire, for
12 the debtor.

13 MR. ROHAN: Alex Rohan from Miller Buckfire, for
14 the debtor.

15 MR. ATKINSON: Todd Atkinson, Womble Bond
16 Dickinson, for the Committee.

17 MR. DETWEILER: Don Detweiler for the Committee.

18 MR. CORWEN: Sean Corwen, SierraConstellation
19 Partners, for the debtor.

20 MS. LAN: Lanna Lan from Sidley Austin for the
21 debtor.

22 UNIDENTIFIED: Jeff (indiscernible), Sidley Austin
23 for the debtor.

24 MR. FORD: Jerry Ford, Sidley Austin, for the
25 debtor.

1 MR. BANE: Abe Bane from Davis Polk for the
2 Noteholders.

3 MS. MILLER: Jerri Leigh Miller, Sidley Austin,
4 for the debtor.

5 MR. PERSONS: Charles Persons, Sidley Austin, for
6 the debtor.

7 MR. NEWMAN: Sam Newman, Sidley Austin, for the
8 debtor.

9 And on Zoom, I would start with Jamie Donadio.

10 MR. DONADIO: Yes, Jamie Donadio with Renibus.

11 MR. STONEBANKS: Frank Stonebanks with Renibus.

12 MR. SOLIMINE: Louis Solimine, Thompson Hine, for
13 Patheon.

14 MR. NEWMAN: I'm sorry. Before we go on, anybody
15 else from Renibus (indiscernible)?

16 MR. STONEBANKS: No.

17 MR. NEWMAN: Okay. Ted, sorry?

18 UNIDENTIFIED SPEAKER: We do have counsel.

19 MR. DILLMAN: Yeah, just so it's clear for the
20 record, Ted Dillman of Latham for Renibus.

21 And it's Frank Stonebanks, who's also with
22 Renibus, he's on the line, as well as Jamie Donadio. And
23 then I have a couple of my colleagues on the call who can
24 introduce themselves if you'd like them to.

25 MR. NEWMAN: Anyone else who would like to

1 introduce themselves from Renibus or from Latham?

2 (No verbal response)

3 THE COURT: Okay.

4 MR. NEWMAN: Brian, I see you (indiscernible).

5 MR. AYERS: Brian Ayers, on behalf of the
6 Committee, Rock Creek Advisors.

7 MR. NEWMAN: Great. Anyone else who has not so
8 far introduced themselves who wants to enter their -- who we
9 would ask them to enter their appearance.

10 MS. MIELKE: Allison Mielke with Young Conaway, on
11 behalf of the debtors.

12 MR. NEWMAN: Great. All right.

13 So, we will proceed. We have received two bids.
14 We've determined at this moment that the highest-and-best bid
15 is from Renibus for \$250,000 in cash. We are in receipt of
16 documentation regarding that bid, which the debtors have
17 found to be acceptable. We've shared with the consultation
18 parties who have reserved their rights, with respect to that
19 agreement.

20 We have also received a bid from Patheon
21 Corporation for \$500,000 in cash. That bid includes two
22 items that are non-conforming to the Renibus bid, which we
23 believe are burdens to the estate. One is they have not
24 agreed to acquire certain inventory, which the estate will be
25 required to dispose of. The debtor's estimated cost of that

1 disposition to be \$130,000, and that will serve as a deduct
2 to the Patheon claim, as compared to the Renibus claim.

3 And, second, as foreshadowed by the comments of
4 creditors, Patheon has acquired -- is asked to acquire the
5 assets identified in Section 1.1(f) and (h), which are
6 certain claims, rights, causes of action that were not
7 proposed to be acquired by Renibus, including, specifically,
8 the rights, claims, causes of action in the right of or
9 otherwise available to seller under the Patheon contracts,
10 which we understand -- there's more language there, but
11 that's the language to which I think the creditors are
12 focused -- we understand that those rights and causes of
13 action exclude, pursuant to 1.2(1), avoidance actions,
14 including avoidance actions against Patheon.

15 And based on that understanding, the debtors have
16 evaluated the detriment to the estate, as compared to the
17 Renibus bid, which would be those assets with the estate at a
18 negative \$500,000. We, therefore, have calculated the
19 required minimum overbid for Patheon to be the Renibus bid of
20 \$250,000, the reduction for the inventory disposal of
21 \$130,000, the reduction for the value of the claims,
22 transferred or assigned, under the Patheon bid of \$500,000,
23 and the minimum overbid increment of \$100,000. Therefore, to
24 continue the auction, the minimum bid was \$980,000.

25 I think the creditors may like to comment on that

1 proposal and calculation.

