

**IN THE
SUPREME COURT OF OHIO**

CLEVELAND INTERNATIONAL FUND-)	Case No. 2022-0744
MEDICAL MART HOTEL, LTD., <i>et al.</i> ,)	
<i>Plaintiffs,</i>)	On Appeal from the Cuyahoga County
v.)	Court of Appeals, Eighth District
))	
OPTIMA 777, LLC, <i>et al.</i> ,)	Court of Appeals Case No. CA-22-111616
))	
<i>Defendant-Appellant,</i>)	
))	
TIM L. COLLINS, RECEIVER,)	
))	
))	
<i>Appellee.</i>)	

**MEMORANDUM OF APPELLEE / RECEIVER TIM L. COLLINS
OPPOSING APPELLANT / OPTIMA 777, LLC'S MOTION FOR EMERGENCY STAY**

Ezio A. Listati (0046703)
Elizabeth E. Collins (0091032)
THRASHER, DINSMORE & DOLAN, LPA
1282 West 58th Street
Cleveland, OH 44102
(216) 255-5431 | (216) 255-5450 (fax)
elistati@tddl.com | ecollins@tddl.com

Attorneys for Appellee Tim L. Collins, Receiver

Amanda J. Martinsek (0058567)
Gregory C. Djordjevic (0095943)
Katherine M. Poldneff (0088529)
ULMER & BERNE LLP
1660 West 2nd Street, Suite 1100
Cleveland, OH 44113
(216) 583-7000
amartinsek@ulmer.com | gdjordjevic@ulmer.com
kpoldneff@ulmer.com

*Attorneys for Cleveland International Fund
Medical Mart Hotel, LTD. and Huntington
National Bank, As Trustee*

David A. Kunselman (0073980)
Steven J. Miller (0014293)
BUCKLEY KING LPA
600 Superior Avenue East, Suite 1400
Cleveland, OH 44114
(216) 363-1400 | (216) 579-1020 (fax)
stevemiller@buckleyking.com
kunselman@buckleyking.com

*Attorneys for Appellant Optima 777,
LLC*

Scott D. Simpkins (0066775)
Patricia M. Ritzert (0009428)
CLIMACO, WILCOX, PEGA AND GAROFOLI CO., LPA
55 Public Square, Suite 1950
Cleveland, OH 44113
(216) 621-8484
sdsimp@climacolaw.com

*Attorneys for Cleveland-
Cuyahoga County Port Authority*

Kelli Kay Perk (0068411)
Mark R. Musson (0081110)
CUYAHOGA COUNTY PROSECUTOR'S OFFICE
1200 Ontario Street, 8th Floor
Cleveland, OH 44113
(216) 443-7800
kperk@prosecutor.cuyahogacounty.us
mmusson@prosecutor.cuyahogacounty.us

Attorneys for Cuyahoga County

David M. Douglass (0068411)
DOUGLASS & ASSOCIATES CO., LPA
4725 Grayton Road
Cleveland, OH 44135
(216) 362-7777
d.douglass@douglasslaw.com

Attorneys for City of Cleveland

MEMORANDUM IN OPPOSITION

I. INTRODUCTION AND BACKGROUND

The underlying matter involves Optima's default on multiple loans to private and government lenders. As a result, Cleveland International Fund-Medical Mart Hotel, Ltd. and the Huntington National Bank ("Plaintiffs") brought a foreclosure action against Optima. The trial court appointed Tim Collins as Receiver ("Receiver") over Defendant-Appellant Optima 777, LLC ("Optima") and its assets (collectively, the "Receivership Estate"), which included the Cleveland Westin Hotel ("Hotel"), to secure repayment of all indebtedness, obligations and liabilities on March 17, 2021. After working with all key stakeholders, including Optima principals and seeking and obtaining the requisite approval and guidance from the trial court, the Receiver determined sale of the Receivership Estate, including the Hotel, was necessary.

Following review of significant evidence, including three expert reports from Optima's purported expert witness, dozens of exhibits submitted by all parties, lengthy briefing, and an evidentiary hearing on May 23, 2022, the trial court granted Receiver's Motion to Sell. *See* Sale Order, attached hereto as Exhibit A and incorporated herein by reference. The trial court further found that a prompt sale of the Receivership Estate is important to preserve the value of Receivership Estate. *See* Sale Order, ¶ J ("[t]he Sale must be approved promptly in order to preserve the value of the Acquired Assets."). At the May 23, 2022 Sale Hearing, the Receiver submitted un rebutted evidence that he would need to receive \$51,890,593, plus per diem interest of \$8,466.61 each day after May 23, 2022, to eliminate all liens from the property title as defined in the Ohio Receivership Statute. *See* May 23, 2022 Transcript at pp. 47-48, attached hereto as Exhibit B and incorporated herein by reference.

On June 10, 2022, Optima filed its Notice of Appeal of the trial court’s Sale Order. In addition to its appeal, Optima also filed a motion seeking a stay to prevent the sale of the Receivership Estate, including the Hotel during the pendency of its appeal, but seeks to do so without posting a reasonable supersedeas bond or following necessary procedures to obtain a stay. The trial court rejected this disingenuous offer on June 14, 2022, when it denied Optima’s Motion to Stay with a low supersedeas bond offer. The Eighth District Court of Appeals issued a decision on June 15, 2022, granting Optima’s request to stay the Sale Order conditioned “upon the posting of a supersedeas bond in the amount of \$43,000,000.00, the approximate amount of the net proceeds of the sale.” *See* Judgment Entry attached hereto as Exhibit C and incorporated herein by reference. Apparently unwilling to post the required bond, Optima now seeks intervention by this Court through the filing of its so-called Supplemental Motion for Emergency Stay (“Motion”).

II. LAW & ARGUMENT

Optima has provided no basis for the Ohio Supreme Court to overturn the sound judgment of the Eighth District and grant a stay without the bond ordered below. Optima has already received the relief it requested—a stay of execution pending appeal—from the Eighth District Court of Appeals, and the bond amount set was appropriate and in compliance with Ohio law. Accordingly, because Optima’s Motion is procedurally defective, and because Optima has not, and indeed cannot, demonstrate an abuse of discretion on the part of either the trial court or the Eighth District, this jurisdictional appeal should be dismissed and Optima’s Motion to Stay should be denied.

A. Optima’s Motion is Procedurally Defective.

Optima’s Motion is procedurally defective due to Optima’s failure to follow the Rules of Appellate Procedure and the Supreme Court Rules of Practice. First, Optima’s Motion is procedurally improper because it fails to comply with the requirements of Civ. App.R.7(A). This rule provides in relevant part that “[w]ith the motion shall be filed such parts of the record as are relevant and as are reasonably available at the time the motion is filed.” Civ. App.R.7(A). The rule further provides that “reasonable notice of the motion and the intention to apply to the court shall be given by the movant to all parties.” *Id.* Optima failed to file with its Motion any relevant parts of the record, including but not limited to the Motion to Stay briefing before the trial court or its filing with the Eighth District. Moreover, Optima failed to provide notice to the Receiver of its intention to apply to the Eighth District, or this Court, as required by Civ.App.R.7(A). Optima’s Motion is therefore procedurally improper and could have been outright denied on those grounds alone.

Second, Optima also improperly seeks to avoid the adequate supersedeas bond requirement of R.C. 2505.09. In parallel with Civ. App.R. 7, R.C. 2505.09, titled “Requirements for Stay of Execution,” further mandates that “a supersedeas bond is executed by the appellant to the appellee, with sufficient sureties and in a sum that is not less than, if applicable, the cumulative total for all claims covered by the final order, judgment, or decree and interest involved. . . .” R.C. 2505.09. Here, Optima has offered (and now suggests to this Court) to (1) simply transfer the deed to the Hotel, which has no value to Optima or claimants during the pendency of the appeal because the Hotel is currently a financial liability and is worth less than the proposed sale price or (2) post a *de minimis* bond. This offer is hollow and does not comply with Ohio law.

Finally, Optima’s Motion is defective in its failure to attach relevant information regarding bond. S.Ct.Prac.R. 4.01(A)(2) provides both (1) that a motion “shall state with particularity the grounds on which it is based” and (2) that “[a] motion to stay a lower court’s decision pending appeal shall include relevant information regarding bond. A copy of the lower court’s decision and any applicable opinion shall be attached to the motion.” Here, Optima’s Motion fails to state the basis for which it thinks it may be entitled to relief from this Court other than to allege that it will “suffer the gross prejudice and irreparable damage of loss of title to the Hotel.” There is no evidence upon which this Court may conclude “gross prejudice” or “irreparable harm” may be visited upon Optima without a reduced bond. Furthermore, it failed to attach any information regarding the bond, but simply makes an unsubstantiated claim that the \$43 million supersedeas bond ordered by the Eighth District is “unwarranted.” Such procedural defects mandate dismissal of Optima’s spurious Motion.

B. Optima’s Motion to Stay Provides no Basis for the Relief Requested.

Even if Optima’s Motion were procedurally proper, its Motion fails because it has provided no reason for this Court to overturn the sound judgment of the Eighth District. Under R.C. 2505.09, “a stay of execution of a judgment may be obtained by complying with the Appellate Rules of Procedure and executing a supersedeas bond in an amount not less than the amount of the cumulative total for all claims covered by the final order, judgment, or decree and interest involved.” *Demery v. Baluk*, 6th Dist. Erie No. E-11-027, 2011-Ohio-3231, ¶ 2. “Determining the need for the bond and its amount are discretionary matters which will not be overturned by the appellate court absent a showing of an abuse of discretion.” *Bibb v. Home S. & L. Co.*, 63 Ohio App.3d 751, 752, 580 N.E.2d 52, 53 (6th Dist.1989). At the evidentiary hearing on the Receiver’s sale of the Hotel on May 23, 2022, the Receiver testified and presented evidence demonstrating that an appropriate redemption price is \$51,890,593.00. *See* May 23, 2022 Transcript at pp. 46-48.

He also testified and presented evidence that a proper purchase price for the Hotel is \$43 million, without any rebuttal evidence to contradict. This comports with R.C. 2505.09, which allows a supersedeas bond of \$50 million exclusive of interest and costs.

Had this Court received the relevant (and mandated) information related to a bond in Optima's Motion, it would have learned that at the May 23, 2022 Sale Hearing, the Receiver submitted un rebutted evidence that he would need to recover \$51,890,593, plus per diem interest of \$8,466.61 each day after May 23, 2022, to make each of Optima's secured creditors to date whole as defined in the Ohio Receivership Statute. *See* May 23, 2022 Transcript at pp. 47-48. This figure did not include unsecured creditors who Optima has also failed to make whole. *Id.* at p. 46.

Further, the Receiver testified that based on operations, the Hotel is losing \$101,213 per month on average this year, or approximately \$1.2 million per year. *Id.* at p. 45. The Receiver testified that many other creditors and expenses are currently delinquent, unpaid entirely, or are not being paid out of the Hotel's operating account, and therefore the \$101,213 per month calculation does not include:

. . . receivership costs. That doesn't include paying a mortgage. We haven't paid a mortgage in quite some time. The mortgage, as I understand it, is \$262,500 a month. It's not been paid in years. It doesn't include paying the State Energy Loan, the City of Cleveland loan. It doesn't include catch-up payments on past due real estate taxes, and it doesn't include \$570,000 worth of past due payments to service providers and vendors who sold things to the hotel years ago and never got paid.

Id. at p. 46. Optima introduced no evidence in the record to support statements related to the Hotel increasing in value, or that no risk of harm would fall to the Receivership Estate should Optima fail to post a substantial bond. In fact, the record shows the Hotel is currently costing creditors money to operate, and is worth less than Optima's outstanding debt. The proposed sale transaction would gross \$42,947,000, which means that the continued \$101,213 in monthly losses for

operating the Hotel are necessarily coming out of the pockets of Optima's creditors, not Optima's pocket, in addition to the other debts and expenses. *See* Sale Order.

The risk of harm to the Receivership Estate due to any further delay by Optima is too significant to overlook, and therefore the Eighth District was entirely justified in setting bond at an amount up to or even over \$51,890,593.00, let alone the much lower amount of \$43,000,00.00 actually set by that Court. The Receiver demonstrated in the Eighth District briefing, and as is evident in the initial foreclosure Complaint with exhibits filed in the trial court, that the supersedeas bond is based on an amount lower than the statutory threshold of \$50,000,000, as the \$51,890,593.00 includes interests and costs as allowed by statute. As the Eighth District's \$43,000,000 supersedeas bond was lower than the unrebutted testimony proves is warranted, Optima cannot demonstrate an abuse of discretion, and has no basis to seek a stay in this Court.

