MILBANK LLP
Dennis F. Dunne
Matthew L. Brod
Andrew C. Harmeyer
55 Hudson Yards
New York, NY 10003
Tel: (212) 530-5000
Fax: (212) 530-5219

-and-

Andrew M. Leblanc
1850 K Street, NW, Suite 1100
Washington, DC US 20006
Tel: (202) 835-7500
Fax: (202) 263-7586

Counsel to Centerbridge Partners, L.P. and Oaktree Capital Management, L.P.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
GARRETT MOTION INC. *et al*.,[1]	:	Case No. 20-12212 (MEW)
Debtors.	:	Jointly Administered

OBJECTION OF CENTERBRIDGE AND OAKTREE TO DEBTORS' MOTION FOR ONE OR MORE ORDERS (A) AUTHORIZING AND APPROVING BID PROCEDURES, (B) AUTHORIZING AND APPROVING THE STALKING HORSE BID PROTECTIONS, (C) SCHEDULING A SALE HEARING, (D) AUTHORIZING AND APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, (E) APPROVING NOTICE PROCEDURES AND (F) GRANTING OTHER RELIEF

Centerbridge Partners, L.P. ("Centerbridge") and Oaktree Capital Management, L.P.

[1] The last four digits of Garrett Motion Inc.'s tax identification number are 3189. Due to the large number of Debtors in these chapter 11 cases, which are being jointly administered, a complete list of the Debtors and the last four digits of their respective federal tax identification numbers is not provided herein. Such information may be obtained on the website of the Debtors' claims and noticing agent at http://www.kccllc.net/garrettmotion. The Debtors' corporate headquarters is located at La Pièce 16, Rolle, Switzerland.

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("Oaktree") hereby object to the *Debtors' Motion for One or More Orders (A) Authorizing and Approving Bid Procedures, (B) Authorizing and Approving the Stalking Horse Bid Protections, (C) Scheduling a Sale Hearing, (D) Authorizing and Approving Assumption and Assignment Procedures, (E) Approving Notice Procedures and (F) Granting Other Relief* (the "Motion"),[2] and, in support thereof, respectfully represent as follows:

PRELIMINARY STATEMENT

1. Centerbridge and Oaktree oppose the Debtors' proposed Bid Procedures because they prevent the Debtors from giving due consideration to value-maximizing alternatives, and thus run counter to the primary goal of maximizing value of the Debtors' estates.

2. Through the Motion, the Debtors seek the Court's approval of a fast-tracked sale of substantially all of their assets and equity interests in certain subsidiaries to KPS Capital Partners, LP ("KPS") for approximately $2.1 billion, a portion of which will fund a trust that is expected to pursue litigation against the Debtors' former owner, Honeywell International, Inc. ("Honeywell"). The recoveries of the Debtors' unsecured creditors and stockholders are expected to hinge on the outcome of that litigation. If the Debtors hit a home run in the litigation against Honeywell, the litigation trust may be positioned to fund distributions—though at some unknown point in the future—to the Debtors' unsecured creditors and then potentially to stockholders. If the Debtors strike out, general unsecured creditors will have waited for the outcome of such litigation only to receive what is likely to be less than payment in full and the Debtors' public stockholders may receive nothing.

3. The Bid Procedures demand that any competing bids be in the form of an asset sale and do not allow for such bids to provide alternative structures, such as, for instance, funding a

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion and the *Deason First Day Declaration*, as applicable.

chapter 11 plan for the Debtors—no matter how value-maximizing or advantageous. The Bid Procedures contain several other flaws that will necessarily chill competitive bidding, for example: (i) they grant the Debtors unbridled discretion to reject Qualified Bids, no matter how value-maximizing they may be, and to deny diligence to Prospective Bidders, and (ii) they include completely arbitrary bid requirements that do not serve to enhance value.

4. Centerbridge and Oaktree have partnered with Honeywell on a proposal (the "Joint Proposal") that they believe offers superior value to these estates as compared to the Stalking Horse Purchase Agreement. Centerbridge, Oaktree, and Honeywell have already submitted the terms of the Joint Proposal to the Debtors and are eager for the Debtors to begin engaging with them on this proposal.

