

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

AEROCENTURY CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 21-10636 (JTD)

(Jointly Administered)

Objection Deadline: August 23, 2021 at 4:00 p.m. (ET)
(Extended for MDI to August 24, 2021 at 4:00 p.m. (ET))

Related Docket Nos. 222, 225 and 266

**OBJECTION OF MONOCOQUE DIVERSIFIED INTERESTS, LLC
TO THE COMBINED DISCLOSURE STATEMENT AND JOINT PLAN OF
AEROCENTURY CORP., AND ITS AFFILIATED DEBTORS**

Monocoque Diversified Interests, LLC (“MDI”), by and through its undersigned counsel, hereby files this objection and reservation of rights (the “**Objection**”) with respect to the *Combined Disclosure Statement and Joint Plan of AeroCentury Corp, and its affiliated Debtors* [Docket No. 225]. In support thereof, MDI respectfully represents as follows:

FACTUAL BACKGROUND

1. On March 29, 2021 (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code (collectively, these “**Chapter 11 Cases**”). The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed and no request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases.

¹ The Debtors in these chapter 11 cases, along with the last four digits of their federal employer identification number, are: AeroCentury Corp. (3974); JetFleet Holding Corp. (5342); and JetFleet Management Corp. (0929). The Debtors’ mailing address is 1440 Chapin Avenue, Suite 310, Burlingame, CA 94010.



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2. MDI is a privately held boutique aviation asset management company headquartered in Austin, Texas founded in 2006. MDI is an equity partner and manager in several aviation funds and its portfolio currently consists of a diverse range of aircraft and engines, including regional, narrowbody, and widebody passenger and freighter aircraft.

3. On July 14, 2021, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the solicitation version of the Combined Disclosure Statement and Joint Chapter 11 Plan of AeroCentury Corp., and Its Affiliated Debtors (as may be amended, supplemented, or modified from time to time, the “**Combined Disclosure Statement and Plan**”)² [Docket No. 225].

4. By Order dated July 12, 2021 [Docket No. 222] (the “**Interim Order**”), the Court approved the Combined Disclosure Statement and Plan, on an interim basis, as containing adequate information within the meaning of section 1125 of the Bankruptcy Code, and authorized the Debtors to solicit votes to accept or reject the Combined Disclosure Statement and Plan. Pursuant to the Interim Order, a hearing to consider final approval and confirmation of the Combined Disclosure Statement and Plan is currently scheduled for August 31, 2021 at 10:00 a.m. (ET).

5. As set forth in the First Day Declaration, the Debtors’ paramount goal in the Chapter 11 Cases was to maximize the value of the Estates for the benefit of the Debtors’ creditor constituencies and other stakeholders through the sale of certain Assets.

6. On the Petition Date, the Debtors filed a motion seeking entry of an order (i)(a) approving bidding procedures relating to the sale of a portion or substantially all of the Assets, (b) scheduling an auction for, and a hearing to approve, the sale of the Assets, (c) approving the form and manner of notices for the sale, auction and sale hearing, and (ii) (x) approving the sale of

² Capitalized Terms not otherwise defined herein shall have the meanings ascribed to them in the Combined Disclosure Statement and Plan.

certain Assets free and clear of liens, claims, interests and encumbrances, and (y) authorizing the assumption and assignment of executory contracts and unexpired leases.

7. On April 22, 2021, the Bankruptcy Court entered the Bidding Procedures Order establishing, among other things, May 17, 2021, at 5:00 p.m. (ET) as the bid deadline, May 20, 2021 at 10:00 a.m. (ET), as the auction date, and May 25, 2021 at 2:00 p.m. (ET) as the date of the hearing to approve the Sale.

8. The Debtors retained B. Riley in October 2019 to assist in analyzing options to address its capital structure, including strategic and financing alternatives to restructure its indebtedness and other contractual obligations, including the Debtors' default under the Prepetition Revolving Credit Facility.