The relief Optima seeks, a stay without posting a cash bond or by posting a small bond, is improper and should be denied. Optima's "offer" to this Court to hold the deed to the Hotel pending resolution of its appeal equally holds no water, as the Hotel is already controlled by the Receiver and the trial court, at a cost to creditors. Accordingly, because Optima has failed to present any basis upon which this Court should disturb the decision of the Eighth District, and because it has failed to demonstrate or even identify how the Eighth District has abused its discretion in setting supersedeas bond at \$43,000,000.00, Optima's Motion should be denied.

III. CONCLUSION

For the foregoing reasons, the Receiver respectfully requests this Court deny Optima's Supplemental Motion for Emergency Stay.

Respectfully submitted,

/s/ *Ezio A. Listati*

Ezio A. Listati (0046703)

Elizabeth E. Collins (0091032)

THRASHER, DINSMORE & DOLAN, LPA

1282 West 58th Street

Cleveland, OH 44102

(216) 255-5431 | (216) 255-5450 (fax)

elistati@tddl.com | ecollins@tddl.com

*Attorneys for Appellee Tim L. Collins,
Receiver*

CERTIFICATE OF SERVICE

I certify that I am sending a copy of the foregoing on the 16th day of June, 2022 to the following via email in compliance with S.Ct.Prac.R. 3.11(C):

Amanda J. Martinsek (0058567)
Gregory C. Djordjevic (0095943)
Katherine M. Poldneff (0088529)
ULMER & BERNE LLP
1660 West 2nd Street, Suite 1100
Cleveland, OH 44113
(216) 583-7000
amartinsek@ulmer.com | gdjordjevic@ulmer.com
kpoldneff@ulmer.com

*Attorneys for Cleveland International Fund
Medical Mart Hotel, LTD. and Huntington
National Bank, As Trustee*

Kelli Kay Perk (0068411)
Mark R. Musson (0081110)
CUYAHOGA COUNTY PROSECUTOR'S OFFICE
1200 Ontario Street, 8th Floor
Cleveland, OH 44113
(216) 443-7800
kperk@prosecutor.cuyahogacounty.us
mmusson@prosecutor.cuyahogacounty.us

Attorneys for Cuyahoga County

David A. Kunselman (0073980)
Steven J. Miller (0014293)
BUCKLEY KING LPA
600 Superior Avenue East, Suite 1400
Cleveland, OH 44114
(216) 363-1400 | (216) 579-1020 (fax)
stevemiller@buckleyking.com
kunselman@buckleyking.com

Attorneys for Appellant Optima 777, LLC

Scott D. Simpkins (0066775)
Patricia M. Ritzert (0009428)
CLIMACO, WILCOX, PEGA AND GAROFOLI CO., LPA
55 Public Square, Suite 1950
Cleveland, OH 44113
(216) 621-8484
sdsimp@climacolaw.com

*Attorneys for Cleveland-Cuyahoga County
Port Authority*

David M. Douglass (0068411)
DOUGLASS & ASSOCIATES CO., LPA
4725 Grayton Road
Cleveland, OH 44135
(216) 362-7777
d.douglass@douglasslaw.com

Attorneys for City of Cleveland

/s/ *Ezio A. Listati*

Ezio A. Listati (0046703)

*One of the Attorneys for Appellee Tim L. Collins,
Receiver*

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

CLEVELAND INTERNATIONAL)	CASE NO. CV-20-938197
FUND-MEDICAL MART HOTEL, LTD.,)	
<i>et al.</i> ,)	JUDGE CASSANDRA COLLIER-WILLIAMS
)	MAGISTRATE STEPHEN M. BUCHA
Plaintiffs,)	
)	
v.)	ORDER AUTHORIZING RECEIVER TO
)	SELL SUBSTANTIALLY ALL
OPTIMA 777, LLC, <i>et al.</i> ,)	OF OPTIMA 777, LLC'S ASSETS AND TO
)	ASSUME AND ASSIGN CERTAIN
Defendants.)	CONTRACTS
)	

This matter having come before the Court upon the motion (the “**Motion**”)¹ of Tim L. Collins in his capacity as receiver (the “**Receiver**”) pursuant to this Court’s March 17, 2021 order appointing the Receiver (as such may be modified from time to time, the “**Order of Appointment**”), whereby the Receiver seeks entry of an order approving and authorizing the Receiver to perform and close the Stalking Horse Agreement, dated as of August 12, 2021, a copy of which, together with all amendments thereto, is attached hereto as Exhibit A (as may be amended, modified, or supplemented in accordance with the terms of this Sale Order and such agreement, the “**Stalking Horse Agreement**”), by and between Optima 777, LLC, as seller (the “**Seller**”), and HEI Hospitality Management, LLC (the “**Buyer**” and “**Stalking Horse Bidder**”); and the Court having entered the Order approving the Bidding Procedures on September 21, 2021 (the “**Bidding Procedures Order**”); and the Buyer having been selected as the Successful Bidder; and upon the Buyer and the Seller having entered into the Stalking Horse Agreement; and this Court having reviewed the Motion; and this Court having determined that the relief requested in the Motion is in the best interests of the Receiver, the estate, the creditors, and other parties in

¹ Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion, the Stalking Horse Agreement (as defined herein), or the Bidding Procedures Order (as defined herein).

interest, including Seller; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with Ohio Revised Code § 2735, *et seq.*; and jurisdiction and venue being proper before this Court under the Civil Rules; and it appearing that proper and adequate notice of the Motion has been given to all parties in this proceeding and all creditors that claim or may claim to have an interest in any portion of the Acquired Assets and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “**Sale Hearing**”); and upon the record of the Sale Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is therefore, **ORDERED, ADJUDGED AND DECREED** that the Motion is GRANTED as set forth herein (this “**Sale Order**”) and the sale to the Buyer as described in the Motion is hereby APPROVED.

In respect thereof, the Court makes certain findings of fact and conclusions of law, to wit:

A. This Court, pursuant to the Order of Appointment has exclusive jurisdiction over all assets of the Defendants and the receivership estate, including, without limitation, the Assumed Contracts. Without limiting the generality of the foregoing, this Court has exclusive in rem jurisdiction over the Acquired Assets pursuant to the Order of Appointment, as such assets are property of the receivership estate, and, as a result of such jurisdiction, the Court has all necessary power and authority to grant the relief contained herein.

B. In compliance with O.R.C. § 2735.04(D)(2)(b), the Receiver’s Motion has been served on (i) counsel for Defendants; (ii) all entities (or counsel therefor) known to have asserted any liens, claims, causes of action, encumbrances, rights of refusal, security interests, pledges, judgments, demands, charges, defects, options, restrictions, and other interests of any kind whatsoever, whether choate or inchoate (collectively “**Encumbrances**” and each an

“**Encumbrance**”) in or upon the Acquired Assets; (iii) all federal, state and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Sale Motion; (iv) all Qualified Bidders; (v) the Internal Revenue Service; (vi) all entities who have filed a notice of appearance and request for service of papers in these cases; and (vii) all other known creditors of the Seller (collectively, the “**Interested Parties**”). All Interested Parties and persons had a fair opportunity to appear, be heard, and object to the sale. All objections to the sale and its procedures are hereby overruled.

C. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, the Receiver and his advisers have diligently and in good faith marketed the Acquired Assets to secure the highest and best offer or offers therefor. The opportunity to submit higher or otherwise better offers for the Acquired Assets has been afforded to all Potential Bidders and there were no Qualified Bidders that outbid the Buyer despite being given a fair and full opportunity to do so. The Sale was conducted, and the Successful Bidder was selected, in accordance with these Bidding Procedures. Pursuant to the Bidding Procedures Order, the Stalking Horse Agreement was deemed a Qualified Bid. The Receiver and Buyer have complied in all material respects with the Bidding Procedures Order and accordingly have afforded a full, fair, and reasonable opportunity for any entity to make a higher or otherwise better offer to purchase the Acquired Assets.

D. The consideration to be paid to the Seller by the Buyer pursuant to the Stalking Horse Agreement, and the transactions contemplated thereby, represents a fair and reasonable purchase price and constitutes the highest and best offer obtainable for the Acquired Assets obtained through a fair process as set forth in the Bidding Procedures.

E. The Buyer is acting, with respect to the Stalking Horse Agreement, the transactions contemplated thereby, and this Sale Order, as a good faith purchaser.

F. The Receiver has demonstrated a good, sufficient, and sound business purpose and the existence of compelling circumstances justifying the assumption and assignment, sale, and transfer of the Acquired Assets on the terms set forth in the Stalking Horse Agreement. The sale of the Acquired Assets, and the assumption and assignment of the Assumed Contracts in accordance with the terms of the Stalking Horse Agreement is in the best interests of the Defendants and the receivership estate.

G. The Receiver has full power and authority, pursuant to O.R.C. § 2735.04 and the Order of Appointment, to execute the Stalking Horse Agreement and all other documents contemplated thereby, and needs no further consents or approvals, other than those expressly provided for in the Stalking Horse Agreement, to consummate such transactions.

H. Under all the circumstances presented, (i) approval and execution of the Stalking Horse Agreement, and all other actions contemplated therein; (ii) consummation of all acts contemplated in this Sale Order; (iii) the sale, assignment and transfer of the Acquired Assets, including the Assumed Contracts, by the Seller to the Buyer; and (iv) the receipt by the Receiver of the Purchase Price are in the best interests of the Defendants and the receivership estate, the creditors, and other parties in interest.

I. Proper, sufficient, and sound business reasons and other good cause for the entry of this Sale Order have been shown. The consideration provided by Buyer for the Acquired Assets pursuant to the Stalking Horse Agreement (i) is fair and reasonable, (ii) is the highest and best offer for the Acquired Assets, (iii) will provide a greater recovery for the Defendants' creditors than would be provided by any other practical available alternative taking into account the potential

cost of holding and operating the Acquired Assets, all as contemplated by O.R.C. § 2735.04(D)(1)(a), and (iv) constitutes reasonably equivalent value as that term is used in the Uniform Fraudulent Transfer Act and O.R.C. §§ 1336 *et seq.* The Stalking Horse Agreement was negotiated, proposed, and entered into by the Receiver and Buyer without collusion, in good faith and at arm's length. None of the Receiver, the Defendants nor the Buyer has engaged in any conduct that would cause or permit the Stalking Horse Agreement to be avoided or avoidable under applicable state or federal law. The Buyer is not an "insider" or "affiliate" of the Defendants or the Receiver as those terms are defined in O.R.C. § 1336.01.

J. The Sale must be approved promptly in order to preserve the value of the Acquired Assets.

K. The transactions contemplated by the Stalking Horse Agreement, including the requirement that the Acquired Assets be transferred free and clear of all Encumbrances (other than the Permitted Exceptions, defined in the Stalking Horse Agreement, as modified by this Order to specifically include Defendant Cuyahoga County's interests identified in Exhibit "G" of the Stalking Horse Agreement and recorded as AFN#201312300852, 201401039005 and 201312300851, which shall run with the land and Buyer shall take title subject to those interests, regardless whether those interests constitute Seller Encumbrances as defined in the Stalking Horse Agreement), were a material inducement for, and an express condition of, the Buyer's willingness to enter into the Stalking Horse Agreement and will provide a greater benefit to the receivership estate and the creditors than in the absence of such transactions and continuation of such Encumbrances.

L. The Buyer has demonstrated its financial wherewithal to satisfy its obligations under the Stalking Horse Agreement, including its payment of the Purchase Price, and otherwise provided adequate assurance of future performance of the Stalking Horse Agreement.

M. The Buyer is as creditworthy and otherwise as capable of performing under the Assumed Contracts as the Defendants were at the time the Defendants entered into the Assumed Contracts. No uncured default exists under the Assumed Contracts, nor is there any existing events or conditions which, with the passage of time or the giving of notice, or both, would constitute such a default. To the extent the Assumed Contracts are assigned to Buyer, the Receiver shall be responsible for all Cure Costs as set forth in the Stalking Horse Agreement.

N. Buyer would not have entered into the Stalking Horse Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Defendants, the receivership estate, and the creditors, if the sale of the Acquired Assets to Buyer were not free and clear of all Encumbrances (other than the Permitted Exceptions as defined in this Order), or if Buyer would, or in the future could, be liable for any such Encumbrances.

O. The assignment of the Assigned Contracts and Leases to Buyer will not subject Buyer to any liability whatsoever with respect to the operation of the Defendants' business or by reason of such assignment based on any theory of antitrust or successor or transferee liability.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Sale Motion is hereby granted in all respects. The Stalking Horse Agreement is approved in all respects. All objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled on the merits.

