IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE INTERSTATE GENERAL MEDIA HOLDINGS, LLC	)	C.A. No. 9221-VCP

MEMORANDUM OPINION

Submitted: April 24, 2014
Decided: April 25, 2014

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PARSONS, Vice Chancellor.

This petition for judicial dissolution of a Delaware limited liability company ("LLC") arises not from a dispute as to whether judicial dissolution is necessary or appropriate, but rather, how the dissolution should be effectuated. The petitioner seeks an order from this Court requiring that the LLC be sold in an auction in which only the LLC's members and a specific labor union are eligible to participate. Furthermore, the petitioner requests that the auction be structured as an "English-style," open outcry auction. According to the petitioner, its proposal for auctioning the LLC is both: (1) more consistent than the respondents' with the terms of the company's LLC agreement; and (2) most likely to maximize the value of the members' ownership interests in the LLC.

Respondents are members of the LLC other than the petitioners, and they urge the Court to order an auction in which the sale of the LLC is open to the public. The respondents aver that the company's LLC agreement is neither controlling nor relevant to the issue of how best to auction the company, and that the most likely way to maximize the value of the members' interests in the LLC is through a public auction in which each bidder submits only a single, sealed bid.

For the reasons stated in this Memorandum Opinion, I will order that the LLC be dissolved, and that it be liquidated in a private, "English-style" open outcry auction held among the LLC's members.

I. BACKGROUND

A. The Parties

The principal subject of this litigation is Interstate General Media Holdings, LLC ("IGM" or the "Company"). IGM is a Delaware limited liability company that was formed in 2012 for the purpose of acquiring all or substantially all of the capital stock of Philadelphia Media Network LLC ("PMN"). PMN's subsidiaries include The Philadelphia Inquirer (the "Inquirer"), the Daily News, and Philly.com. Through PMN and its subsidiaries, IGM engages in the business of publishing, printing, reporting, advertising, and performing other activities of a multimedia news and information company.

Petitioner, General American Holdings, Inc. ("General American"), is a Pennsylvania corporation and a Class A Member of IGM.[1] General American owns a 54.3638% interest in the Company and is one of its two Managing Members. As a Managing Member, General American has the right to appoint one of the two members of IGM's Management Committee. George E. Norcross, III serves as General American's appointee on the Management Committee.

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[1] Two of IGM's other Members, Buckelew Inq LLC, which represents the interests of Joe Buckelew, and Wayne Avenue Investments LLC, which represents the interests of Bill Hankowsky, support General American's position, but are not parties in this action.

Respondent Intertrust GCN, LP ("Intertrust") is a Delaware limited partnership and a Class A Member of IGM. Intertrust GCN GP, LLC is a Delaware limited liability company and the general partner of Intertrust. Intertrust owns a 26.1819% interest in the Company and is IGM's other Managing Member. Lewis Katz serves as Intertrust's appointee on IGM's Management Committee.

Respondent H.F. "Gerry" Lenfest is a Pennsylvania resident and a Class A Member of IGM. Lenfest owns a 16.3637% interest in the Company and serves as the Chairman of its Board of Directors (the "Board").[2]

Intervenor, the Newspaper Guild of Greater Philadelphia, Local 38010, AFL-CIO, CLC (the "Guild"), is IGM's largest labor union. The Guild represents over 550 employees, including reporters, editors, and photographers, of IGM's main assets, The Inquirer, Daily News, and Philly.com. Currently, IGM and the Guild are parties to a collective bargaining agreement that is effective from February 8, 2013 through February 8, 2015.[3]

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[2] Lenfest is aligned with Intertrust in this matter. For purposes of simplicity, any reference to Intertrust should be read to include Lenfest, unless otherwise noted.

[3] The Guild has not taken a position as to whether IGM should be dissolved in accordance with General American's or Intertrust's proposal. As both proposals currently stand, the Guild would have the opportunity to participate in either a private or public auction of IGM so long as it can acquire the necessary funding from a third party backer.