9. B. Riley conducted a thorough postpetition marketing and sale process in accordance with the terms of the Bidding Procedures Order, including by continuing to reach out to potential strategic and financial buyers and having advanced discussions with numerous potential buyers. B. Riley prepared and circulated marketing materials, which included a brief description of the Debtors' assets and the sale process and was accompanied by a form NDA. Through B. Riley, the Debtors executed numerous NDAs with interested parties, including MDI. In addition, for those parties which executed a NDA, B. Riley provided them with a confidential information memorandum for the Debtors' assets and populated an electronic data room with related diligence information.

10. As a result of the foregoing marketing efforts, the Debtors received three bids, including a bid from MDI, in addition to the Stalking Horse Purchase Agreement, for all or a subset of assets subject to the Stalking Horse Purchase Agreement (the "**Stalking Horse Assets**"). After reviewing such bids, the Debtors determined, in their business judgment, that the bids were not

Qualified Bids (as defined in the Bidding Procedures Order) as they did not conform to the requirements of the Court approved bidding procedures, including that they were neither higher nor better on terms or price than the Stalking Horse Purchase Agreement (the “**Non-Qualified Bidders**”).

11. B. Riley reengaged with the Non-Qualified Bidders, including MDI, and inquired as to whether such bidders were willing to increase their offers for the Stalking Horse Assets. Each of the Non-Qualified Bidders stated that they were not willing to increase the offer for the Stalking Horse Assets in an amount that would render such bid a Qualified Bid. Accordingly, the Debtors, after consultation with their advisors and in their business judgment, determined that the Stalking Horse Purchase Agreement was the highest and best bid for the Stalking Horse Assets.

12. The Bankruptcy Court entered Orders approving the Stalking Horse Asset Sale and other asset sales on May 21, 2021, and May 28, 2021 (the “**Asset Sales**”).

13. Following the Asset Sales, the Debtors filed the combined Disclosure Statement and Plan that contemplates two potential paths to the Debtors’ emergence from bankruptcy. The first is the Sponsored Plan, whereby the Plan Sponsor will submit the Plan Sponsor Agreement to operate the Reorganized Debtors’ businesses on a go-forward basis and relaunch the Debtors’ aircraft acquisition, leasing, and disposition operations (the “**Plan Sponsor Process**”). The second path is the Stand-Alone Plan, which will occur if an acceptable Plan Sponsor Agreement is not received. Under the Stand-Alone Plan, the Debtors’ remaining Assets will vest in the Post-Effective Date Debtors, and the Plan Administrator will sell or otherwise monetize the Post-Effective Date Debtor Assets for the benefit of Holders of Allowed Claims and Interests and wind-down the affairs of the Debtors in accordance with Section 303 of the DGCL.

14. Unlike the fair and open Sale process outlined above, and set forth in detail in the Combined Disclosure Statement and Plan, the Plan Sponsor Process is not detailed in the Combined Plan and Disclosure Statement and was not subject to a Court approved bidding process.

15. Nevertheless, MDI made it clear to B. Riley and the Debtors that it wanted to participate in a process to become the plan sponsor and invest in and operate the Reorganized Debtors' businesses on a go-forward basis, even before the bankruptcy filing.

16. On June 29, 2021, MDI submitted a term sheet to B. Riley to invest in and operate the Reorganized Debtors' businesses on a go-forward basis. During the month of July, MDI made several attempts to further engage with the Debtors to understand the process for becoming the stalking horse and how it could improve its proposal. However, at some point, the dialog between the parties stopped and the Debtors focus apparently shifted to negotiate exclusively with the current Stalking Horse.

17. On August 10, 2021, the Debtors filed a *Notice of Executed Investment Term Sheet Regarding Notice of Selection of Plan Sponsor* [Docket No. 254] identifying for the first time the terms of transaction for the current Sponsored Plan.

18. On August 16, 2021, the Debtors filed their *Notice of Filing of Plan Supplement to the Combined Disclosure Statement and joint Chapter 11 Plan of AeroCentury Corp., and its Affiliated Debtors* (the "**Plan Supplement**") [Docket No. 266]. The Plan Supplement attaches numerous stock purchase agreements detailing the various transactions to implement the Sponsored Plan.