2. **If the property is not redeemed as provided in Section 19 of this order**, the Receiver is hereby authorized and empowered, and has all the power and authority necessary to:

- a. Fully perform under, consummate, implement, execute and deliver the Stalking Horse Agreement and all other documents contemplated thereby, to consummate the transactions contemplated by the Stalking Horse Agreement, and to take all other actions required to be taken pursuant to the Stalking Horse Agreement.
- b. Sell and transfer the Acquired Assets, and assume, sell, transfer, and assign the Assigned Contracts and Leases, to the Buyer, effective upon the Closing and upon the terms and conditions set forth in the Stalking Horse Agreement, and to take any action reasonably necessary to effectuate the sale, transfer, and assignment of the Acquired Assets and the Assigned Contracts and Leases to the Buyer.
- c. Receive the consideration described in the Stalking Horse Agreement from the Buyer and take any action necessary to effectuate the receipt of such consideration; and
- d. Fully perform and take all action necessary to effectuate the Stalking Horse Agreement, the transactions contemplated thereby, and the obligations contemplated by this Sale Order.

3. No other or further consents or approvals of this Court are required for the Receiver to consummate or effectuate (i) the Stalking Horse Agreement, (ii) the sale and transfer of the Acquired Assets to the Buyer; (iii) the assumption and sale, transfer, and assignment of the Assumed Contracts to the Buyer, and (iv) the receipt of consideration from the Buyer.

4. The Assumed Contracts shall be assumed, assigned and transferred by the Receiver to the Buyer, and, upon the Closing under the Stalking Horse Agreement, the Assumed Contracts and Acquired Assets shall be conveyed to the Buyer free and clear of all Encumbrances (other than the Permitted Exceptions as defined in this Order), or interests, including, without limitation, all claims, if any, arising from the operation or cessation of the Defendants' business, whether arising prior to or subsequent to the commencement of the above-captioned receivership case, and whether imposed by agreement, understanding, law, equity or otherwise (except as otherwise provided in the Stalking Horse Agreement or this Order), which liens, claims, encumbrances and/or interests,

if any, shall attach to the proceeds of the sale. The Buyer shall not, as a result of the assignment of any Assumed Contract, assume any liability under such Assumed Contract for events occurring prior thereto, all of which (if any) shall be Cure Costs for which the estate shall be liable.

5. Effective upon the Closing, all persons and entities, including but not limited to all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors, holding Encumbrances against or in the Defendants, the Acquired Assets, or the Assumed Contracts (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Defendants, the Acquired Assets, the operation of the Defendants' business or the assignment of the Assumed Contracts to Buyer, hereby are forever barred, estopped and permanently enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding, against the Buyer or its successors or assigns with respect to any Encumbrance. All persons holding Encumbrances (other than the Permitted Exceptions as defined in this Order) against or in the Defendants, the Acquired Assets, or the Assumed Contracts of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Encumbrances against Buyer, its successors and assigns, its properties, the Acquired Assets, or the Assigned Contracts and Leases with respect to such Encumbrances of any kind or nature whatsoever such person or entity had, has, or may have against or in the Defendants, the receivership estate, their officers, directors, shareholders, the Acquired Assets or the Assigned Contracts and Leases. Following the Closing Date, no holder of any Encumbrances (other than the Permitted Exceptions as defined in this Order) in the Acquired Assets or the Assigned Contracts and Leases shall interfere with Buyer's

use and enjoyment of the Acquired Assets or the Assigned Contracts and Leases based on or related to such Encumbrance (unless to enforce the Permitted Exceptions as defined in this Order), or any actions that the Receiver may take in this case.

6. The Buyer shall have no liability for any claim against the Defendants or the Receiver. Without limiting the generality of the foregoing, the consummation of the Stalking Horse Agreement shall not subject the Buyer to any liability whatsoever with respect to the operation of the business of the Defendants or the Receiver (or any of their agents, representatives or management companies), including, without limitation, by reason of any theory of successor or transferee liability or pursuant to any labor agreements covering the current or former employees of the Defendants. Buyer shall not be liable for any claims against the Defendants, the Receiver, or any of their respective predecessors or affiliates, and Buyer shall not have any successor or vicarious liabilities of any kind or character whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Defendants or the Receiver or any obligations of the Defendants or Receiver, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Defendants' business, or liabilities to any brokers claiming an entitlement to any fees and expenses in respect of the sale, all of whom shall not be entitled to assert, and are hereby enjoined from asserting, any claim against Buyer or Encumbrance against any of Buyer's property, including the Acquired Assets. Under no circumstances shall Buyer be deemed a successor of or to the Defendants for any Encumbrance against or in the Defendants, the Acquired Assets, or the Assumed Contracts of any kind or nature whatsoever.

7. If any person or entity that has filed a financing statement or other documents or agreements evidencing Encumbrances (excluding the Permitted Exceptions as defined in this

Order) in or upon the Acquired Assets shall not have delivered, in proper form for filing, termination statements, instruments of satisfaction, releases and other documents to the Receiver prior to Closing, then the Receiver shall execute such termination statements, instruments of satisfaction, releases and other documents on behalf of the person or entity and shall file the same with any appropriate registry or public filing office. Notwithstanding the foregoing, the provisions of this Sale Order shall be self-executing, and notwithstanding the failure of the Buyer, the Receiver or any other party to execute, file or obtain releases, termination statements, assignments, consents or other instruments to effectuate, consummate and/or implement the provisions hereof or the Stalking Horse Agreement with respect to the sale of the Acquired Assets, all Encumbrances on the Acquired Assets (other than Permitted Exceptions as defined in this Order) shall be and hereby are deemed to be divested, terminated and discharged.

8. The Receiver is hereby authorized and empowered, and, upon entry of the Order, shall have all the authority necessary, to perform such ministerial acts as may be required to effectuate and implement the Stalking Horse Agreement and any transaction contemplated thereby.

9. This Court retains jurisdiction to enforce and implement the terms and provisions of the Stalking Horse Agreement, all amendments thereto, any waivers and consents thereunder, and any agreements executed in connection therewith in all respects, including but not limited to, retaining jurisdiction (a) to resolve any disputes arising under or related to the Stalking Horse Agreement, except as otherwise provided therein; and (b) to interpret, implement, and enforce the provisions of this Sale Order.

10. The terms and provisions of the Stalking Horse Agreement and this Sale Order shall be binding in all respects upon, and shall insure to the benefit of, the Buyer, the Receiver, the

Defendants, and their respective affiliates, successors, and assigns of each of the foregoing, any affected third parties, and any successor receiver or conservator of the Defendants or their assets.

11. The failure specifically to include or refer to any particular provisions of the Stalking Horse Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Stalking Horse Agreement be authorized and approved in its entirety.

12. The Stalking Horse Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by the Receiver and the Buyer, and in accordance with the terms of the Stalking Horse Agreement, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Receivership Estate.

13. This Sale Order shall be effective as a determination that, on the Closing Date, all Encumbrances (other than Permitted Exceptions as defined in this Order) existing in the Acquired Assets have been unconditionally released, discharged and terminated, and that the conveyances described herein have been affected.

14. Upon conveyance of the Acquired Assets, the Receiver shall deliver to the Buyer (a) all non-privileged documents associated with the Acquired Assets in the Receiver's possession, including without limitation all insurance policies, insurance claims, maintenance records, bank records, tenant rental receipts, environmental reports, receivable aging reports, appraisals, surveys, and the like (irrespective of whether such documents were authored or originated by Receiver, Defendants, or some other third party); provided, however, that the Receiver and his counsel may retain any and all copies of such documents as they may deem necessary; and (b) such other

instruments of transfer as may be necessary and appropriate to effectuate the applicable conveyance of the Acquired Assets contemplated hereby.

15. The Receiver and Buyer shall cooperate to do all things necessary to carry out the terms of this Order to effectuate an orderly transition of responsibilities to the Buyer, including, for example, the proration of expenses in the month of the conveyance, the transfer of any utility services, liquor licenses, or other similar items.

16. As soon as reasonably possible after the Closing Date, the Receiver shall file and serve upon all parties a certificate and report which shall include all of the information required by O.R.C. § 2735.04(D)(10) and certify that the conveyance contemplated by the Stalking Horse Agreement has been completed to the satisfaction of the Receiver.

17. Effective as of the date of the recording of a receiver's fiduciary deed to the Buyer, the Receiver shall not thereafter be responsible for payment of any expenses incurred or services provided for the operation of the Acquired Assets, or any other expenses in connection with the Acquired Assets, after such conveyance.

18. The provisions of this Sale Order are nonseverable and mutually dependent.

19. Optima 777, LLC, or any other person having an equity of redemption in the Acquired Assets, may exercise such equity of redemption by paying to the Receiver, by cashier's check or other form of immediately available funds the sum of **\$51,890,593** plus **\$8,466.61** in interest per day from 5/23/22², on or before June 15, 2022, at 4:30 p.m. local time. If no party redeems as provided herein, such equity of redemption shall be forever barred.

² This amount is calculated as follows:

Amount owed to Plaintiff CIF: \$43,126,702.00 as of 5/23/22 with per diem interest thereafter of \$8,390.41;

20. **This Sale Order is effective when entered.**
21. Pursuant to Civ.R. 54(B), there is no just reason for delay. This is a final, appealable order.
22. Pursuant to Civ.R. 58(B), the Clerk of Courts must serve, in a manner prescribed by Civ.R. 5(B), all parties not in default for failure to appear notice of this judgment and its date of entry upon the journal and must note the service on the appearance docket.

[Footnote 2 continued]

Amount owed on JDI loan: \$4,592,673.00 (there is no per diem on this loan until July of 2022 because JDI required prepaid interest under the agreement);

Amount owed for past due Cuyahoga County taxes: \$1,200,000.00 as of 5/23/22 (not incurring per diem interest because the Receiver has been making payments pursuant to a delinquent payment plan agreement with the County);

Amount due on Cleveland vacant property tax loan: \$771,218.00 as of 5/23/22 with per diem interest thereafter of \$76.20;

Amount due on State energy loan: \$2,200,000.00 as of 5/23/22 (no per diem interest).

Plaintiff and the receiver requested that court costs be included in the redemption amount. R.C. 2735.04(D)(8) provides that property subject to a receiver sale may be redeemed by timely:

... paying to the receiver by cashier's check or other form of immediately available funds an amount equal to the greater of the following:

- (i) The sale price at which the real property was sold;
- (ii) An amount equal to the total of all liens upon the real property that were to be canceled as liens upon the real property by virtue of the sale, including all principal, interest, costs, and other amounts secured by those liens through the date of payment to the receiver.

This statutory provision does not include court costs in the redemption amount. Accordingly, the redemption amount above does not include court costs.

IT IS SO ORDERED:

DATE: 6/8/2022


JUDGE CASSANDRA COLLIER-WILLIAMS

1 THE STATE OF OHIO,)
) SS: CASSANDRA COLLIER-WILLIAMS, J.
2 COUNTY OF CUYAHOGA.)

3 IN THE COURT OF COMMON PLEAS
4 CIVIL DIVISION

5 **CLEVELAND INTERNATIONAL FUND**)
6 **MEDICAL MART HOTEL, Ltd.,**)
) Plaintiff,)
7 -v-) Case No. **CV-938197**
) C/A: **N/A**
8 **OPTIMA 777, LLC, et al.,**)
) Defendants.)

9 **TRANSCRIPT OF PROCEEDINGS, MAY 23, 2022**

10 APPEARANCES:

11 **AMANDA MARTINSEK, ESQ. & GREGORY DJORDJEVIC, ESQ.,**
12 on behalf of the Plaintiff;

13 **STEVEN MILLER, ESQ. & DAVID KUNSELMAN, ESQ.,**
14 on behalf of Defendant Optima 777;

15 **EZIO LISTATI, ESQ. & ELIZABETH COLLINS, ESQ.,**
16 on behalf of the Receiver;

17 **PATRICIA RITZERT, ESQ.,**
18 on behalf of Cuyahoga County Port Authority,

19 **MARK MUSSON, ESQ.,**
20 on behalf of Cuyahoga County;

21 **JONATHAN HAWKINS, ESQ. & JESSICA KINCAID, ESQ.,**
22 on behalf of HEI Hospitality Management LLC;

23 **DONALD MAUSER, ESQ.,**
24 on behalf of Northern Frozen Foods;

25 **SEAN BERNEY, ESQ.,**
on behalf of City of Cleveland;

MAGISTRATE STEPHEN BUCHA, ESQ.

Tracy L. Vargo, RMR
Official Court Reporter
Cuyahoga County, Ohio

EXHIBIT B

I N D E X

Witness:

Tim Collins, Receiver

<u>Examination by:</u>	<u>Page No.</u>
Mr. Miller	48, 55
Ms. Martinsek	52
Mr. Listati	54

Receiver's Exhibits:

- 1 - Sale & Purchase agreement
- 2 - Newmark Knight Frank appraisal
- 3 - JLL strategic analysis
- 4 - Hanna Chartwell Broker Opinion of Value
- 5 - Colliers Broker Opinion of Value
- 6 - CBRE Proposal
- 7 - CBRE Email
- 8 - Kemmons Wilson Indication of Interest
- 9 - Schulte Indication of Intent
- 10 - Sculpter/Step Stone Indication of Interest
- 11 - Lakewood Hotel Indication of Interest
- 12 - Westin Cleveland Downtown marketing report
- 13 - Offer Summery
- 14 - BCG Offer

Exhibits 1-14 offered - page 58

Exhibits 1-14 admitted - page 59

MONDAY AFTERNOON SESSION, MAY 23, 2022

1
2 THE COURT: Good afternoon,
3 everyone.