2 MR. DETWEILER: Yes, for the record, Don
3 Detweiler.

4 The Committee was not consulted with regard to
5 what was a qualified bid for purposes of opening the auction
6 today and we reserve all rights.

7 MR. NEWMAN: I appreciate the reservation.

8 I do believe, in good faith, that we have
9 consulted with the Committee regarding our approach to this.
10 If you'd like to take a brief adjournment so that we could
11 consult further, we're happy to do that, but we do believe
12 that we have been in consultation with all consultation
13 parties about our (indiscernible).

14 MR. DETWEILER: Well, the Committee disagrees with
15 the debtor's business judgment.

16 MR. NEWMAN: Fair enough.

17 Anyone else?

18 MR. KLEIN: Yeah. Hey, Sam, it's Darren, again.

19 I'll just say, in bouncing off what Don just said,
20 that in addition to that, we vehemently disagree with
21 (indiscernible) on top of including claims against Patheon,
22 selling them for the -- and valuing them at the trivial sum
23 of \$500,000. So, we'd reserve rights there.

24 MR. NEWMAN: Great. Thank you, I appreciate it.

25 With that reservation of rights, we would turn

1 over to Patheon, the opportunity to further bid, if it so
2 chooses.

3 MR. SOLIMINE: Let me begin by saying that we did
4 not know of any of these so-called valuations until this
5 moment. Number two, we don't agree with those valuations.
6 Number three, just so, again, everyone on the call, including
7 the Committee knows, we are prepared to increase our cash bid
8 from \$500,000, but not to \$980,000 which you have arbitrarily
9 decided is the minimum overbid, and that, Patheon is not
10 prepared to do.

11 MR. NEWMAN: Well, the debtor disagrees with the
12 characterization that that determination is arbitrary; that's
13 Patheon's right. You're welcome to bid further or not.
14 That's your choice.

15 Okay. We're just going to go off the record for
16 one minute.

17 (Pause)

18 MR. NEWMAN: One question for Patheon before we
19 proceed. The debtors would be prepared to accept a further
20 bid without judgment if Patheon were to agree that it was not
21 acquiring any claims against Patheon in the purchase
22 agreement.

23 MR. SOLIMINE: No, we're not prepared to do that.

24 MR. NEWMAN: Okay. So, with that, the debtors
25 have determined in their business judgment that the highest

1 and, otherwise, best bid we've received at the auction is the
2 Renibus bid and we would determine them to be, at this time,
3 the successful bid and the Patheon bid the backup bid.

4 With that, we would like to -- we've received
5 indications before from the creditors that they have further
6 consideration that they would like to give to the bid and the
7 backup bid and we will, therefore, continue this auction to
8 Monday morning at 10:00 a.m. Eastern.

9 Any other questions or comments before we wrap up?

10 MR. SOLIMINE: I'm sorry, would you -- I'm sorry,
11 I didn't understand the purpose of reconvening the auction to
12 Monday.

13 MR. KLEIN: Yeah, it's Darren, Sam.

14 I just want to be clear. The Noteholders are not,
15 as you could probably tell from my prior comments, happy to
16 have the company sell this at the price that was just
17 determined to be the highest bidder. We would ask that the
18 auction be continued because we would like to work with the
19 debtor on an alternative proposal, where the debtor keeps
20 this, because we think it's worth more than \$250,000.

21 MR. DETWEILER: And Don Detweiler, I would just
22 echo what the Noteholders' counsel has said. We don't
23 believe that you can declare them the successful and highest
24 bid.

25 What we believe the appropriate action of the

1 debtor to be is to continue the auction, but not declare
2 today. But they may be right now is the highest bid on the
3 table, but the auction is open, so it's not appropriate to
4 declare the highest and successful bid. Right now, they're
5 the highest bid and that's it.

6 The auction is going to be continued. There may
7 be other bidders who come forward.

8 MR. DILLMAN: Sam, this is Ted.

9 Before your adjourn the auction, I think I'd just
10 like to (indiscernible) because that's been a curve ball. I
11 think I would like to have a break with my client to just
12 discuss it, if that's okay?

13 MR. NEWMAN: So, I honestly don't think there's
14 any further discussion to be had. I think the record is
15 clear and we're continuing the auction. We've received two
16 bids and we're going to continue the auction until Monday
17 morning at 10:00 a.m. I'm happy to have further
18 conversations with the bidders in that interim time, but at
19 the request of the creditors, following the debtor's
20 determination, we will continue the auction until 10:00 a.m.

21 MR. SOLIMINE: And, Sam, may I ask just one
22 question, because I -- again, perhaps you've said that and I
23 just missed it -- what is the purpose of the adjournment? I
24 understand it's going to be adjourned, but what is the
25 purpose of the adjournment?