5. Centerbridge, Oaktree, and Honeywell believe that the Joint Proposal will result in a fast, value-maximizing reorganization that eliminates the risks and uncertainties associated with the Stalking Horse Purchase Agreement and the value-destructive litigation with Honeywell that will likely drag on well past the Debtors' emergence from these cases. Given that such a proposal is available, KPS should not be designated as the Stalking Horse Bidder, nor should the Court approve the Stalking Horse Bid Protections, which include a $63 million break-up fee and an uncapped expense reimbursement. To do so would almost guarantee that KPS will be entitled to collect significant value prior to the Debtors' consideration of the Joint Proposal. Such a result would not be in the best interests of the Debtors or their estates.

6. Accordingly, the Court should (i) deny the designation of KPS as the Stalking Horse Bidder and approval of the Stalking Horse Bid Protections, and (ii) deny approval of the Bid Procedures.

RELEVANT FACTUAL BACKGROUND

A. The Honeywell Litigation.

7. In 2018, in connection with the Debtors' spin-off from Honeywell, certain of the Debtors and certain Honeywell entities entered into the ASASCO Indemnity Agreement and the Tax Matters Agreement. Under the ASASCO Indemnity Agreement, ASASCO is obligated to indemnify Honeywell for 90% of certain asbestos-related liabilities up to a cap equal to a USD equivalent of €149.6 million per year for a period of 30 years and maximum payments up to $5.25 billion. Under the Tax Matters Agreement, Debtor Garrett Motion, Inc. ("GMI") is obligated to indemnify Honeywell for certain taxes that Honeywell determines are attributable to the Debtors, including an obligation of $240 million which the Debtors dispute.

8. On December 2, 2019, GMI and ASASCO commenced an action in the New York Supreme Court against Honeywell, certain of its subsidiaries and certain of their respective employees in connection with the ASASCO Indemnity Agreement for declaratory judgment, breach of contract, breach of fiduciary duties, aiding and abetting breach of fiduciary duties, corporate waste, breach of the implied covenant of good faith and fair dealing, and unjust enrichment. The action has since been removed to this Court and is currently pending as Adv. Proc. No. 20-01223 (the "Honeywell Litigation"). Honeywell has since moved to dismiss the adversary proceeding.

B. The Proposed Bid Procedures.

9. Through the Motion, the Debtors seek approval of (a) the designation of KPS as the Stalking Horse Bidder, (b) the procedures for the sale of substantially all of their assets and equity interests in certain subsidiaries to the Stalking Horse Bidder (subject to higher or otherwise better offers) for approximately $2.1 billion, and (c) the approval of significant Stalking Horse Bid Protections, including a break-up fee of $63 million and an uncapped expense reimbursement.

10. The proposed milestones set forth in the Bid Procedures are as follows:

- October 30, 2020: Indication of Interest Deadline
- November 16, 2020: Bid Deadline
- November 24, 2020: Auction
- February 10, 2021: Sale Objection Deadline
- February 17, 2021: Sale Hearing

11. The Bid Procedures set forth detailed requirements that must be met before a Potential Bidder's offer will constitute a Qualified Bid. Notwithstanding these detailed requirements, the Bid Procedures grant the Debtors unqualified discretion to "reject any and all bids, other than the Stalking Horse Purchase Agreement or a credit bid made pursuant to section 363(k) of the Bankruptcy Code, that would otherwise constitute Qualified Bids after consultation with the Consulting Professionals." *See* Motion ¶ 31. Once the Debtors reject such a bid—for whatever reason or without any reason—it will no longer be a "Qualified Bid." *See* Bid Procedures p. 8.

12. All Qualified Bids must be in the form of an offer to purchase all or substantially all of the Debtors' assets and the proposed consideration must (i) exceed the aggregate sum of the purchase price under the Stalking Horse Purchase Agreement and the Stalking Horse Bid Protections, and (ii) include a minimum overbid of $10 million.