4 We're going to try to get through
5 everything today. I see I have a binder up
6 here, from the plaintiffs?

7 MR. LISTATI: No, Your Honor.
8 Those are the receiver's exhibits.

9 THE COURT: Receiver's
10 exhibits. Thank you very much.

11 The first thing we're going to do is
12 identify for the record who we have.

13 All right. On behalf of the
14 plaintiff, Cleveland International Fund, who
15 do I have?

16 MS. MARTINSEK: Your Honor,
17 Amanda Martinsek is here as counsel joined by
18 my colleague Greg Djordjevic. We also have
19 Steve Strnisha who is --

20 THE COURT: I'm sorry. What
21 is your name again?

22 MR. DJORDJEVIC: Greg Djordjevic.

23 THE COURT: Okay. Let's say
24 Greg.

25 MS. MARTINSEK: Greg Djordjevic.

1 And then sitting to my right is the
2 CEO of Cleveland International Fund Steve
3 Strnisha, S, T as in Thomas, R as in Robert, N
4 as in Nancy, I, S as in Sam, H, A.

5 THE COURT: Okay.

6 MS. MARTINSEK: We also have
7 Ms. Gibbons, a potential expert witness.

8 And on behalf of plaintiff Huntington
9 Bank we have Biagio, B-I-A-G-I-O, Impala,
10 I-M-P-A-L-A.

11 THE COURT: Okay. And those
12 are not attorneys, correct?

13 MS. MARTINSEK: Correct.

14 THE COURT: They are just
15 representing their respective clients.

16 MS. MARTINSEK: Yes.
17 Ms. Gibbons is an attorney, as identified in
18 her expert opinion. And, of course,
19 Mr. Djordjevic is with my office.

20 THE COURT: Okay. Very
21 good. Thank you very much.

22 MS. MARTINSEK: Certainly.

23 THE COURT: On behalf of the
24 receiver, who do I have?

25 MR. LISTATI: Your Honor, we

1 have Ezio Listati from Thrasher, Dinsmore &
2 Dolan on behalf of the receiver. I'm here
3 with Elizabeth Collins as counsel also, and
4 our receiver Tim Collins.

5 THE COURT: All right.
6 Thank you very much.

7 On behalf of the Association of
8 Flight Attendants, do I have anyone here from
9 that case?

10 Okay. On behalf of Northern Frozen
11 Foods, do I have anybody here on that case?

12 MR. MAUSAR: Thank you, Your
13 Honor. Donald Mausar on behalf of Northern
14 Frozen Foods.

15 THE COURT: All right.
16 Thank you very much.

17 On behalf of the defendant Optima 777
18 LLC, who do I have?

19 MR. MILLER: Good afternoon,
20 Your Honor. I am Steve Miller from the
21 Buckley King law firm. My colleague is David
22 Kunselman, K-U-N-S-E-L-M-A-N. Our expert
23 witness is Matt Wilk, Matthew Wilk. Our
24 corporate representative is Daniela Yost,
25 Y-O-S-T.

1 THE COURT: Daniela?

2 MR. MILLER: Daniela,

3 D-A-N-I-E-L-A.

4 THE COURT: All right. Did

5 I leave out anyone who's an attorney

6 representing someone?

7 MR. HAWKINS: Yes, Your Honor.

8 MR. MILLER: I want to make

9 one mention for Your Honor. You asked about

10 the Flight Attendants case.

11 THE COURT: Yes.

12 MR. MILLER: I believe that

13 on the docket entry that Flight Attendants

14 case was dismissed, terminated in all

15 respects.

16 I think that because of the

17 receivership order that all cases come before

18 you. It keeps popping up, but I do think that

19 as a housekeeping matter that case is actually

20 dismissed and terminated.

21 THE COURT: True or false?

22 MR. COLLINS: True. And my

23 recollection is it's been settled.

24 THE COURT: Okay. Thanks

25 very much.

1 MS. RITZERT: Your Honor, my
2 name is Patricia Ritzert, and I am here on
3 behalf of the Cleveland Cuyahoga County Port
4 Authority.

5 THE COURT: Got it. Thank
6 you.

7 MS. RITZERT: And as a
8 representative of the Port Authority is Rhonda
9 Winslow is also present in the courtroom.

10 THE COURT: Rhonda what?

11 MS. RITZERT: Winslow.

12 THE COURT: All right.

13 Thank you.

14 Court reporter, you had a question?

15 COURT REPORTER: Yes, the
16 spelling of the person who was speaking.

17 THE COURT: All right.

18 Ms. Ritzert, stand up and spell your name.

19 MS. RITZERT: Yes. The last
20 name is spelled R-I-T, Z as in zebra, E-R-T.

21 THE COURT: Thank you very
22 much.

23 Next person.

24 MR. MUSSON: Yes, Your Honor.

25 Mark Musson on behalf of Cuyahoga County. I

1 have law director Greg Huth as well.

2 THE COURT: Okay. Thank
3 you.

4 I'm sorry. Your last name again?

5 MR. HUTH: Greg Huth.

6 THE COURT: Spell your last
7 name.

8 MR. HUTH: H-U-T-H.

9 THE COURT: H-U-T-H.

10 MR. HUTH: Yes. Like Ruth.

11 THE COURT: Okay. Anybody
12 else?

13 MR. HAWKINS: Hi. Jonathan
14 Hawkins, Thompson Hine, LLP, together with
15 Jessica Kincaid, also Thompson Hine, LLP,
16 representing HEI Hospitality Management LLC,
17 the stalking horse purchaser.

18 THE COURT: I'm sorry. Give
19 me your name again.

20 MR. HAWKINS: Jonathan
21 Hawkins, H-A-W-K-I-N-S.

22 THE COURT: Okay. And who
23 else is with you?

24 MR. HAWKINS: Jessica Kincaid,
25 Your Honor.

1 MS. KINCAID: Jessica, and
2 then Kincaid, K-I-N-C-A-I-D.

3 THE COURT: All right. And
4 you represent the stalking horse?

5 MR. HAWKINS: Yes, Your Honor.

6 THE COURT: All right. I
7 think I --

8 MR. BERNEY: Your Honor --

9 THE COURT: -- have
10 everybody.

11 Oh, no.

12 MR. BERNEY: Berney, Sean.
13 Berney, B-E-R-N-E-Y, here on behalf of the
14 City of Cleveland Department of Economic
15 Development. Sean is common spelling.

16 THE COURT: Okay. Are you
17 on both of the cases or just one?

18 MR. BERNEY: I believe I'm on
19 just one.

20 THE COURT: Okay. And I'm
21 sorry. Give me your full name again.

22 MR. BERNEY: Sean, S-E-A-N,
23 and last name is Berney, B-E-R-N-E-Y.

24 THE COURT: N E Y?

25 THE BERNEY: Correct.

1 THE COURT: And you are with
2 the City of Cleveland Department of
3 Development?

4 MR. BERNEY: That's who I
5 represent.

6 THE COURT: And I guess
7 that's everyone, right?

8 On October 26, 2021, the receiver
9 filed a motion for an order authorizing him to
10 sell the Westin Cleveland Downtown Hotel to
11 HEI Hospitality Management LLC free and clear
12 of all liens, claims, and encumbrances
13 pursuant to Revised Code Section 2735.01.

14 In response to that, the defendant --
15 hold on just a second. On November 9, 2021,
16 defendant Optima 777 filed their brief in
17 opposition to the motion for an order
18 authorizing sale. And if I'm not mistaken,
19 that is our purpose for today. Does anyone
20 disagree with that?

21 MR. LISTATI: No, Your Honor.
22 All right. Very good.

23 MR. MILLER: Your Honor, we
24 have -- we came to a hearing today under the
25 statute and under the Court's order giving

1 notice of this hearing. We don't limit
2 ourselves to the matter that is set forth in
3 our brief in November of 2021.

4 THE COURT: Okay. So as
5 this is the receiver's motion, I'm going to
6 allow you to go first. Now, one of the things
7 that, you know, I've been -- the question has
8 been raised as to, how much information does
9 this court want to hear today? Certainly
10 we're not -- I'm not interested in hearing a
11 whole lot of testimony. I am interested in
12 hearing some relevant testimony to the sale of
13 the property.

14 And I think the attorney for the
15 plaintiff had one solution because in the
16 midst of everything else we also have motions
17 that were filed by the plaintiff seeking to
18 exclude the testimony of Matthew J. Wilk, or
19 in the alternative to present Ms. Gibbons as a
20 rebuttal expert. And I know last week on the
21 18th also the defendant Optima filed the
22 latest report from their expert Matthew Wilk.
23 And, again, there are questions -- there are
24 people that are opposing his status as an
25 expert.

1 On the 16th of May the receiver filed
2 a motion to exclude the testimony related to
3 the court-approved bidding procedures because
4 we're beyond that. That was already dealt
5 with. So the only thing that we'll deal with
6 today would be the actual sale, not the
7 bidding procedures and stuff of that nature.

8 So I think that the attorney for the
9 plaintiff had an interesting solution
10 regarding the experts, etc., and I'm going to
11 let you put that on the record.

12 MS. MARTINSEK: Your Honor, we
13 have deposed Mr. Wilk. We do not believe he
14 is a qualified expert. However, in the
15 interest of expediency, we would be willing to
16 withdraw our objection and let all five expert
17 reports, Mr. Wilk's three reports,
18 Ms. Gibbons' two reports go back and be part
19 of the record without testimony.

20 THE COURT: All right.
21 Anybody object to that?

22 MR. LISTATI: I was just going
23 to say, we would agree with that, Your Honor.

24 THE COURT: Okay. All
25 right. And let me just go through everybody

1 so everybody gets a chance to weigh in.

2 Mr. Berney, do you have any position
3 on that one way or the other?

4 MR. BERNEY: No objection,
5 Your Honor.

6 THE COURT: And Mr. Miller,
7 what's your thought on that?

8 MR. MILLER: Well, I was in
9 good shape until the last two words when she
10 said "without testimony." So is the premise
11 then that the Court would not hear Mr. Wilk
12 orally today? If -- I would rather let the
13 Court hear Mr. Wilk even if it's briefly. He
14 drove a long way to get here. He has
15 important things to say, and I think the Court
16 should inform itself.

17 THE COURT: Well, but as
18 a -- so as an expert, you are really bound by
19 your report, right? So he wouldn't be saying
20 anything that's not in his report.

21 MR. MILLER: I understand.

22 THE COURT: Okay. Very
23 good. Thank you.

24 Mr. -- or, I'm sorry, Ms. Ritzert.

25 MS. RITZERT: Yes, Your Honor.

1 On behalf of the Port Authority, we have no
2 objection to that resolution and accepting the
3 report in lieu of live testimony.

4 THE COURT: All right.

5 Mr. Musson?

6 MR. MUSSON: Thank you, Your
7 Honor. No, the County does not object to
8 proceeding as proposed.

9 THE COURT: And so if we --
10 if I decide to go that way, then the only
11 person, or at least -- at least one person
12 that would be heard today would be the
13 receiver. Does everybody agree with that, the
14 receiver does need to be on the record to show
15 procedures and everything that occurred?

16 MR. LISTATI: We do, Your
17 Honor. We believe the receiver needs to
18 testify today.

19 THE COURT: Okay. So why
20 don't we first hear from the receiver, and
21 then once I hear from that, if I'm cloudy, or
22 if I'm like, I don't know, then we'll make the
23 determination whether I need to hear anybody
24 else or any of the experts or anything like
25 that. Okay? So why don't we do the receiver

1 first.

2 Is there anything you want to say
3 preliminarily before he gets up?

4 MR. LISTATI: The only thing I
5 would say in order to expedite things for the
6 Court and everyone that's here, we would just
7 have the receiver come up to the podium and
8 testify under oath if necessary at the podium
9 and then be cross-examined by anyone who wants
10 to rather than just going back and forth with
11 questions. It would take double the time.

12 MR. MILLER: Well, I would
13 actually object to that. If he came to the
14 podium, I'm going to be behind him.

15 THE COURT: No, he can be --

16 MR. LISTATI: He can sit in
17 the box and do the same thing if you prefer.

18 MR. MILLER: That would be
19 better.

20 MR. LISTATI: Then you could
21 cross-examine him if necessary.

22 MR. MILLER: That's fine.

23 THE COURT: Raise your right
24 hand.

25 - - - -

1 The **RECEIVER**, to maintain the issues
2 on its part to be maintained, called as a
3 witness, **TIM L. COLLINS**, who, being first duly
4 sworn, was examined and testified as follows:

5 THE COURT: Thank you very
6 much. Please come up and have a seat.

7 And as I think you are aware, that
8 seat does not really move, only the
9 microphone, but I need you to get as close to
10 that microphone as possible.