1 MR. NEWMAN: I think as you heard the creditors
2 say, they believe they may have an alternative proposal that
3 they would like the debtor to continue -- consider, which
4 they will have until that time to present.

5 MR. SOLIMINE: Thank you.

6 MR. NEWMAN: Thank you.

7 MR. DETWEILER: So, Don Detweiler, on behalf of
8 the Committee.

9 I think sale objections are due tomorrow, as well
10 as objections to the plan. We would respectfully request a
11 continuance of its deadline to object to any proposed sale or
12 the plan.

13 MR. NEWMAN: I appreciate that request. I think
14 we should talk about that offline in terms of scheduling for
15 the sale hearing. At this point, I think you understand the
16 debtor's intention, given where this is, and we do want to
17 have time to brief it. But why don't we talk about it
18 offline, and we're happy to come to some reasonable briefing
19 schedule.

20 MR. DETWEILER: Thank you.

21 MR. KLEIN: Yeah, I would join in that. I'm happy
22 to talk about it offline, Sam.

23 MR. NEWMAN: Yeah. We can have a meet-and-confer
24 immediately after this auction. Thank you.

25 Any other questions?

1 (No verbal response)

2 MR. NEWMAN: All right. We are -- we stand in
3 recess.

4 (Proceedings concluded)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ William J. Garling

February 17, 2023

William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN RE: . Chapter 11
. Case No. 23-10024 (JTD)
TRICIDA, INC., .
. .
. .
Debtor. .
. .
.

TRANSCRIPT OF AUCTION OF ASSETS

Wednesday, February 15, 2023

APPEARANCES:

For the Debtor: Samuel A. Newman, Esquire
Julia Philips Roth, Esquire
SIDLEY AUSTIN, LLP
555 West Fifth Street
Suite 4000
Los Angeles, California 90013

Charles M. Persons, Esquire
Jeri L. Miller, Esquire
2021 McKinney Avenue
Suite 2000
Dallas, Texas 75201

(APPEARANCES CONTINUED)

Transcription Company: Reliable
The Nemours Building
1007 N. Orange Street, Suite 110
Wilmington, Delaware 19801
Telephone: (302)654-8080
Email: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 APPEARANCES (CONTINUED):

2 For the Debtor: Alex Rohan, Managing Director
3 MILLER BUCKFIRE & CO, LLC
4 787 7th Avenue
5 5th Floor
6 New York, New York 10019

7 -and-

8 Sean Corwen, Director
9 SIERRACONSTELLATION PARTNERS, LLC
10 805 3rd Avenue
11 Suite 29
12 New York, New York 10022

13 -and-

14 Neal Karnovsky, Managing Director,
15 M&A, Biopharma
16 STIFEL
17 501 North Broadway
18 St. Louis, Missouri 63102

19 For Renibus
20 Therapeutics: Alistair K. Fatheazam, Esquire
21 LATHAM & WATKINS, LLP
22 1271 Avenue of the Americas
23 New York, New York 10020

24 For the Official
25 Committee of
Unsecured Creditors: Donald J. Detweiler, Esquire
WOMBLE BOND DICKINSON (US) LLP
1313 North Market Street
Suite 1200
Wilmington, Delaware 19801

Todd A. Atkinson, Esquire
811 Main Street
Suite 3130
Houston, Texas 77002

1 APPEARANCES (CONTINUED):

2 For the Official
3 Committee of
4 Unsecured Creditors: James Gansman, Founding Partner
5 Brian Ayers, Managing Director
6 ROCK CREEK ADVISORS, LLC
7 1738 Belmar Boulevard
8 Belmar, New Jersey 07719

9 For Liquidity
10 Services, Inc.: Nick Jimenez, Vice President of
11 Global Business Development
12 LIQUIDITY SERVICES, INC.
13 6931 Arlington Road
14 Suite 200
15 Bethesda, Maryland 20814

16 For the Noteholders: Darren S. Klein, Esquire
17 Abraham Bane, Esquire
18 DAVIS POLK & WARDWELL, LLP
19 450 Lexington Avenue
20 New York, New York 10017

21 For Patheon Austria
22 GmbH & Co. KG: William P. Hodges, Esquire
23 THOMPSON HINE, LLP
24 335 Madison Avenue
25 12th Floor
New York, New York 10017

For *****: Monica Healy, Corporate Finance and
Restructuring Senior Consultant
FTI CONSULTING, INC.
1166 Avenue of the Americas
15th Floor
New York, New York 10036