13. In addition, the "Topping Bid Guidelines" distributed to Prospective Bidders contain additional terms that are not included in the Bid Procedures for which the Debtors are seeking the Court's approval. Such guidelines provide, among other things, that all Qualified Bids must have a leverage limit of 2.5x gross debt/EBITDA, inclusive of all financial liabilities.

C. Allocation of Sale Proceeds

14. Prior to the Petition Date, the Debtors entered into a restructuring support agreement (the "RSA") with the holders of 61% of the loans outstanding under the Prepetition Credit Agreement. *See Deason First Day Declaration* ¶ 90. Among other things, the RSA provides that the proceeds of the sale of all or substantially all of the Debtors' assets will be split between two substantively consolidated groups of Debtors—the U.S. entities and the ASASCO entities—with the ultimate allocation to be determined by an intercompany settlement reached by the Debtors' independent directors and to be incorporated into the Debtors' chapter 11 plan. There is no mechanism to allocate the sale proceeds among individual Debtors based on the value of the individual assets sold by each Debtor. This proposed methodology for allocating sale proceeds is embodied in the Topping Bid Guidelines.

15. The sale proceeds allocated to the ASASCO entities under the intercompany settlement will be used to pay, upon the Debtors' emergence from these cases, (i) all claims under the Senior Credit Facilities, (ii) an amount equal to 90% of the principal amount of the Senior Notes, plus accrued and unpaid interest through the Petition Date at the non-default contract rate, and (iii) administrative expenses of these cases. The remainder of those sale proceeds will be used to fund a distribution waterfall, under which proceeds will first be used to fund an initial amount of $25 million into a litigation trust tasked with prosecuting certain causes of action (including the Debtors' claims asserted in the Honeywell Litigation), with the remaining proceeds used to pay the remaining claims on account of the Senior Notes (*i.e.*, the remaining 10% of the allowed claim), the Honeywell indemnity and tax claims (to the extent the Court allows them), and general unsecured claims. For proceeds attributable to the U.S. entities, they will flow through a distribution waterfall to first pay general unsecured claims against the U.S. entities, with any remaining funds going to the holders of equity interests in GMI.

OBJECTION

A. Applicable Legal Standard.

16. The paramount goal of any bankruptcy sale (and, in particular, a sale of all or substantially all of a debtor's assets) is to generate the highest purchase price or otherwise the greatest possible benefit for the bankruptcy estate. *See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (the officers and directors of the debtor, in the auction context, "have a duty . . . to attract the highest price for the estate"); *In re Metaldyne Corp.*, 409 B.R. 661, 668 (Bankr. S.D.N.Y. 2009) ("It is a well-established principle of bankruptcy law that the objective of bankruptcy rules and the [Debtor's] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate." (internal citations and quotations omitted)); *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288-89 (B.A.P. 9th Cir. 2005) ("The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances . . . ."); *In re Wintz Companies*, 219 F.3d 807, 812 (8th Cir. 2000) ("The sale procedures approved by the bankruptcy court provided for [a process] calculated to maximize the value the estate might obtain.").

17. To achieve these goals, it is incumbent on the debtor to foster robust, competitive bidding. *See Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 535-37 (3rd Cir. 1999) (recognizing that more competitive bidding will bring better benefit to the estate); *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) (noting that judges should encourage "fervent bidding" that "redounds to the benefit" of the estate). Thus, bidding and sale procedures must be designed to encourage, rather than chill, bidding. *See In re Chrysler LLC*, 405 B.R. 84, 109 (Bankr. S.D.N.Y. 2009) (approving bidding procedures upon finding that "the bidding procedures would encourage bidding from any interested party with the wherewithal

and interest to consummate a purchase transaction to ensure that the highest and best offer was attained"); *In re Bidermann Indus. U.S.A., Inc.*, 203 B.R. 547, 551-53 (Bankr. S.D.N.Y. 1997) (rejecting proposed bidding procedures where "the whole bidding arrangement [was] designed not to encourage but to stifle bidding"). Courts should not approve bidding procedures that "undermine principles of fair play," because "unless the bidding process remains fair and equitable, competitors will refrain from the type of full participation that is needed to assure bids for the highest reasonable value." *In re Jon J. Peterson, Inc.*, 411 B.R. 131, 137 (Bankr. W.D.N.Y. 2009). The Debtors carry the burden of demonstrating that the proposed Bid Procedures, including the designation of KPS as the Stalking Horse Bidder, comply with the above requirements. *See In re Innkeepers USA Trust*, 448 B.R. 131, 145 (Bankr. S.D.N.Y. 2011) (the court should apply "a business judgment test" to determine whether a sound business purpose justifies the debtors' decision to seek approval of a stalking horse bid).