11 All right. On behalf of the
12 receiver, you may inquire. Or are you going
13 to be asking him questions, or are you --

14 MR. LISTATI: I'm not. Just,
15 he's just going to go, Your Honor.

16 THE COURT: All right.

17 MR. COLLINS: Let me give
18 you I think in a more abbreviated fashion
19 than -- question and answer would take double
20 the time.

21 THE COURT: Okay.

22 MR. COLLINS: I think this
23 would be quicker.

24 MR. MILLER: So then how
25 would I -- how would I object if I were to

1 have anything to which I would wish to object?

2 THE COURT: Just object, and
3 I will -- and I will --

4 MR. MILLER: I understand. I
5 wanted to set it out at the beginning.
6 There's no question to object to. Okay.

7 MR. COLLINS: And, judge,
8 first let me thank you for the opportunity to
9 be a receiver in this case. It is, of course,
10 a unique case during unique times. And in
11 addition to the parties that have monetary
12 interest here, this is important to the city
13 of Cleveland, and I'm glad to be able to
14 participate in the case on that basis.

15 We did give you a binder. It has 14
16 exhibits in it, and I want to go through that
17 binder and --

18 THE COURT: Does everybody
19 have a copy of the binder?

20 MR. COLLINS: -- and point out
21 to you important references so that you have a
22 record to understand what we've done. The
23 cover page gives you an exhibit list. The
24 purchase and sale agreement with the -- I
25 don't even want to call them stalking horse

1 anymore because they exceeded their stalking
2 horse -- with HEI is the first exhibit, and
3 the extensions, the modifications to that
4 original agreement are contained in the pages
5 following the original exhibit. That's
6 Exhibit 1.

7 I am a lawyer, not a real estate
8 agent or an appraiser, and so value was an
9 important thing to start with to understand
10 what we were going to do with this property.

11 And so the sources that I have for
12 value are derived from five documents. The
13 first one is an appraisal which was part of
14 the record before the Court prior to me giving
15 you this binder, which is the Newmark Frank
16 appraisal, and then the other sources of value
17 came from four brokers' opinions of value that
18 I received in the course of selecting a broker
19 to serve as the agent in this case.

20 So that the first of those items is
21 Exhibit 2, which is the Newmark Grubb --
22 Newmark Knight Frank -- sorry, they changed
23 their name -- appraisal. That organization is
24 an internationally recognized commercial real
25 estate company. They have an appraisal arm

1 that operates out of Columbus, Ohio. In other
2 words, they are familiar with our market.
3 These aren't people from Utah or far away.

4 And they prepared a report. They
5 were serving as an independent appraiser of
6 the property. They were retained by the
7 Cleveland International Fund. I wasn't there
8 for that, but I presume it would comply with
9 the mandates of the Ohio Revised Code for
10 foreclosure cases.

11 Their report is dated March 15, 2021,
12 which was two days before the appointment
13 hearing where I was appointed as the receiver.
14 And quite frankly, in all that period of time
15 no one's argued about the veracity of that
16 appraisal. That appraisal was received in
17 court. It served its purpose, and to this day
18 no one's disputed it.

19 And it has an opinion of value -- if
20 you turn to page 4 of Exhibit 2. You'll see
21 in the center of the page, total, the final
22 reconciled value is \$40,700,000. That was the
23 first data point for me to determine value of
24 this property.

25 Of course there's plenty of pages

1 with backup analysis, which is typical in an
2 appraisal, but that's the number that the
3 appraiser came to.

4 The second batch of information I
5 used in order to try to understand the range
6 of value for this property -- like I said,
7 we're the brokers. When I was first
8 appointed, I contacted three brokers and then
9 eventually was contacted by a fourth to serve
10 as the broker to assist in the sale of the
11 property. And I told each of them that I
12 needed a proposal from them. And, of course,
13 that proposal included the marketing plan to
14 sell the property, what method they were going
15 to use to sell the property, but also I asked
16 for a broker's opinion of value from each of
17 those four appraisers. I'm sorry, from each
18 of those four brokers. And so you can see
19 those proposals which each have brokerage
20 opinions in the next, say, four exhibits.

21 So starting with Exhibit 3, that's
22 JLL. That's a Chicago-based group of hotel
23 brokers that has significant Cleveland
24 experience in selling hotels.

25 If you turn to page 5 of Exhibit 3,

1 you'll see pictures and references to six
2 different Cleveland hotels that they had
3 served as broker for, one of them bigger than
4 the Westin Cleveland Hotel. That would be the
5 Renaissance Cleveland Hotel. The others are
6 smaller, but they're all full-service hotels.
7 Two Embassy suites, the Holiday Inn at the
8 Cleveland Clinic, and the Hyatt Regency. They
9 were involved with a refinance with that
10 property.

11 And so I asked those folks -- and I
12 wish to point out, it says: Westin Cleveland
13 Downtown (Prior Marketing). In 2018 this
14 property was put up for sale by the title
15 owner Optima 777. That was before our case
16 was filed. And a sales effort was undertaken,
17 and that was in 2018 that they undertook their
18 effort to try to sell this property.

19 If you turn to page 31, that's where
20 you will find the opinion of value for
21 these -- for this brokerage. And 31 and 32,
22 combined at the bottom of the pages you'll see
23 there's one schedule of analysis on page 31
24 that has a range of value between 40.7 million
25 to 44.2 million. And then on the next page

1 using a different analysis they have a range
2 of value of 41.7 million up to 43 million
3 dollars.

4 So for JLL combining all of the
5 ranges of the value that they provided us, the
6 range was \$40,000,700, and the highest of the
7 range was \$44,200,000. There's another data
8 point for us to try to assess its value.

9 If you're ready, Exhibit 4 is the
10 next broker that gave us a proposal for sale,
11 but in the middle of it is a broker's opinion
12 of value. That is a Hanna Commercial Real
13 Estate Group. Hanna Commercial Real Estate is
14 a regional brokerage firm here in Cleveland.
15 They have their fingers in pies beyond
16 Cleveland. But the uniqueness about Hanna,
17 the reason we invited them, is because they do
18 oral outcry auction. That was specifically
19 why we asked them to come. None of the
20 others -- we didn't want oral outcry auction
21 from anybody else, but we wanted a proposal
22 that used that methodology to try to sell this
23 property, and we invited them to come and make
24 a presentation.

25 In the end, the management team,

1 which included the title owner representative
2 Mr. Schochet, Chaim Schochet, would have been
3 participating as well as Mr. Lapine who's
4 seated in the back of the room. Others
5 representing Cleveland International Fund were
6 present.

7 And we concluded that it was not the
8 kind of sale methodology we thought was best
9 for this kind of hotel. We decided that a
10 targeted sale was better for this kind of
11 hotel, not a generalized advertisement in the
12 Wall Street Journal or in Crain's Cleveland
13 Business. It was better to find the persons
14 who were in this business across the country,
15 target market them, and reach out to those
16 folks. Hanna was not the company that was
17 interested in that sort of sale process, so we
18 didn't use them.

19 But, nonetheless, buried on page 12
20 in their report, 12 and 13, is an opinion of
21 value that in Hanna Commercial Real Estate
22 Group gave us, and they -- they used an
23 appraiser to help them. His name is
24 referenced on page 13. That the value that
25 they gave us for this property was not less

1 than \$45,000,000. You see that on the bottom
2 of page 12. So that gave us another data
3 point or range of value.

4 Exhibit 5 is the proposal that we
5 received from Colliers, another national real
6 estate brokerage firm that had a national
7 hotel group within their organization that was
8 headquartered in Atlanta. The others are all
9 perfectly reputable too, but the uniqueness
10 about Colliers is, I know them to do a lot of
11 disposition of property that's in
12 receivership. And so we spoke with three of
13 the representatives of that organization to
14 see what their proposals were in terms of
15 helping us in the sale of the property.

16 In their handout on page 23 is their
17 brokerage opinion of value. They gave us the
18 range. At the top of the page, the low value,
19 \$37,500,000, and a high value listed on the
20 right column all the way to the right,
21 \$43,979,000.

22 MR. MILLER: Would you wait
23 just one sec? The book we got had --
24 everything was upside down. I can't read the
25 page that you're talking about yet. If you

1 can just wait one second.

2 MR. COLLINS: Page 23, Steve.

3 MR. MILLER: The numbers you
4 just read in were the 37-5, the 39 million,
5 and the 40.5 million?

6 MR. COLLINS: 43 million 979.

7 MR. MILLER: Okay.

8 MR. COLLINS: That's the range
9 of value that Colliers gave us.

10 MR. MILLER: And when you're
11 saying the range in value was which number to
12 which number? Sorry.

13 MR. COLLINS: 37,500,000 is
14 the low, and the high is 43,979,000.

15 THE COURT: Why wouldn't the
16 high be 40.5 million or the low be 40.9?

17 MR. COLLINS: I was trying to
18 see the maximum value that they were
19 attributing, judge. I think those are --
20 that's the range for these folks of the
21 maximum values.

22 THE COURT: All right. You
23 may proceed.

24 MR. COLLINS: I'd also point
25 out at page 24 that they provided us at the

1 top of the page a pricing summary with a
2 suggested list price of 39 million. That's
3 what Colliers had in mind of selling this
4 despite the range that they gave us. That's
5 where they wanted to start, is 39 million.

6 I think that leads us to Exhibit 6,
7 which is the CBRE proposal. CBRE is the
8 largest and I think the most sophisticated
9 commercial real estate company in the United
10 States. And inside of their business they
11 have a hotel group that is pretty much
12 universally regarded as the best commercial
13 brokerage for specializing in hotel sales.

14 There's a gentleman named Eric
15 Belfrage who eventually was the lead with me
16 in working on this sale effort. He is -- he
17 works out of Columbus, Ohio. Again, we've got
18 a person who knows our state and knows our
19 area and has been involved with properties in
20 Cleveland, Ohio in addition to expertise he's
21 got beyond that. We had a Buckeye, which I
22 thought was appropriate for this property in
23 trying to sell it.

24 And, in fact, I had another project
25 with another client we were preparing to sell

1 a hotel before you gave me this assignment
2 that identified Eric Belfrage as the expert.
3 I recommended him to my client. In the end,
4 the client decided not to sell, but -- I
5 didn't know Eric, but I was familiar with his
6 work and so was glad to work with him here on
7 this project when he finally got involved.

8 I'm afraid that the page number
9 isn't on their report, and it's about 20 pages
10 in. And the top of it reads: "Value & Asset
11 Summary."

12 MR. MILLER: What does the
13 top of the page immediately before it read?

14 MR. COLLINS: Labor Union
15 Contract Review.

16 MR. MILLER: Okay. One
17 second, please.

18 Okay. We got it.

19 MR. COLLINS: Thank you.

20 Judge, do you have that page? I
21 apologize.

22 THE COURT: No problem.

23 MR. COLLINS: Value & Asset
24 summary gives us the range of value from CBRE
25 of 40,200,000 to high of 47,500,000.

1 I just want to mention that these are
2 net values. This is after the ballpark
3 expense that these brokers thought would be
4 the cost of a property improvement plan. And
5 so I've identified these numbers that they're
6 consistent across the board.

7 And these points of reference that
8 these professionals gave me provided a range
9 of value for this property of between
10 \$37,500,000 to the high of \$47,500,000 in the
11 aggregate. All five of them. That's the
12 range that we had.

13 And with that range then we could set
14 out in doing a marketing plan of how we were
15 going to conduct the sale of this property.
16 July the 14th of 2021 I signed a contract with
17 CBRE. Of course you approved it in September,
18 but we could start in on marketing plans at
19 that juncture then.

20 THE COURT: Why did you
21 select CBRE?

22 MR. COLLINS: We selected CBRE
23 because they were the biggest and best. And
24 the consensus of the group, which may have
25 been ten people in the room, was that they had

1 the best connections. They answered all the
2 questions the right way as to who they would
3 contact, the best ways to bring targeted
4 marketing forward on this project compared to
5 all the others. And it was almost -- we had
6 them all in one day. All four of them came in
7 and made presentations.

8 And it was head and shoulders to
9 everyone in the room who was the most talented
10 group and had the most information and
11 perspective on doing this right, and it was
12 CBRE. I don't think Optima 777's
13 representative would disagree with that.

14 So our goal once we signed up CBRE
15 was to make sure that the Westin Hotel was
16 listed for a July 26, 2021, America's Lodging
17 Investment Summit in Los Angeles. That was a
18 very large coming-out party for our property
19 and a lot of other properties, and we wanted
20 to make sure that with CBRE being as prominent
21 as they are, the Westin Hotel description that
22 this property was for sale was in their book.
23 And that when they had meetings with
24 individuals that they had planned during that
25 conference, that their book and our hotel was

1 put in front of those folks as an investment
2 opportunity.