1 APPEARANCES (CONTINUED) VIA ZOOM:

2 For Patheon Austria
3 GmbH & Co. KG:

Louis F. Solimine, Esquire
THOMPSON HINE, LLP
312 Walnut Street
Suite 2000
Cincinnati, Ohio 45202

6 For Renibus
7 Therapeutics:

Ted A. Dillman, Esquire
LATHAM & WATKINS, LLP
355 South Grand Avenue
Suite 100
Los Angeles, California 90071

Claire H. Drucker, Esquire
12670 High Bluff Drive
San Diego, California 92130

11 -and-

12 Jamie Donadio, Chief Financial
13 Officer
14 RENIBUS THERAPEUTICS, INC.
15 181 Grand Avenue
Suite 225
Southlake, Texas 76092

16 For Heritage Global
17 Partners, Inc.:

Nick Dove, President
David Barkoff, Senior Vice President
18 James Sklar, Executive Vice
19 President and General Counsel
HERITAGE GLOBAL PARTNERS, INC.
12625 High Bluff Drive
20 Suite 305
21 San Diego, California 92130

22
23
24
25

1 (Proceedings commenced)

2 MR. NEWMAN: Okay. So, if we could just -- this
3 is Sam Newman. This is the auction of assets in the Tricida,
4 Inc. case, as authorized by the bid procedures order.

5 We have presented two lots for auction. One is a
6 liquidation of the company's equipment and we have two
7 bidders here, who I understand are interested in those
8 assets, and then a separate lot excluding equipment for all
9 other assets, which is substantially all other assets of the
10 company. As reflected in the bids that we've received, we
11 have two bidders for those lots.

12 This auction is on the record and everything that
13 is said will be recorded using our Zoom technology and will
14 not be subject to any confidentiality, so we wanted to just
15 make clear and would like to have everyone who is here
16 participating in the auction, either in person or remotely,
17 introduce themselves so that we have a record.

18 I'll start over here to my left and we'll go to
19 the right.

20 MR. FATHEAZAM: Alistair Fatheazam from Latham, on
21 behalf of Renibus.

22 UNIDENTIFIED SPEAKER: John (indiscernible) with
23 FTI (indiscernible).

24 MS. HEALY: Monica Healy, with FTI.

25 MR. NEWMAN: Hold on one second.

1 Can the people on Zoom hear as people are
2 announcing themselves?

3 MR. DOVE: Yes.

4 UNIDENTIFIED SPEAKER: It's very quiet.

5 MR. NEWMAN: Go ahead.

6 MR. KLEIN: Darren Klein from Davis Polk &
7 Wardwell, on behalf of the Noteholders.

8 MR. JIMENEZ: Nick Jimenez with Liquidity
9 Services.

10 MR. BANE: Abe Bane from Davis Polk.

11 MS. PHILIPS ROTH: Julia Philips Roth, Sidley
12 Austin, on behalf of the debtor.

13 MS. MILLER: Jeri Leigh Miller, Sidley Austin, on
14 behalf of the debtor.

15 UNIDENTIFIED SPEAKER: (Indiscernible) from Sidley
16 Austin, on behalf of the debtor.

17 UNIDENTIFIED SPEAKER: Jeff (indiscernible) from
18 Sidley Austin, on behalf of the debtor.

19 MR. ROHAN: Alex Rohan from Miller Buckfire, on
20 behalf of the debtor.

21 MR. CORWEN: Sean Corwen from SierraConstellation
22 Partners, on behalf of the debtor.

23 MR. KARNOVSKY: Neal Karnovsky, Stifel, on behalf
24 of the debtor.

25 MR. NEWMAN: Sam Newman, Sidley Austin, for the

1 debtors.

2 MR. PERSONS: Charles Persons, Sidley Austin, for
3 the debtor.

4 MR. HODGES: William Hodges, Thompson Hine, for
5 Patheon.

6 MR. ATKINSON: Todd Atkinson of Womble Bond
7 Dickinson, on behalf of the Official Committee of Unsecured
8 Creditors.

9 MR. GANSMAN: Jim Gansman from Rock Creek
10 Advisors, on behalf of the UCC.

11 MR. AYERS: Brian Ayers, Rock Creek Advisors, FA
12 to the Committee.

13 MR. NEWMAN: And if the people on Zoom could
14 introduce themselves, starting with Lou.

15 MR. SOLIMINE: Louis Solimine, on behalf of
16 Patheon.

17 MR. NEWMAN: Ted?

18 MR. DILLMAN: Yeah, Ted Dillman from Latham &
19 Watkins, on behalf of Renibus.

20 Sam, would it be helpful for me to just introduce
21 the other Renibus people while I'm at it or do you just want
22 to go through the whole list?

