

Strafford

presents

Section 363 Bankruptcy Sales

Navigating the Sale Process, Negotiating the Asset Purchase Agreement, and Conducting Due Diligence

A Live 90-Minute Teleconference/Webinar with Interactive Q&A

Today's panel features:

George M. Cheever, Of Counsel, **K&L Gates**, Pittsburgh, Pa.

Keith Miles Aurzada, Partner, **Bryan Cave**, Dallas

Thursday, September 2, 2010

The conference begins at:

1 pm Eastern

12 pm Central

11 am Mountain

10 am Pacific

You can access the audio portion of the conference on the telephone or by using your computer's speakers.
Please refer to the dial in/ log in instructions emailed to registrants.



Section 363 Bankruptcy Sales: Navigating the Sale Process, Negotiating the Asset Purchase Agreement, and Conducting Due Diligence

George Cheever, K&L Gates

Keith Aurzada, Bryan Cave

- General bankruptcy concepts – the bankruptcy “estate”
- Sales in the ordinary course vs. sales out of the ordinary course
 - “Horizontal” and “vertical” tests
 - The need for court approval for sales “other than in the ordinary course of business” (§ 363(b)(1)) and the risks of not getting it (§ 549)
- Bankruptcy sales vs. non-bankruptcy judicial sales vs. private sales
 - Timing
 - Expense
 - Control of the process
 - Ability to divest liens, encumbrances, and other issues
 - Ability to override anti-assignment provisions in executory contracts
 - Finality
- Section 363 sale vs. sale under a reorganization plan
 - Enhanced creditor protections under reorganization plans – disclosure and voting rights
 - Limitations on credit bidding in sales conducted under a plan
- The players in a § 363 sale

- The debtor
- The debtor's secured creditor(s)
- The debtor's marketing professionals
- The "stalking horse" bidder
- The creditors committee
- The title company
- The bankruptcy court
- Getting started – the sale procedures motion
 - Establishing a time line
 - Notice
 - Bid qualification standards
 - Selecting a stalking horse
 - Approving the form of the asset purchase agreement
 - "No shop" issues
 - Break-up fees and expense reimbursement
 - Bid terms
- The asset purchase agreement
 - Limited representations and warranties – the importance of due diligence
 - Contingencies
 - Employee issues
 - Operation of the assets pending closing
- What will the buyer take subject to?
 - Sales "free and clear of any interest" under § 363(f)
 - Successor liability

- Executory contracts and unexpired leases
- The auction process
 - Pre-qualification of bidders
 - Time and place
 - Open bidding vs. sealed bids vs. right of first refusal
 - Credit bidding - § 363(k)
 - “Back-up bidders”
- The sale hearing
 - Standards for approval
 - Business justification for the sale
 - “Highest and best offer”
 - Buyer good faith
 - Sub rosa plans
- The sale order
- Appeals from the sale order
 - Mootness under § 363(m)
 - Waiver of the automatic 14 day stay under Bankruptcy Rule 6004(h)
- Collusive bidding - § 363(n)
- Transfer taxes
- Post-sale strategies
 - Liquidating plan
 - Conversion
 - Dismissal
 - “Structured dismissals”