

**NEWS**

UPDATED: Judge approves sale of Genesis HealthCare assets to bidder 101 West

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A federal bankruptcy judge on Tuesday evening approved the sale of Genesis HealthCare and its nearly 300 subsidiaries to a newly formed investment group whose bid emerged as a surprise last week.

The ruling followed more than three hours of testimony – including objections from competing bidders – and a nearly two-month long auction process. Newcomer 101 West State Street was ultimately selected the winner of a second auction, with US Bankruptcy Judge Stacey Jernigan approving its \$996 million offer.

Genesis was once one of the nation's largest skilled nursing providers but had dwindled to 175 facilities across 17 states by the time it filed for Chapter 11 protection last July. An effort to sell has been dogged by allegations of insider dealing. In her bench ruling Tuesday, Jernigan said she believed the second auction had been conducted at “arm’s length” and without collusion.

That statement followed questions raised by at least two attorneys about the makeup of 101 West, which was represented at auction and in a Dallas courtroom by Chief Financial Officer Shawn Zhou.

He acknowledged that 101 West holds a 50% stake in a joint venture known as Bold Quail and that its sale order includes a provision to assume 50% equity still held by Genesis. In his testimony, he put the value of that acquisition at about \$57.5 million. Other bidders didn’t have an open path to those assets.

Zhou also testified under oath that Genesis investors Joel Landau and David Gefner were not insiders with 101 West, and they had not played a part in the latest deal. Landau's previous offer, under the name of CPE, was rejected by Jernigan.

Still, John Anthony, an attorney for 345 clients with personal injury and wrongful death claims against Genesis, raised new questions about who might be participating in the purchase. He got Zhou to acknowledge that 101 West's owners were potentially seeking to borrow \$35 million to use toward its Genesis cash sale requirements from Centers Health Care owner Daryl Hagler. He is currently subject to state-led nursing home fraud cases in New Jersey and New York.

Zhou said his group could "easily replace" the loan with alternative financing if needed.

Outside strategy

The court also heard details on an unconsidered attempt by Landau's CPE to circumvent the bankruptcy auction with an offer to maintain control through a reorganization. Genesis' own restructuring committee declined to look closely at the option, with an attorney raising questions Tuesday about whether CPE violated bankruptcy rules during that appeal.

CPE's attorney denied the allegation, but the US Trustee's representative told the judge she had seen concerning statements in a court document CPE submitted this week. Meredith Kippis said the trustee may file its own pleading to bring the "serious matter" of improper solicitation before the judge.

Jernigan herself noted the CPE workaround also still included legal releases that she had expressly stricken from any sale at auction.

In approving 101 West as the buyer, Jernigan also named former lead bidder Genie 3 as a back-up, with an offer of \$991 million.

An attorney for that investor said it was "still committed to this process." He also raised questions about 101 West Street's composition, and insinuated that Landau may still be lurking behind the scenes. When Jernigan noted that Zhou testified under penalty of perjury that he was not, Genie 3's attorney asked her to impose a

sale condition prohibiting Landau, Gefner and their trusts from reentering Genesis later.

“We should have more information about any connections now or in the future between this new bidder, and the debtor and CPE,” said Andrew Layden. “They should not be part of this deal at closing, or within some timeframe thereafter.”

Jernigan declined to impose that detail on the buyer.

More voices heard from

In addition to criticizing auction tactics its witness said forced it out of contention, Olumie Capital asked the judge to consider its objection and reopen the bid process again because the auction hadn't considered quality as apart of its scoring process.

The judge said she was convinced that the reopened auction represented a “fulsome” process that exceeded expectations of typical bankruptcy proceedings. It included participation by an independent mediator, a monitor, a judge-appointed broker and a representative of the US Trustee.

“Bankruptcy is always imperfect,” Jernigan said. “I cannot imagine a process that would bring in more integrity than all of this combined.”

The process now moves to 101 West securing its financing and fulfilling other requirements of the sale order; the judge could still step in and order a sale to another buyer if any stipulations are not met.

Dan Simon, a bankruptcy attorney for Genesis, said the approval — and a formal, final asset purchase agreement to come by Thursday — would help the company begin addressing the challenging process of transitioning its highly regulated nursing homes.

He and Zachary Hemenway, attorney for the creditors committee, said the apparent certainty of closing the deal was important to start the clock on all the transactions that must now follow. Hemenway called Tuesday's hearing the first time all estate fiduciaries had come to court “enthusiastically supporting” a sale.

Notably, Anthony, thanked the court for approving the sale agreement. He estimated the first auction might have netted his clients 17 cents for each dollar owned, while the 101 West deal brings that to about 30 cents.

The Genesis operating team also said it was pleased with Tuesday's results.

"Our teams remain focused on improving the lives we touch through the delivery of high-quality healthcare and everyday compassion," a spokeswoman said in a statement Tuesday night. "Genesis HealthCare leaders are committed to a thoughtful and collaborative transition with 101 W State Street Holdings, LLC, which we anticipate to be finalized this spring or later, prioritizing our residents, families, associates, communities and more who we serve every day."

Editor's note: This article has been updated to include further concerns raised at the sale hearing and comments from creditors' attorneys. It also attributes questioning of a 101 West State Street official to attorney John Anthony.

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