23 MR. NEWMAN: So there's only a couple more people
24 on screen. If you have additional people who are appearing
25 on screen, feel free.

1 MR. DILLMAN: Sure. So, Jamie just joined, but
2 Jamie Donadio is with Renibus.

3 I don't know if we have anybody else from Renibus
4 currently on the line, though, we may have some others
5 dialing in.

6 MR. NEWMAN: Okay. And then there's one more
7 person on the screen who I don't recognize. I apologize.

8 MR. DOVE: It's probably me, Nick Dove at Heritage
9 Global.

10 MR. NEWMAN: Great. Thank you, Nick.

11 Anyone else who's listening in by Zoom or
12 otherwise that has not announced themselves?

13 MR. BARKOFF: Yeah, David Barkoff from Heritage
14 Global Partners, as well.

15 MR. SKLAR: And James Sklar, I'm general counsel
16 for Heritage Global, as well.

17 MS. DRUCKER: You have Claire Drucker here from
18 Latham & Watkins, on behalf of Renibus.

19 MR. NEWMAN: Anyone else who has not yet announced
20 their presence?

21 (No verbal response)

22 MR. NEWMAN: Okay. Thank you very much.

23 All right. So, we have received and qualified two
24 bids for the liquidation of the equipment. Who has the
25 official names of the bidders? I apologize.

1 MR. PERSONS: So, Liquidity Services, Inc. is the
2 first and Heritage Global, I'm not sure (indiscernible).
3 Apologies.

4 MR. NEWMAN: Does the other liquidator want to
5 just give us their full name for the record.

6 MR. DOVE: Heritage Global Partners, Inc.

7 MR. NEWMAN: Great. Thank you.

8 So, we're prepared to proceed with that auction
9 for that lot. We have documentation that the Board has
10 deemed acceptable and has qualified those bidders for the
11 lots for which they are bidding.

12 One question we want to ask for clarification
13 purposes, it would be of value to the estate to be able to
14 remove the equipment that is being bid on no later than
15 February 28th, are both bidders able to accommodate that
16 schedule?

17 MR. DOVE: Yes.

18 UNIDENTIFIED SPEAKER: Yes.

19 THE COURT: Okay. So on that basis, in a moment,
20 we will proceed with that auction. We have decided in the
21 exercise of the business judgment of the debtors and in an
22 effort to kind of streamline and maximize value, to modify
23 the bid increment for that auction to \$10,000. And so, we
24 will announce the highest and lowest best bid that has been
25 received and then proceed in open bidding rounds of 10,000 or

1 more.

2 With respect to the lots that have been received
3 from Patheon and Renibus for the rest of the assets, we do
4 not presently have definitive documentation reflecting those
5 bids. We have agreed to extend the deadline for submission
6 of documentation to 12:00 Eastern, and we would ask that both
7 of those parties adjourn to the breakout rooms available to
8 work with our corporate teams to finalize the documentation
9 to make sure that we have all open (indiscernible).

10 Those bids received, we appreciate the work that
11 the parties have done to try to work with our accelerated
12 schedule and we believe that both parties have made -- have
13 agreed to modifications of their bid terms that would be
14 acceptable to the debtors and the Board, but we need to
15 receive definitive documentation reflecting those bids before
16 we proceed with that auction.

17 I'll also just announce that based on the bids
18 that have been received, which we have disclosed to the
19 consultation parties, both of the consultation parties and
20 the Noteholders have expressed reservation as to whether they
21 would (indiscernible) the acceptance of either bid. We do,
22 however, intend to proceed with the auction and allow those
23 parties to reserve their rights to object to any sale that is
24 the product of the auction.

25 So, assuming that we are able to get those

1 documents, late documents resolved, we expect to reconvene to
2 conduct this auction at about 12:00 p.m. If either bidder is
3 not able to complete their documentation by then, we will
4 assess whether we proceed further.

5 So, with that, I would excuse everyone who does
6 not have an interest in Lot One to hopefully start getting
7 the work done, finalizing their bid documents, and getting
8 whatever information the Committee and Noteholders need in
9 order to address their objections to the conduct of the
10 auction as to the all-assets bid, and we would plan to
11 reconvene that group at noon.

12 Any questions before we break?

13 UNIDENTIFIED SPEAKER: Yes. Sam, I missed the
14 beginning part. Is the court transcriber going to be
15 present?

16 MR. NEWMAN: No. Just to save money, given the
17 indicative bids, we have opted to use the recorded Zoom
18 feature. So we can have that just transcribed if people
19 believe it's necessary, so we'll have a record of the
20 auction.