3 That was in July. We were
4 successful. We got our materials in the book.
5 They distributed out the book. They had their
6 contacts.

7 I then direct the Court to Exhibit
8 Number 7.

9 - - - -
10 (Thereupon, a discussion was held off the record.)

11 - - - -
12 THE COURT: All right.
13 Mr. Collins, you may proceed.

14 MR. COLLINS: Thank you.
15 Exhibit 7 is where I want to direct the
16 Court's attention to.

17 THE COURT: Yes.

18 MR. COLLINS: That is an
19 email. You see Eric Belfrage across the top.
20 This was -- this was a call for offers and
21 informing the market that we had new data
22 in what has been called a data room. The data
23 room was a fully populated confidential set of
24 information that interested parties who wanted
25 to bid on this hotel had access to if they

1 signed a nondisclosure agreement.

2 And so this -- this is -- you can
3 see, this is what was sent out. And I can
4 tell you that -- I'm going to give you a round
5 number -- 640 emails to targeted prospective
6 purchasers were sent out like this one, like
7 Exhibit Number 7. 240 of those emails were
8 opened, and then 60 nondisclosure agreements
9 were signed out of that group. This targeted
10 marketing effort brought out 60 interested
11 people who wanted to read through our
12 information related to the financial condition
13 of the operation but also the physical
14 condition of the operation.

15 One of the things we did -- because
16 we were not going to hide the ball. I, as the
17 receiver, wanted people to know what was going
18 on -- was we hired a nationally-recognized
19 engineering firm to come in, do a property
20 condition report on this property, and we told
21 them everything they wanted to know. And they
22 wrote a report hiding nothing for people that
23 were interested in this property to go into
24 the data room, and they would see certainly
25 financial performance but also the property

1 condition report.

2 We didn't want people saying to us,
3 we need to study this property more. We
4 wanted to give them the insider's perspective.
5 Of course they could then study it. Of course
6 they could have tours, and many of them did.
7 But we gave them as much information as we had
8 available including the condition of the
9 property through that methodology.

10 And then following those 60 folks
11 getting into the -- into the data room, we
12 found 26 candidates that we spoke with that
13 were interested in purchasing the property.
14 And for that bit of information I turn the
15 Court's attention to Exhibit 12.

16 THE COURT: 12?

17 MR. COLLINS: Yes.

18 MR. MILLER: I'm sorry. What
19 is 12?

20 THE COURT: Twenty-six
21 candidates --

22 MR. COLLINS: I haven't told
23 you yet.

24 THE COURT: Oh, yes.

25 MR. COLLINS: I'll tell you.

1 MR. MILLER: Got it.

2 THE COURT: I think these
3 are the candidates.

4 MR. COLLINS: These are the 26
5 candidates that were interested in purchasing
6 the property after they've gone through the
7 data in the data room. This is a document
8 prepared at my request by CBRE. You can see
9 down at the bottom there's a CBRE Bates
10 number. That's because of the subpoena by
11 Mr. Miller.

12 And there are listings of the kinds
13 of conversations, the levels of interest.
14 Some of them were high interest and some of
15 them were passing on the project. But,
16 nonetheless, these were the candidates that
17 CBRE was working to try and create interest in
18 the marketplace and obtain bids before the
19 September 2, 2021, preliminary indication of
20 interest bid deadline. So that was the
21 deadline established in the procedures that
22 Your Honor approved.

23 We indeed received preliminary
24 indications of interest from four different
25 hotel companies. I'm going to backtrack on

1 exhibits. Exhibits 8, 9, 10, and 11 are the
2 four hotel companies that came in with
3 preliminary indication of interest. That was
4 a nonbinding expression of how much would they
5 pay and that they had the ability to close.
6 And, quite frankly, these four are national
7 companies, all recognized by CBRE. They were
8 capable of buying a hotel of this size
9 financially, and they were also capable of
10 running a complicated hotel of this size.

11 The hotel was built in the mid 1970s,
12 a lot like this building, and you can only
13 imagine, knowing what goes on with this
14 building, what might be going on with a hotel
15 in terms of buying the seams and the
16 infrastructure of it.

17 An amateur or a wannabe can't buy
18 this property, Your Honor. It has to be
19 somebody that knows what they're doing in
20 running that size of a property, and these
21 four all fell into that category. They are
22 all sophisticated hotel companies.

23 Each of them -- you can read them if
24 you wish, but each of them had basically the
25 same offer. They had to exceed a stalking

1 horse bid, which was \$39,600,000. They could
2 exceed it by \$1.1 million. That means their
3 offer had to be \$40,700,000. Because this was
4 such a preliminary phase of expression of
5 interest, no one was surprised if they came in
6 right at that number, all four of them, and
7 they also were required to assume a State
8 Energy Loan and a City of Cleveland VPI loan,
9 vacant property initiative loan. And they
10 agreed to do that in each of their bids.

11 After receiving those four offers --
12 and of course, HEI was determined by virtue of
13 their contract and the bid procedures to be a
14 qualified bidder, they didn't have to raise
15 their bid. They were going to be in the mix.

16 The four qualified bidders were
17 required to submit offers on September 24,
18 2021. In the interim, you granted a couple of
19 motions approving HEI's contract and the bid
20 procedures and the security contract, and so
21 we were all very focused on September 24,
22 2021, to get the bids in, and you'll recall
23 that a fifth party showed up, and that was
24 BCG.

25 They expressed an interest in being

1 involved with the bidding. You had just
2 approved the day before the bid procedures,
3 and so we weren't going to oppose them, but we
4 couldn't, ourselves, let them in because it
5 violated procedures.

6 They filed a motion with Your Honor.
7 You had a hearing very promptly and granted
8 their motion to join in to the bid protocol,
9 and you also extended the bidding protocol out
10 to October 1st.

11 And so everyone, now five, had a
12 right to come in and bid on or before October
13 the 1st, and so we started to receive those
14 bids.

15 The BCG bid was not quite in
16 compliance with the bid procedures. We took
17 their bid anyway. We received a bid from the
18 company called Schulte, and, of course, HEI
19 was there by virtue of it being the stalking
20 horse.

21 I would turn Your Honor's attention
22 to Exhibit 13, which kind of summarized where
23 we were in this October time period.

24 THE COURT: You only had
25 three bids?

1 MR. COLLINS: Yeah. We had
2 three bids. That's what we had. And there's
3 a couple of items on this -- apparently, they
4 used the summary chart and changed the
5 heading. This isn't the Radisson Hotel for
6 North Texas, this is our hotel, and the date
7 is also incorrect.

8 You see the Shulte bid came in
9 October 2nd. They offered \$40,700,000.

10 MR. MILLER: Can I just ask
11 one more question. Who is the source of this
12 document? I'm not --

13 MR. COLLINS: This is CBRE.

14 MR. MILLER: Sorry?

15 MR. COLLINS: CBRE.

16 MR. MILLER: But this one
17 doesn't have a footer on it that designates
18 that it was provided.

19 MR. COLLINS: Yeah. We
20 weren't in charge of their document
21 production.

22 MR. MILLER: I'm not
23 quarrelling about that. I just want to
24 understand. No question this came from CBRE?

25 MR. COLLINS: Yes. This was a

1 summary they prepared for me so I knew where
2 things stood back in October.

3 MR. MILLER: Okay. Thank
4 you.

5 MR. COLLINS: And so you'll
6 see the Schulte offer included some asterisks
7 and questions such as, we'd like to include
8 some representations and warranties that are
9 traditionally in commercial real estate
10 contracts. That was a question they posed to
11 me.

12 Of course that's not permitted under
13 the bidding procedures, and so we -- I spoke
14 with their lawyer. They had in-house counsel.
15 And I also spoke with their chief -- I think
16 he was the president, Mr. Shulte.

17 And we explained to them what our
18 process was, what our procedure was, where we
19 stood in the whole matter to try to see if we
20 could allay their concerns that they weren't
21 going to get representation and warranties.
22 For instance, judge, when I am done with this,
23 when I sell this property, if we're able to do
24 that, I'm going to not have any responsibility
25 for that property. I'm not a typical owner

1 that can give representations and warranties
2 that they could come back and look at me if I
3 violated any of them. I -- I offered none
4 except for the deed.

5 I'm going to give them the
6 representation and warranty that they're going
7 to get a receiver's deed, but that's it.
8 That's all the buyer is going to get from me.

9 These folks wanted more than that.
10 And I said, I can't do that, and we were --
11 the lawyer and I were in communication on it.
12 I thought he was going to get back to me. It
13 turns out he went on vacation in Colorado
14 hiking and we lost communication with him.
15 And his business principal said, well, if he's
16 not around, then we're not doing the deal.
17 And so that's what happened with the Shulte
18 offer.

19 With the other offer, BCG, we worked
20 with them to cause them to be compliant in
21 their offer. Their offer was not compliant.
22 I will show you an exhibit a little further
23 on, but you can see the summary here. They
24 wanted 21 more days of due diligence. They
25 wanted to make a \$500,000 initial deposit

1 which was short. It wasn't enough money. And
2 they wanted it all back refundable if they
3 weren't satisfied with their due diligence,
4 all of which violated the basics of the
5 bidding procedures in the case.

6 If you turn to page 14. This is a
7 composite exhibit of --

8 THE COURT: Exhibit 14?

9 MR. COLLINS: Yes.

10 MR. MILLER: Exhibit 14?

11 MR. COLLINS: Yes. Which is
12 all of the communication that we had with the
13 folks, the lawyers on behalf of BCG where
14 we -- they tried to explain to us why we
15 should do things differently. We said, no, we
16 can't.

17 And the second to the last group of
18 exhibits behind the blue page is an
19 October 2021 letter from me to the BCG Land
20 Group. This was our last stab at causing BCG
21 to be compliant with the terms and conditions.
22 We wanted them to be compliant. You know, we
23 wanted another bidder in here to try to raise
24 the price that we got for this property. And
25 so we were on the phone with them.

1 Corresponding, as you can see, with them.

2 And then finally on October 20th we
3 were at the end of the process. I wrote to
4 them and told them 11 different reasons why
5 their bid was not compliant in the hopes that
6 they would fix it, and we gave them one more
7 day to try to work through as you can see at
8 the end of the two-page letter. We gave them
9 until October 21, 2021, to fix their offer and
10 make it compliant because we wanted them to do
11 that.

12 We never got a compliant offer from
13 BCG. And quite frankly, they're involved with
14 another hotel in Cleveland, or at least
15 they're involved with talk about another hotel
16 in Cleveland, and they have not performed on
17 it in the last couple years, so we were not
18 confident that they were going to be able to
19 take on this hotel and make a go of it.

20 MR. MILLER: Objection.
21 What's the source of that information? Is
22 that firsthand knowledge by you?

23 MR. COLLINS: It's the -- it's
24 easily-obtained information if you do a Google
25 search. I don't know if it's Crain's or

1 Cleveland.com. But you'll easily see that
2 there's announcement in 2019 of a dream hotel
3 in the Masonic Auditorium. And we talked with
4 them extensively about this. We asked them,
5 you know, what's happening with that hotel?

6 They were -- they have not performed.
7 There's no hotel at that property. And so we
8 didn't think they were going to be able to
9 perform on this property, which is a big
10 sophisticated property that required a lot of
11 experience and just ability to take over.

12 So in my judgement I concluded that
13 they were not a candidate that we could rely
14 on to proceed in buying this hotel.

15 At this same time at this point HEI
16 had offered \$39.6 million to purchase the
17 hotel. This late in October -- I don't know
18 what the Sunday was, but it was late in
19 October. I communicated with counsel for HEI
20 and said we would entertain an offer from them
21 of \$40,200,000, in other words, the \$600,000
22 improvement of cash purchase price by HEI.

23 Counsel indicated, thought that would
24 be acceptable, got back with his client. Had
25 to get back with me. He said that will be

1 fine.

2 Exhibit 1, as I said, includes
3 amendments to the HEI contract. The first
4 amendment, which is just called Amendment to
5 Agreement of Sale and Purchase -- again, I
6 apologize, it's in the middle of Exhibit 1 --
7 is that modification that we made to the
8 stalking horse contract such that HEI was
9 willing to purchase the property in cash for
10 the number that I mentioned, \$40,200,000. And
11 they assumed the City of Cleveland loan and
12 they assumed the loan, the State Energy Loan
13 with the State of Ohio, which made the HEI
14 deal now worth \$42,947,000.

15 THE COURT: 47?

16 MR. COLLINS: Yes. That
17 42,947,000, that's squarely in that range of
18 value. The 37,500,000 up to 47,500,000,
19 that's squarely in that range of value.

20 And in addition to the cash, we knew
21 HEI could be the largest manager of Westin
22 Hotels in the United States beyond Marriott
23 and sufficiently capitalized to do the
24 transaction, to take over the hotel and run it
25 in a way that would make Cleveland proud.