18. Additional requirements must be met to prove to the Court that the Debtors' request to approve the Stalking Horse Bid Protections is based on their sound business judgement and that such approval is, indeed, necessary. *See, e.g.*, *In re O'Brien*, 181 F.3d 535 ("allowability of break-up fees . . . depends upon the requesting party's ability to show that the fees were actually necessary to preserve the value of the estate"); *In re Hupp Industries, Inc.*, 140 B.R. 191, 195-96 (Bankr. N.D. Ohio 1992) (allowance of break-up fees in bankruptcy "is to be highly scrutinized" to "insure that the debtor's estate is not unduly burdened and that the relative rights of the parties in interest are protected").

B. The Designation of the Stalking Horse Bidder and Approval of the Stalking Horse Bid Protections Should be Denied.

19. Given that a comprehensive restructuring transaction is available, there is no basis to designate KPS the Stalking Horse Bidder at this time. Rather than foster competitive bidding,

designation of the Stalking Horse Bidder and approval of the Stalking Horse Bid Protections are likely to chill bidding, as they do not allow the Debtors time to first consider the Joint Proposal. Thus, designation of KPS as the Stalking Horse Bidder and approving tens of millions of dollars in bid protections at this time would be both inappropriate and unnecessary.

20. When evaluating the propriety of bid protections, courts have adopted the following three-part test: "(1) is the relationship of the parties who negotiated the breakup fee tainted by self-dealing or manipulation; (2) does the fee hamper, rather than encourage, bidding; and (3) is the amount of the fee unreasonable relative to the proposed purchase price?*" In re Integrated Res., Inc.*, 147 B.R. at 657. Whether the proposed bidding protections encourage or discourage bidding is central to this analysis: "The usual rule is that if break-up fees encourage bidding, they are enforceable; if they stifle bidding they are not enforceable." *Id.* at 659. Under this central prong of the *Integrated* test, courts evaluate "whether the break-up fee serve[s] any of three possible useful functions: (1) to attract or retain a potentially successful bid, (2) to establish a bid standard or minimum for other bidders to follow, or (3) to attract additional bidders." *Id.* at 661-62.

21. Because the Stalking Horse Bid Protections will stifle competitive bidding, they should be denied. Given the existence of the Joint Proposal, KPS should not be entitled to the break-up fee and unlimited expense reimbursement, as the Stalking Horse Purchase Agreement is not necessary to provide a "floor" to attract better bids or retain the KPS bid. Nor did the KPS bid lay the foundation for the Joint Proposal, as the Joint Proposal is a fundamentally different transaction based on a plan restructuring rather than an asset sale followed by a liquidation. Given the existence of multiple parties with interests in engaging in a comprehensive restructuring and the lack of any break-up fee or expense reimbursement under the Joint Proposal, it would be a waste of estate assets to pay any of the Stalking Horse Bid Protections. Accordingly, not only are

the Stalking Horse Bid Protections excessive, but are wholly unnecessary, as they will only serve to chill other parties from developing value maximizing proposals.

22. Based on the foregoing, the designation of KPS as the Stalking Horse Bidder and approval of the Stalking Horse Bid Protections should be denied.

C. The Bid Procedures Contain Other Terms that Will Chill Competitive Bidding.

23. In addition, the proposed Bid Procedures contain a number of other features that will stifle competitive bidding, including the following:

1. The Debtors Have Carte Blanche Authority to Reject Qualified Bids.

24. The Bid Procedures grant the Debtors unlimited discretion to reject Qualified Bids, so long as they consult with the Consulting Professionals (which include the advisors to the Prepetition Agent, the trustee under the prepetition Indenture, the Committee, the *ad hoc* group of bondholders under the Indenture, and the agent under the DIP facility). This unfettered right to reject any bid that otherwise fully complies with the Court-approved requirements for a Qualified Bid serves no legitimate purpose and will only chill competitive bidding.