21 And I did announce at the beginning that this
22 auction itself is on the record and not subject to any
23 confidentiality obligations on behalf of the debtor or other
24 parties and they should expect that any statements made in
25 this room will be public knowledge.

1 MR. KLEIN: Know for the record, Darren Klein for
2 the Noteholders. We're happy to (indiscernible). We do
3 object to the debtor selling the IP (indiscernible). We
4 think it's much better to (indiscernible).

5 MR. NEWMAN: And we note that objection, and what
6 I'd like to see happen next is finalizing the bids in their
7 current form and, hopefully, you know, engaging between you
8 and the bidders to determine whether we proceed and resolve
9 your objection. At this point, the debtor intends to proceed
10 with an auction if the bids have been finalized and --

11 MR. SOLIMINE: Sam, this is Lou Solimine.

12 So am I to understand that you're suggesting that
13 Renibus and Patheon sign off now, and then will one of your
14 corporate team members contact us or how do you propose to
15 proceed?

16 MR. NEWMAN: So one of the reasons that I -- one
17 of the reasons we wanted to conduct this in person, we have
18 breakout rooms for each party, and so we would align our
19 corporate people with representatives that are here in person
20 and ask them to arrange, you know, for electronic
21 communication with appropriate parties to finalize that
22 documentation. So, that would be my hope.

23 MR. DILLMAN: And Sam, just so people can sort of
24 plan their days, would we expect that the auction, assuming
25 people get through documentation, the auction would pick up

1 at 1 o'clock or sometime in the afternoon?

2 MR. NEWMAN: That -- my expectation at this point
3 is just given the amount of work that we have to do to try to
4 resolve the Committee and Noteholder objections, I would
5 expect to reconvene at noon Eastern.

6 If we have definitive bids and have resolved those
7 objections, I would like to proceed at that time.

8 MR. DILLMAN: Okay.

9 MR. NEWMAN: If we don't have definitive bids by
10 that time, then we'll decide whether or not to continue the
11 auction further. And if we have definitive bids, but have
12 not resolved the creditor objections, then the debtor will
13 decide whether or not to proceed with the auction at that
14 time.

15 MR. DILLMAN: Okay.

16 MR. NEWMAN: But it's worthwhile to give everybody
17 until noon. Let's reconvene, we'll have an update, and we'll
18 provide the debtors potentially with respect to how we'd like
19 to proceed at that time.

20 MR. DILLMAN: Okay. Thanks.

21 MR. NEWMAN: Any other questions?

22 MR. ATKINSON: Sam, just given the Noteholders'
23 objection, you know, we'd join in and share the same
24 objection and we reserve all rights.

25 MR. NEWMAN: And just -- because we don't have a

1 stenographer, if you could just add your name?

2 MR. ATKINSON: Yeah, Todd Atkinson for the
3 Committee at Womble Bond Dickinson.

4 MR. NEWMAN: And also, for the record, Don
5 Detweiler just walked in, also with Womble, for the
6 Committee.

7 Great. So, let's dismiss everyone who's not
8 interested in Lot One. We will proceed to an auction of Lot
9 One and we'll reconvene -- we'll, then, suspend the auction
10 until noon and reconvene at that time for further
11 (indiscernible).

12 Any questions?

13 (No verbal response)

14 MR. NEWMAN: Okay. So, we'll excuse those who are
15 not interested in Lot One.

16 MR. DILLMAN: Cool. Thank you, all.

17 (Pause)

18 MR. BARKOFF: Hey, guys?

19 UNIDENTIFIED SPEAKER: Yes? Who's talking?

20 MR. BARKOFF: Yes, this is David Barkoff from
21 Heritage Global Partners.

22 How long till you reconvene for that first lot or
23 is everyone just going to do --

24 MR. NEWMAN: We are doing -- we are -- we are
25 convening right now, I think.

1 MR. BARKOFF: Okay. Great.

2 MR. NEWMAN: So, (indiscernible) everybody else
3 out of the room.

4 Charles -- I'm going to turn the mic over to
5 Charles Persons who will conduct the auction for Lot One.

6 MR. BARKOFF: Great.

7 MR. NEWMAN: And thank you very much. Thanks,
8 everyone, for your patience.

9 UNIDENTIFIED SPEAKER: Charles, Sam, it looks like
10 there are some volume issues. I've called IT to turn up the
11 microphones. Until they get here, if you could just make
12 sure you're talking right into the microphone.