1 And so that's why I concluded that
2 HEI was the appropriate purchaser, and so we
3 filed the motion with the Court to authorize
4 the sale to HEI.

5 THE COURT: All right.

6 Thank you very much.

7 Magistrate, do you have any questions
8 of the receiver at this time?

9 MAGISTRATE BUCHA: I do not, judge.

10 THE COURT: All right.

11 Thank you very much.

12 Does anyone --

13 MR. COLLINS: Can I add just a
14 couple things that we need for the record?

15 THE COURT: Sure.

16 MR. COLLINS: The cost of
17 holding this property if it's not approved for
18 sale, we are -- if you look at the first four
19 months of 2022, which we're doing better,
20 we're still nonetheless losing more than
21 \$100,000. 101,213 a month we're losing on
22 average during this year. That's much better
23 than what was projected and what we thought
24 was going to happen, but nonetheless, somebody
25 else's \$100,000 a month. Meaning \$1.2 million

1 a year is being spent to run this hotel. Not
2 the operations. To keep it going. Somebody's
3 going to have to pay an additional
4 1.2 million, or we're going to run up bills
5 that we don't pay for \$1.2 million.

6 It doesn't include -- that doesn't
7 include receivership costs. That doesn't
8 include paying a mortgage. We haven't paid a
9 mortgage in quite some time. The mortgage, as
10 I understand it, is \$262,500 a month. It's
11 not been paid in years. It doesn't include
12 paying the State Energy Loan, the City of
13 Cleveland loan. It doesn't include catch-up
14 payments on past due real estate taxes, and it
15 doesn't include \$570,000 worth of past due
16 payments to service providers and vendors who
17 sold things to the hotel years ago and never
18 got paid.

19 I get these phone calls from these
20 small meat purveyors from Geauga County. You
21 know, your hotel owes me \$15,000. I'm
22 terribly sorry. I can't do anything about
23 that. They haven't been paid. And that
24 \$100,000 a month loss doesn't include that
25 kind of payment.

1 One more thing, I think you need to
2 establish a redemption price, and I think I
3 have the numbers for you.

4 The Cleveland International Fund
5 loan, if I'm correct, right now including
6 principal, interest, and fees, there's
7 \$43,126,702 as of today. And after today,
8 there's a per diem of \$8,390.41.

9 THE COURT: How much per
10 diem?

11 MR. COLLINS: Per diem is
12 8,390.41.

13 There's another loan, as you recall,
14 on this property. We call it the JDI loan.
15 It's got priority over the Cleveland
16 International Fund loan with the agreement of
17 CIF. That right now principal, interest, and
18 fees is \$4,592,673, 4592673.

19 There are past due taxes for a tax
20 payment plan, but that's a lien, in the amount
21 of \$1,200,000.

22 Another lien that's on the property
23 is a judgment granted in favor of the City of
24 Cleveland. That's in the amount of \$771,218.
25 There's another lien which is the State Energy

1 Loan. That's the \$2,200,000. All of which I
2 think totals up to a redemption price of
3 \$51,890,593. If my math is wrong, I
4 apologize.

5 That's all I have.

6 THE COURT: All right.

7 Based on that testimony, I'm going to first go
8 to Optima. Do you have questions you want to
9 ask at this time?

10 MR. MILLER: Thank you, Your
11 Honor.

12 - - - -

13 EXAMINATION OF TIM L. COLLINS

14 BY MR. MILLER:

15 Q. Exhibit 2, the appraisal, what was the date of
16 the appraisal?

17 A. I thought it was March the 15th, 2021.

18 Q. And today's date is May 23, 2022.

19 A. Correct.

20 Q. What is the appraisal value updated as today?

21 A. This appraisal has not been updated.

22 Q. The Exhibit 3, JLL opinion of value, what was
23 the date of the opinion of value?

24 A. May 2021.

25 Q. Right. And they portend to assess value as of

1 December 31, 2021, in that opinion of value?

2 A. I think they used information that they had
3 available to them in -- for their assessment. I
4 think that's right.

5 Q. Right. Today, May 23, 2022, JLL's opinion of
6 value is how much?

7 A. I didn't ask them to update their opinion of
8 value.

9 Q. Exhibit 4, the date of the Hanna opinion of
10 value is?

11 A. I don't know the date. Is there a date on
12 there? You seem to know.

13 Q. I couldn't always find the date. But,
14 generally speaking, these were in the May 2021 time
15 frame that you were having the meetings and
16 interviews, right?

17 A. Correct.

18 Q. Okay. And today, May 23, 2022, Hanna's
19 opinion of value is how much?

20 A. I did not ask them to update their opinion of
21 value.

22 Q. Exhibit 5, Colliers' opinion of value was
23 presented in the same time frame, early May 2021,
24 correct?

25 A. Correct, yes.

1 Q. And today, May 23, 2022, Collier's opinion of
2 value is how much?

3 A. I did not ask them to update their opinion of
4 value.

5 Q. Exhibit 6, CBRE's presentation of their
6 opinion of value was established in the same early
7 May 2021 time frame, correct?

8 A. Correct. Yes.

9 Q. And today, May 23, 2022, CBRE's opinion of
10 value is?

11 A. I did not ask them to update their opinion of
12 value.

13 Q. The discussions with Shulte about Shulte's
14 request -- and Shulte was apparently listed in I
15 guess a summary in Exhibit 13. The discussions with
16 Schulte about Schulte's request for what Schulte said
17 were standard representations and warranties that
18 Schulte would have asked to get from the seller, you
19 indicated that because you were the receiver you were
20 not in a position to provide those reps and
21 warranties to Schulte if they were going to buy the
22 property, correct?

23 A. Correct.

24 Q. Those reps and warranties as requested were
25 not presented to Optima for Optima's response about

1 whether Optima would provide those reps and
2 warranties, correct?

3 A. They were not because I was the receiver and I
4 was in charge, not Optima.

5 Q. Right. But I didn't ask to debate the point.
6 That's your explanation. They were not presented to
7 Optima for Optima's response whether Optima could
8 provide those reps and warranties, correct?

9 A. Correct.

10 Q. You have not asked CBRE to do anything to
11 determine the market today, May 23, 2022, for this
12 Westin Hotel, correct?

13 A. That's incorrect.

14 Q. What has CBRE done today for today's value and
15 market of the hotel?

16 A. We didn't ask for a reissued broker's opinion
17 of value, but we inquired whether taking this project
18 back, this property back to market for sale, whether
19 there would be a material difference between what
20 resulted from the process that I just described and
21 doing it again.

22 Q. Right. And the answer you would give to that
23 question would be CBRE's answer, not your answer.
24 You don't have the expertise to answer that question
25 on your own, right?

1 A. Correct.

2 Q. Okay.

3 MR. MILLER: One moment. May
4 I?

5 THE COURT: Sure.

6 MR. MILLER: Thank you.

7 THE COURT: Thank you very
8 much.

9 On behalf of the plaintiff, any
10 questions you'd like to ask the receiver?

11 - - - -

12 EXAMINATION OF TIM L. COLLINS

13 BY MS. MARTINSEK:

14 Q. Good afternoon, Mr. Collins. I'm Amanda
15 Martinsek.

16 Mr. Collins, Schulte asked for representations
17 and warranties from the receiver, correct?

18 A. Correct.

19 Q. Did Schulte ask for representations or
20 warranties from Optima, the seller of the property?

21 A. No.

22 MS. MARTINSEK: Thank you.

23 THE COURT: All right.

24 Thank you very much.

25 I'm just going to call out names, and

1 if you want to ask questions, jump up now.

2 Mr. Berney, any questions you want to
3 ask?

4 MR. BERNEY: No questions,
5 Your Honor.

6 THE COURT: Thank you very
7 much.

8 Ms. Ritzert, any questions you want
9 to ask?

10 MS. RITZERT: Nothing for the
11 Port Authority, Your Honor.

12 THE COURT: Thank you.

13 Mr. Musson, any questions you want to
14 ask?

15 MR. MUSSON: No. Nothing on
16 behalf of the County, Your Honor.

17 THE COURT: All right.
18 Thank you.

19 Mr. Mausar, any questions you want to
20 ask?

21 MR. MAUSAR: No. Thank you,
22 Your Honor.

23 THE COURT: And finally,
24 I'll go back to Mr. Listati, anything that you
25 would like to add, or ask?

1 MR. LISTATI: I have just one
2 question, Your Honor.

3 THE COURT: Okay.

4 - - - -

5 EXAMINATION OF TIM L. COLLINS

6 BY MR. LISTATI:

7 Q. Tim, I just wanted to clarify one thing on the
8 record that you were talking about at the beginning
9 of your testimony.

10 THE COURT: Speak up just a
11 little.

12 MR. LISTATI: Sure.

13 Q. Was Optima's counsel and representatives in
14 the meetings when you were selecting brokers?

15 A. Yes.

16 Q. And did they vote in favor of selecting CBRE
17 as the broker for this project at the time, or did
18 they -- I'll ask it differently. Did they make any
19 objection to retaining CBRE as the broker?

20 A. We didn't have a formal raise your hand up or
21 down. We had discussions. And there was no
22 objection at all to going forward by Optima or its
23 counsel Mr. Lapine, who's in the back of the room, to
24 bring in CBRE.

25 Q. Thank you.

1 MR. LISTATI: I just wanted to
2 clarify that.

3 MR. MILLER: Your Honor, may
4 I?

5 THE COURT: Any other
6 questions?

7 MR. MILLER: Yes.

8 - - - -

9 EXAMINATION OF TIM L. COLLINS

10 BY MR. MILLER:

11 Q. Mr. Listati probably did not intend this, but
12 he stepped into something I have to ask about. He
13 asked whether they, plural, who he had identified as
14 Optima's counsel and Optima's representatives. I, as
15 Optima's counsel, was excluded from that meeting,
16 correct?

17 A. You were excluded from meetings that
18 involved --

19 Q. I'm asking about that meeting.

20 A. That meeting was like all the other business
21 meetings. We didn't need litigation counsel in
22 business meetings.

23 Q. I'm not quarreling about your decision. I
24 just wanted to clarify for the record. I was not
25 invited to that meeting. Optima's counsel, I was not

1 invited to that meeting, right?

2 A. Well, Mr. Lapine was Optima's --

3 Q. I'm going to get to that.

4 A. -- counsel at --

5 Q. No. No. He was there -- oh, oh. I

6 understand what you're saying. I'm sorry.

7 MR. MILLER: When you said
8 Optima's counsel and Optima's representative,
9 you meant Optima's counsel Ken Lapine.

10 MR. LISTATI: Correct.

11 MR. MILLER: And Optima's
12 representative Chaim Schochet.

13 MR. LISTATI: Correct.

14 BY MR. MILLER:

15 Q. You did not mean Optima's counsel Steve
16 Miller.

17 A. No.

18 Q. Okay. I misunderstood.

19 A. You weren't there.

20 Q. I wanted to clarify. No problem. Okay. Got
21 it. Thank you.

22 THE COURT: Thank you very
23 much.

24 All right. Any questions,
25 Magistrate?

1 MAGISTRATE BUCHA: No, Your Honor.

2 Thank you.

3 THE COURT: Okay. Thank you
4 very much.

5 MR. COLLINS: Okay.

6 THE COURT: All right. Now,
7 based upon that testimony and the fact that
8 the only -- the only party who is opposing the
9 sale is Optima, is it your position that at
10 this time you think you would feel the need to
11 put on the evidence -- I mean put on the
12 testimony of your -- Mr. Will I believe? Is
13 that your position? Wilk.

14 MR. MILLER: Your Honor, no.
15 In light of the testimony and the answers to
16 questions that we asked, we do not believe
17 that in the interest of expediency that we
18 have to have Mr. Wilk testimony orally in
19 light of your withdrawal of the objection to
20 his presentation through the declarations that
21 have already been filed with the Court. So we
22 would -- we would join in that proposal.

23 THE COURT: All right. So
24 then just to make sure I have everything --

25 MR. MILLER: We have -- I

1 guess I've got to say one thing. We have a
2 collection of exhibits that we would put in
3 the record, we want to put into the record
4 through Mr. Wilk. So I would need a moment
5 probably at a short break to show the exhibits
6 to counsel and seek to have those admitted.

7 THE COURT: Okay.

8 MR. MILLER: We can do that
9 without testimony. We can do it after this.

10 THE COURT: Okay.

11 MR. LISTATI: And I would just
12 move formally to admit our exhibits into
13 evidence, Your Honor.

14 THE COURT: Any objection to
15 the exhibits --

16 MR. MILLER: No.

17 THE COURT: Hold on. I --
18 you know, and I know you like to sort of take
19 over. I can tell. I get it. But let me just
20 ask it this way: Are there any objections to
21 the exhibits as presented by the receiver?