25. The Bid Procedures also improperly allow the Debtors to reject Qualified Bids if the respective bidder fails to submit a timely Indication of Interest that satisfies seven criteria, which Indications of Interest must be submitted a mere *four days* after the hearing on the Motion. *See* Bid Procedures p. 4-5. The Debtors should not be permitted to reject otherwise Qualified Bids based on a preliminary deadline for submitting Indications of Interest.

2. The Bid Procedures Are Inflexible.

26. Moreover, the Bid Procedures do not provide for the possibility of a Qualified Bid taking any form other than a sale and purchase agreement, thus apparently precluding bidders from

submitting offers to fund a chapter 11 plan instead.[3] Approval of such an inflexible structure would serve to entrench the type of transaction contemplated by the Stalking Horse Purchase Agreement and leave little room for alternative, and more value-maximizing, proposals like the Joint Proposal.

27. In addition, the Bid Procedures prevent all bidders, Prospective or Qualified, from communicating with one another with respect to a transaction without the Debtors' prior written consent. *See* Bid Procedures p. 3 ("No Interested Party, Potential Bidder or Qualified Bidder . . . shall communicate with . . . any other Interested Party, Potential Bidder, or Qualified Bidder with respect to any potential bid or transaction absent the prior written consent of the Debtors."). This provision is unduly restrictive and chills bidders from joining together, like the Joint Proposal, to form value-maximizing transactions.

3. Other Arbitrary Terms.

28. Centerbridge and Oaktree have serious concerns that the Debtors may reject otherwise Qualified Bids based on arbitrary metrics. For instance, under the Topping Bid Guidelines, all bids must have a leverage limit of 2.5x gross debt/EBITDA, inclusive of all financial liabilities. Potential bidders should be free to propose other leverage ratios as part of otherwise value-maximizing bids. If a Potential Bidder can provide more value to the estates, even with a higher leverage ratio, that bid should be accepted, and the Debtors should not be permitted to reject it out of hand based on management's arbitrary metrics. The Topping Bid Guidelines also unduly restrict Potential Bidders' ability to allocate value among Debtor entities. Accordingly, the Topping Bid Guidelines improperly restrict Potential Bidders' flexibility to propose value-

[3] Although the Debtors circulated "Topping Bid Guidelines" to Prospective Bidders that provide that such bidders may structure proposals as a chapter 11 plan sale or reorganization, those guidelines run contrary to the terms of the Bid Procedures that the Debtors put before the Court.

maximizing alternatives and, when combined with the Debtors' right to reject Qualified Bids for no reason, will further suppress competitive bidding.

29. Finally, the Bid Procedures inexplicably provide the Debtors with unfettered discretion to limit diligence to Prospective Bidders. *See* Bid Procedures p. 3 ("The Debtors may withhold or limit access by any Potential Bidder to the Data Room, in consultation with the Consulting Professionals . . . , or other due diligence materials at any time and for any reason"). The Debtors should not be permitted to arbitrarily limit Potential Bidders' access to materials necessary to complete their diligence process. Such limitations will only serve to further chill bidding and limit the potential formulation of value-maximizing proposals.

CONCLUSION

WHEREFORE, Centerbridge and Oaktree request that the Court (i) sustain this objection, (ii) deny the relief requested in the Motion, and (iii) grant Centerbridge and Oaktree such other or further relief as it deems appropriate.

New York, New York
Dated: October 16, 2020

/s/ *Dennis F. Dunne*

MILBANK LLP
Dennis F. Dunne
Matthew L. Brod
Andrew C. Harmeyer
55 Hudson Yards
New York, NY 10003
Tel: (212) 530-5000
Fax: (212) 530-5219

-and-

Andrew M. Leblanc
1850 K Street, NW, Suite 1100
Washington, DC US 20006
Tel: (202) 835-7500
Fax: (202) 263-7586

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