13 MR. PERSONS: Okay. It's probably because there's
14 not as many microphones as there were people originally.

15 Can everyone on the -- that's currently on the
16 phone hear me fairly clearly?

17 MR. BARKOFF: Yes.

18 MR. PERSONS: Julia, why don't you swing down
19 here.

20 MS. PHILIPS ROTH: Yeah, no problem.

21 MR. PERSONS: Okay. For the record, Charles
22 Persons at Sidley Austin.

23 This will be the auction for what we have deemed
24 "Lot One" which is essentially the liquidation assets, the
25 PP&E, if you will, of the company. We have two bids.

1 First, from Liquidity Services, I wanted to ask
2 who will be representative speaking?

3 MR. JIMENEZ: Yeah, Nick Jimenez.

4 MR. PERSONS: Thank you.

5 And then Heritage Global, who's --

6 MR. DOVE: Me, Nick Dove.

7 MR. PERSONS: Two Nicks, okay.

8 Nick, how do you spell your last name?

9 MR. JIMENEZ: J-i-m-e-n-e-z.

10 MR. PERSONS: Okay. So, the debtors have received
11 two bids for Lot One, the company's PP&E. We have heard on
12 the record that both bidders are able to get the property out
13 by February 28th. I want to affirm that one more time on the
14 record, just one at a time.

15 Nick Jimenez?

16 MR. JIMENEZ: Yes.

17 MR. PERSONS: Yes.

18 And Nick Dove?

19 MR. DOVE: Yes.

20 MR. PERSONS: All right. Thank you both.

21 So, the two bids -- the bid that we received from
22 Liquidity Services is the high bid right now at \$145,000. So
23 the auction will go -- the next bid will be Heritage Global.
24 You have an option of -- the minimum bid increment is 10,000,
25 so a bid of 155,000 or more, Mr. Dove?

1 MR. DOVE: Heritage will be 180,000, one, eight,
2 zero.

3 MR. PERSONS: Heritage Global bids 180,000. Thank
4 you very much.

5 Mr. Jimenez?

6 MR. JIMENEZ: 190.

7 MR. PERSONS: And Liquidity Services has gone to
8 190.

9 It's 200,000 to Heritage.

10 MR. DOVE: Heritage will be 205,000.

11 MR. PERSONS: So 205,000 to Heritage. So, that's
12 two -- a bid of 215 to Liquidity Services.

13 MR. JIMENEZ: I bid 215.

14 MR. PERSONS: Liquidity Services will bid 215.
15 Heritage?

16 MR. DOVE: Yeah, 225 for Heritage.

17 MR. PERSONS: Heritage is at 225.

18 So, 235 now to Liquidity.

19 MR. JIMENEZ: We'll bid 235.

20 MR. PERSONS: Liquidity Services bids 235.
21 Heritage?

22 MR. DOVE: What'd you see there, Nick?

23 (Laughter)

24 MR. PERSONS: It's Storage Wars. You can't open
25 it until you buy it.

1 (Laughter)

2 MR. DOVE: What did we miss, Nick?

3 (No verbal response)

4 MR. DOVE: The current bid is 235?

5 MR. PERSONS: The current bid is 235. So, it's to
6 Heritage --

7 MR. DOVE: Heritage's bid would have to be 245?

8 MR. PERSONS: Yes.

9 MR. DOVE: Okay. Congrats to Liquidity Services.

10 MR. PERSONS: Very good. Thank you both for
11 participating.

12 With that, the auction for Lot One will stand
13 closed. Congratulations to Liquidity Services. We
14 appreciate that.

15 We will figure out what we need in terms of
16 documentation. Well, I know we actually have an APA with
17 you. I appreciate that we've got the rest of the bids and a
18 bunch of stuff to figure out, but we will sort out what we
19 need to do.

20 Anything from the Committee or Noteholders'
21 representatives in here?

22 (No verbal response)

23 MR. PERSONS: All right. So, Lot One, 235,000.

24 We appreciate everyone participating. Thank you
25 very much.

1 MR. DOVE: Thanks.

2 MR. JIMENEZ: Hey, take care, Nick.

3 MR. DOVE: You got it. See ya.

4 MR. BARKOFF: Thanks, guys. Bye-bye.

5 MR. PERSONS: All right. So, with that, we'll go
6 off the record until at least 12:00 noon. Everyone can
7 convene to their rooms and we will keep people posted as to
8 how things are going at that point in time. Thank you.

9 (Recess taken)

10 (Proceedings resumed)

11 MR. NEWMAN: So, going back on the record in the
12 auction of the Tricida, Inc. case, we've had direct
13 conversations today with both bidders. We have, I think,
14 finalized the bid documents from both bidders.