19. MDI submitted a revised Term Sheet to the Debtors concurrently with the filing of this Objection that MDI believes represents a higher and better proposal than the current Stalking Horse proposal set forth in the Combined Disclosure Statement and Plan (the "**MDI Stalking**

Horse Proposal”). A copy of the MDI Stalking Horse Proposal is attached hereto as **Exhibit A**. MDI Stalking Horse Proposal provides for a cash investment in the Reorganized Debtors that it believes is in excess of the Stalking Horse proposal to be closed on September 30, 2021.³

STANDING

20. Because there was not a competitive Court approved process to serve as the Plan Sponsor, and the fact that MDI has now submitted what it believes is a higher and better investment proposal for the Reorganized Debtors than the current Plan Sponsor’s proposal, the Court should consider MDI’s concerns about the Combined Disclosure Statement and Plan, even though as a bidder MDI may not have formal standing to appear. *See, e.g., In re Planned Systems, Inc.*, 82 B.R. 919, 922-23 (Bankr. S.D. Ohio 1988) (holding that the mere fact that a bidder lacks standing to object to a sale does not prevent the Court from considering issues raised by that bidder). Indeed, the Court may consider issues raised by prospective bidders as part of the Court’s independent duty to determine whether a proposed transaction is reasonable, because:

As parties with interest, prospective bidders may be positioned to offer valuable insight and perspective. Though arguably not parties in interest, they are welcomed to appear at least as friends of the court. In any event, the present decision is a necessary fulfilment of the court’s duty to consider the reasonableness of the terms and conditions of any proposed sale of estate assets. Even without objection from other potential bidders, the bidding procedures would still require a resolution of the same infirmities that are discussed herein.

In re Jon J Peterson, Inc., 411 B.R. 131, 135 (Bankr. W.D.N.Y. 2009).

OBJECTIONS

21. MDI objects to the Combined Disclosure Statement and Plan because MDI believes it does not provide the highest and best value for holder of Interests under the Sponsored Plan.

³ Out of an abundance of caution, the MDI Stalking Horse Proposal was filed under seal contemporaneously herewith due to the NDA that is in place between MDI and the Debtors.

MDI believes that there was not a full, fair and open process for parties, such as MDI, to submit competing bids to become the Plan Sponsor.

22. As set forth above, on June 29, 2021, MDI submitted a term sheet to B. Riley to invest in and operate the Reorganized Debtors' businesses on a go-forward basis. During the month of July, MDI made several attempts to further engage with the Debtors to understand the process for becoming the stalking horse and how it could improve its proposal. However, at some point, the dialog between the parties stopped and the Debtors focus apparently shifted to negotiate exclusively with the current Stalking Horse. Had there been a more formal process, MDI would have been able to understand the process and the value and structure of competing offers, which would have allowed MDI to submit the MDI Stalking Horse Proposal in that process.

23. MDI further believes that the Combined Disclosure Statement and Plan lacks adequate information for holders of Interests in Class 7 to vote on the Plan. The Combined Disclosure Statement and Plan contains no discussion of the process used by the Debtors for the selection of the current Plan Sponsor or how the current Plan Sponsor's proposal is the highest and best outcome for holders of Interests.

24. As set forth above, had there been a proper process, MDI would have submitted the MDI Stalking Horse Proposal for a higher value than what is currently contemplated. To the extent the Debtors believe that the MDI Stalking Horse Proposal is not higher and better than the current Plan Sponsor's proposal, MDI would welcome an expedited process so that MDI can work with B. Riley and the Debtors to further refine its proposal to ensure the holders of Interests are receiving the highest and best value under the Combined Disclosure Statement and Plan.

RESERVATION OF RIGHTS

25. MDI reserves his right to amend and supplement this Objection and make such other and further objections as it deems necessary or appropriate and reserves all rights to object.

WHEREFORE, MDI objects to the Combined Disclosure Statement and Plan and requests that the Court either deny confirmation, or condition confirmation upon the Debtors proving a full and fair opportunity for MDI to compete to become the plan sponsor.

Dated: August 24, 2021
Wilmington, Delaware

CHIPMAN BROWN CICERO & COLE, LLP

/s/ William E. Chipman, Jr.

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EXHIBIT A

MDI Stalking Horse Proposal

**FILED UNDER
SEAL**