22 If anyone has an objection, I need
23 you to stand and make that objection.
24 Otherwise, we are going to assume that hearing
25 none that there are no objections. So at this

1 point, does anyone have any objections for the
2 exhibits? If so, answer.

3 Okay. Hearing none, then the
4 exhibits will be all admitted.

5 Okay. Now, on behalf of Mr. -- I'm
6 sorry. On behalf of Optima 777, do you have
7 exhibits that all the parties have seen?

8 MR. MILLER: No, Your Honor.

9 THE COURT: Okay. They have
10 not seen they exhibits?

11 MR. MILLER: No. They have
12 not.

13 THE COURT: All right.

14 MR. MILLER: We didn't know
15 what the presentation was going to be.

16 THE COURT: I understand.

17 MR. MILLER: Yeah.

18 THE COURT: Now, so what you
19 are asking is that you be allowed to show the
20 parties the exhibits, and then if there is no
21 objection, you want those exhibits to be
22 entered to go along with the expert report
23 that you are submitting; is that correct?

24 MR. MILLER: Yes. So -- yes.

25 THE COURT: All right. So I

1 will give you some time now. You guys can
2 talk about it and see what exhibits would be
3 admitted.

4 MR. MILLER: Okay.

5 THE COURT: And make sure
6 that there are not duplicates here.

7 How much time do you need? I'll give
8 you ten minutes.

9 MR. MILLER: Perfect. Thank
10 you.

11 THE COURT: We're in a brief
12 recess. Thank you.

13 - - - -

14 (Thereupon, a recess was taken.)

15 - - - -

16 THE COURT: Mr. Miller,
17 where are we at in your exhibits?

18 MR. MILLER: We are in a very
19 good place with the exhibits, Your Honor. We
20 have complete agreement on all but two items.

21 THE COURT: Okay.

22 MR. MILLER: The only thing
23 that I ask of the Court is that the items on
24 which we are in complete agreement, they will
25 be submitted jointly to the Court, but those

1 items are not completely in the courtroom this
2 second. So we will assemble those items. We
3 will crosscheck them with counsel, and they
4 will become joint filings.

5 THE COURT: When?

6 MR. MILLER: Within the next
7 couple of days literally.

8 THE COURT: All right. You
9 have until Friday.

10 MR. MILLER: Okay. All
11 right. There are two items that we would have
12 sought to introduce through Mr. Wilk were he
13 to have testified. I'm going to state each
14 item briefly, and they are objected to by both
15 CIF, Huntington, and plaintiff and the
16 receiver.

17 So first is a report dated March 30,
18 2022, by CBRE Hotels Research entitled U.S.
19 Hotels State of the Union. This is publicly
20 available on the CBRE relevant website. And
21 we would have sought to have Mr. Wilk testify
22 about it and introduce it through his oral
23 testimony.

24 THE COURT: On behalf of the
25 receiver, why the objection?

1 MR. LISTATI: Your Honor,
2 really for two reasons. One is, we were just
3 handed this document, so we haven't had an
4 opportunity to look at it.

5 THE COURT: Okay.

6 MR. LISTATI: And, second,
7 there are several pages that are cut off.

8 THE COURT: Okay.

9 MR. LISTATI: So we can't see
10 the complete document.

11 THE COURT: All right.

12 MR. LISTATI: And without
13 that, it's difficult to --

14 THE COURT: So, again, by
15 Friday. And if the -- if by Friday the other
16 people, the other two parties decide to say,
17 okay, we have no objection, great. If they
18 do, you will put it in and they will just note
19 their objection and why they are objecting,
20 and I'll make a decision.

21 Next.

22 MR. MILLER: The second
23 document is from a brokerage firm called
24 Marcus, M-A-R-C-U-S ampersand Millichap,
25 M-I-L-L-I-C-H-A-P. It's entitled 2022

1 Hospitality National Investment Forecast.

2 And each sets of parties has objected
3 to that document as well. We would have heard
4 Mr. Wilk's oral testimony, asked him questions
5 about it, and offered it into evidence.

6 THE COURT: On behalf the
7 receiver, why are you objecting?

8 MR. LISTATI: My objections on
9 this one would be exactly the same, Your
10 Honor. An opportunity to review it more
11 closely, and there appear to be some charts
12 that are cut off on certain pages, so we need
13 to see this document.

14 THE COURT: Okay.
15 Ms. Martinsek, anything you have?

16 MS. MARTINSEK: We join in the
17 objection with the receiver, Your Honor.

18 THE COURT: Say again?

19 MS. MARTINSEK: We join in the
20 objection with the receiver. We will note
21 that we don't have anyone who has knowledge of
22 production of these documents or the
23 supervision of their production, and we
24 wouldn't even if Mr. Wilk were on the stand.
25 These are third-party documents. We don't

1 know their purpose.

2 THE COURT: Okay. Like I
3 said, what will happen is, today is Monday.
4 By Friday you will submit to me the exhibits.
5 The ones that are object -- that the parties
6 are objecting to, they will put their
7 objection in writing. Doesn't have to be a
8 long drawn-out thing, a paragraph, or a couple
9 of paragraphs noting your objection to those,
10 and I'll make a decision and we'll go from
11 there.

12 We have all the reports, the expert
13 reports already. So we don't have to worry
14 about that.

15 And I think that's it right now. And
16 what is our next court date?

17 MAGISTRATE BUCHA: May 31st we have
18 a scheduling hearing.

19 THE COURT: All right. And
20 then you will get -- we will put an order on
21 regarding this motion that we dealt with
22 today.

23 Anything further before we end this?
24 Anything further on behalf -- and I'm going to
25 call everybody again.

1 Ms. Martinsek, anything, any issue
2 that you need to raise with the Court before
3 we end today?

4 MS. MARTINSEK: No, Your Honor.
5 Thank you very much.

6 THE COURT: Thank you.

7 Mr. Djordjevic.

8 MR. DJORDJEVIC: No, Your Honor.

9 THE COURT: All right.
10 Thank you.

11 Mr. Berney?

12 MR. BERNEY: Nothing on
13 behalf of the City of Cleveland, Your Honor.

14 THE COURT: Thank you very
15 much.

16 Mr. Listati?

17 MR. LISTATI: I have nothing
18 further. The only other thing I would say is,
19 probably from the County's perspective, I
20 believe the County has an objection that's
21 standing that needs to be withdrawn. That
22 needs to be addressed as well.

23 MR. MUSSON: Your Honor, the
24 County submitted a response to the proposed
25 order. There was an apparent conflict with

1 the text with the financing interest of the
2 County in maintaining if there is an order of
3 sale granted that interest would continue.
4 The sale would not extinguish that
5 encumbrance.

6 We submitted some proposed language
7 that the receiver agreed with, and we will
8 withdraw our objection provided that interest
9 is secure.

10 THE COURT: All right. We
11 will make sure that we read through that.
12 Okay. Thank you.

13 MR. MUSSON: Thank you, Your
14 Honor.

15 MR. LISTATI: Your Honor, I
16 would --

17 THE COURT: I'll note that
18 the objection will be withdrawn as long as
19 that language is in there.

20 MR. LISTATI: I would just
21 add, Your Honor, that the proposed order
22 that's been submitted --

23 THE COURT: Has the language
24 in it?

25 MR. LISTATI: -- has the

1 language in it the County wanted.

2 THE COURT: Have you
3 reviewed the proposed order?

4 MR. MUSSON: Yes. Yes,
5 Your Honor, we have.

6 THE COURT: Okay. Thank you
7 very much.

8 Ms. Collins, anything you need to
9 raise with the Court before we end today?

10 MS. COLLINS: No. Thank you.

11 THE COURT: Mr. Collins, as
12 the receiver, anything additional you need to
13 raise with the Court today?

14 MR. COLLINS: No. Thank you
15 for your time.

16 THE COURT: Thank you.
17 Mr. Miller, anything additional?

18 MR. MILLER: Yes.

19 THE COURT: Of course.

20 MR. MILLER: First, Your
21 Honor, a question. Do we get to make any
22 brief arguments about the hearing presentation
23 that's made today as part of the hearing?

24 THE COURT: I don't think
25 that's necessary.

1 MR. MILLER: Second, under
2 the statute Ohio Revised Code section
3 2735.04(D)(7), the Court order, if there is
4 one, approving the application for authority
5 to sell the property is asked to, called for,
6 required to establish a reasonable time for
7 the owner of the property to exercise its
8 rights. We have a proposal and a request for
9 the Court's consideration in that respect.

10 The Court order -- should we wait?

11 MR. LISTATI: No.

12 MR. MILLER: Okay.

13 The Court order, of course, would be
14 subject to appeal proceeding which would need
15 to be filed within a 30-day period. We would
16 propose and request that the Court include in
17 its order, if it makes such an order approving
18 an authorized sale, that the owner have that
19 30-day period to sustain its ownership in the
20 hotel, whether by negotiation, by right of
21 redemption, or otherwise. We would ask that
22 the reasonable time under the statute given
23 the magnitude of this property, both in its
24 significance and in its financial value, for
25 that reasonable time to be 30 days.

1 THE COURT: All right.

2 MR. MILLER: Thank you.

3 THE COURT: Thank you very
4 much.

5 MR. LISTATI: Your Honor.

6 THE COURT: Yes.

7 MR. LISTATI: May I address
8 that on behalf of the receiver?

9 THE COURT: Sure.

10 MR. LISTATI: We would -- the
11 statute provides for at least three days, and
12 we would suggest in this case three days is
13 appropriate. I have never seen 30 days. And
14 more importantly, as Mr. Collins testified,
15 this hotel is bleeding money right now, and 30
16 days is an extraordinary amount of time for a
17 third party to continue to pay for this hotel
18 to operate without some --

19 THE COURT: All right. Go
20 ahead.

21 MS. MARTINSEK: If I may on
22 behalf of plaintiff.

23 We too agree that 30 days would not
24 be a reasonable time in this context. There
25 has been ample time for discussion. This

1 matter has been delayed sufficiently.
2 Cleveland International Fund and Huntington
3 have the greatest financial interest at stake
4 here, and they strongly support closing the
5 deal and moving on to the next chapter.

6 THE COURT: Do you have a
7 date -- I mean, do you have a date? They
8 suggested three days, what did you suggest?

9 MS. MARTINSEK: I would give
10 Optima seven days, Your Honor.

11 THE COURT: All right. We
12 will review that and make a decision. And of
13 course it would be my decision, a written
14 decision.

15 All right. Mr. Kunselman, anything
16 additional?

17 MR. KUNSELMAN: No, Your Honor.
18 Thank you.

19 THE COURT: Thank you.

20 Ms. Ritzert, anything you'd like to
21 raise with the Court?

22 MS. RITZERT: No, Your Honor.
23 Thank you.

24 THE COURT: Mr. Musson?

25 MR. MUSSON: No. Thank you,

1 Your Honor.

2 THE COURT: And Mr. Mausar?

3 MR. MAUSAR: No, Your Honor.

4 Thank you.

5 THE COURT: I want to thank
6 everyone for coming in. Once we get your
7 information, we will review everything, and
8 I'm hoping that we can make a decision in the
9 next maybe 14, 21 days, something like that.
10 But we will do our best to do it as fast as
11 possible and just giving due consideration to
12 all the arguments that were made.

13 I appreciate you all coming in. This
14 matter is now concluded. Thank you.

15 - - - -

16 (Court adjourned at 4:18 p.m.)

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

C E R T I F I C A T E

I, Tracy L. Vargo, Official Court Reporter for the Court of Common Pleas, Cuyahoga County, Ohio, do hereby certify that as such reporter I took down in stenotype all of the proceedings had in said Court of Common Pleas in the above-entitled cause; that I have transcribed my said stenotype notes into typewritten form, as appears in the foregoing Transcript of Proceedings; that said transcript is a complete record of the proceedings had in the matter of said cause and constitutes a true and correct Transcript of Proceedings had therein.

Tracy L. Vargo, RMR
Official Court Reporter
Cuyahoga County, Ohio

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Nailah K. Byrd, Clerk of Courts

CLEVELAND INTERNATIONAL FUND-MEDICAL MART HOTEL, L

Appellant

COA NO.
111616

LOWER COURT NO.
CV-20-938197

COMMON PLEAS COURT

-vs-

OPTIMA 777, LLC, ET AL.

Appellee


MOTION NO. 555697

Date 06/15/22

Journal Entry

Emergency motion by appellant to stay sale order, including the date for redemption, is granted upon the posting of a supersedeas bond in the amount of \$43,000,000.00, the approximate amount of the net proceeds of the sale. The stay is effective upon the posting of the bond.

Judge Lisa B. Forbes, Concur


Emanuella D. Groves
Presiding Judge

RECEIVED FOR FILING
06/15/2022 15:02:52
NAILAH K. BYRD, CLERK

EXHIBIT C