15 Given the late hour and the somewhat material
16 differences in non-monetary terms between the two bidders,
17 we're going to need to spend some time with the creditors
18 assessing the relative value of the two bids. So we have
19 proposed, in the interests of the late hour here in New York,
20 and also the unavailability of the Patheon client in Austria,
21 that we adjourn the auction until tomorrow morning. We
22 propose 10:00 a.m.

23 We expect to have continued conversations with
24 both, the Creditors' Committee and the Noteholders over
25 trying to overcome some of their objections to proceeding

1 with the auction given the current bids, and to commence
2 bidding in the morning.

3 I would offer to the Committee any further
4 statement they would like to make regarding the status of the
5 auction and bidding process.

6 MR. ATKINSON: The auction is being adjourned
7 until tomorrow morning?

8 MR. NEWMAN: Correct, 10:00 a.m. Eastern.

9 MR. ATKINSON: We will reserve our statements
10 until then.

11 MR. NEWMAN: Okay. I'd offer a statement to the
12 Noteholders, if they --

13 MR. KLEIN: Well, just a question. If you've
14 finalized the bid docs, I haven't seen them if you have, and
15 I thought you -- there was a bid and ask that fell between
16 you and Patheon; is that not true anymore or do you accept
17 it?

18 MR. NEWMAN: We asked. They said no. And we have
19 the bid doc they're prepared to submit, so we'll circulate
20 that to the noticed parties shortly after we adjourn so they
21 can consider them overnight.

22 MR. KLEIN: Okay.

23 MR. NEWMAN: Any comments from the bidders?
24 Patheon?

25 MR. SOLIMINE: I guess I'd just be interested in

1 the rationale of not -- I understand what you are proposing,
2 but I guess I'm at a loss to understand why we wouldn't --
3 you also would not want to understand at this juncture what
4 each of the two bidders is prepared to pay.

5 MR. NEWMAN: So my view and the debtor's view is
6 that the non-monetary terms on the Patheon bid require a
7 further assessment before we can determine what, if any, next
8 bid increment would be.

9 Ted, any questions or comments from Renibus?

10 MR. DILLMAN: No, Sam, not at this time.

11 MR. NEWMAN: So we encourage the parties -- there
12 are obviously issues beyond just the cash consideration that
13 have been raised today amongst the parties. We encourage the
14 parties to continue to discuss them.

15 As the debtors, we, you know, we would like to see
16 consensus emerge among the creditor body over the next steps
17 and we are willing to continue to progress the process and
18 have direction from the Board, if needed, to progress the
19 process if such consensus is (indiscernible).

20 And we look forward to seeing you all tomorrow at
21 10:00 a.m.

22 We can go off the record. Thank you.

23 (Audio concludes)

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ William J. Garling

February 16, 2023

William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

CERTIFICATE OF SERVICE

I, Donald J. Detweiler, do hereby certify that on February 17, 2023, I caused a copy of the foregoing **Omnibus Objection of the Official Committee of Unsecured Creditors to (I) Debtor's Proposed Sale of Assets; and (II) Disclosure Statement in Respect of Chapter 11 Plan of Liquidation** to be served on the parties listed on the attached service list via email.

/s/ Donald J. Detweiler

Donald J. Detweiler (DE Bar No. 3087)

SERVICE PARTIES

Counsel to the Debtor

SIDLEY AUSTIN LLP

Attn.: Samuel A. Newman

Jeri Leigh Miller

Julia Philips Roth

Charles Persons

Geoffrey Levin

555 West Fifth Street

Los Angeles, CA 90013

Email: sam.newman@sidley.com

jeri.miller@sidley.com

julia.roth@sidley.com

cpersons@sidley.com

glevin@sidley.com

Counsel to the Debtor

YOUNG CONAWAY STARGATT

& TAYLOR, LLP

Attn: Sean M. Beach

Allison S. Mielke

Carol Cox

1000 N. King Street

Rodney Square

Wilmington, DE 19801

Email: sbeach@ycst.com

amielke@ycst.com

ccox@ycst.com

**Office of the United States Trustee
for the District of Delaware**

J. Caleb Boggs Federal Building

Attn: Timothy J. Fox

844 King Street, Suite 2207

Wilmington, DE 19801

Email: timothy.fox@usdoj.gov

Counsel to Joint Noteholders

GREENBERG TRAUIG, LLP

Dennis A. Meloro

222 Delaware Avenue, Suite 1600

Wilmington, Delaware 19801

Email: dennis.meloro@gtlaw.com

Counsel to Joint Noteholders

DAVIS POLK & WARDWELL LLP

Darren S. Klein

Abraham Bane

450 Lexington Avenue

New York, New York 10017

Email: darren.klein@davispolk.com

abraham.bane@davispolk.com