B. Facts

1. The recent ownership history of PMN

In 1969, Knight Ridder purchased the The Inquirer and Daily News from Walter Annenberg for $55 million. Knight Ridder owned the papers exclusively and continuously until 2006, when it sold them to McClatchy, another large newspaper chain. Later in 2006, McClatchy resold The Inquirer and Daily News to a local Philadelphia investor group led by Brian Tierney for over $500 million. At some point, the Tierney-led group created PMN to house The Inquirer, Daily News, and other properties.

In February 2009, PMN filed for Chapter 11 bankruptcy protection. Approximately twenty months later,[4] in September 2010, PMN was sold in a bankruptcy auction for $139 million to a group of hedge funds led by Angelo Gordon and Alden Global Capital.[5] Less than two years later, in April 2012, PMN was sold again, this time to IGM for $55 million.

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[4] The September 2010 auction actually was the second bankruptcy auction held for PMN. The first auction failed because the prevailing bidder, a group led by Tierney, was unable to reach agreements with all of PMN's unions, as required by the Bankruptcy Court.

[5] Raymond Perelman, who the Guild recently represented was currently interested in possibly working with the Guild to make a bid for IGM, bid unsuccessfully for PMN against the Angelo Gordon Group in the September 2010 auction.

Thus, since 2005, The Inquirer, Daily News, and Philly.com have operated under five different owners.

2. IGM acquires PMN

In October 2011, Katz and Norcross discussed the possibility of purchasing PMN and conducted at least some due diligence on a potential transaction. As early as December 2011, PMN began working with investment bank Evercore Group LLC ("Evercore") to facilitate a sale. In January 2012, Katz and Norcross formally retained investment bank The Blackstone Group ("Blackstone") to assist them in evaluating a potential acquisition of PMN. Between January 2012 and March 2012, Katz and Norcross, with the assistance of Blackstone, continued their due diligence regarding PMN. This diligence included, among other things, reviewing the contents of a "data room" established by Evercore[6] and conducting interviews with PMN's senior management.

In early February 2012, the Katz/Norcross-led group that ultimately became IGM sent an initial offer letter to PMN. On March 1, 2012, IGM submitted its

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[6] Evercore took approximately one month to establish the data room, which was updated constantly thereafter.

final, and prevailing, bid of $55 million.[7] IGM's acquisition of PMN closed on April 2, 2012.

Both Katz and Norcross testified that their interest in acquiring PMN and, thus, The Inquirer, was not a purely profit-driven business decision. Rather, it appears that both individuals were brought into the group that became IGM by former Pennsylvania Governor Edward Rendell, at least in part, for the purpose of "rescuing" The Inquirer from its non-Philadelphia-based hedge fund owners. As The Inquirer is one of this country's oldest and most venerable news publications, which all parties seem to agree is not merely a business, but also an important "community asset," the receptiveness of Katz, Norcross, and eventually, Lenfest to Governor Rendell's call to action is unsurprising.

3. IGM's LLC Agreement

On March 30, 2012, shortly before the close of IGM's acquisition of PMN, IGM's Members executed an LLC agreement (the "LLC Agreement"). Under the LLC Agreement, IGM was to be managed by a Management Committee and the Board. The day-to-day operations of the Company were managed by the two-member Management Committee, which at all relevant times consisted of Katz, as Intertrust's appointee, and Norcross, as General American's appointee.

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[7] IGM's 2012 acquisition of PMN was the result of a private sale in which only a select group of bidders were invited to participate.

Importantly, any action by the Management Committee required the approval of *both* Katz and Norcross. IGM's six-person Board, which also included Katz and Norcross, was meant to govern and direct IGM's business and affairs. As with the Management Committee, the Board could not take any action without the approval of *both* Katz and Norcross. Thus, Katz and Norcross each effectively had a veto right over any action that required the approval of the Management Committee or the Board.

4. IGM becomes deadlocked

In the months following IGM's acquisition of PMN, Katz and Norcross, and, thus, Intertrust and General American, repeatedly disagreed about how the Company should be managed. As Katz and Norcross's disagreements escalated, beginning in late 2012 and continuing through the summer of 2013, they attempted, unsuccessfully, to reach an agreement under which one would buy out the other's ownership interest in the Company.

On October 7, 2013, matters finally came to a head when The Inquirer's Publisher, Robert J. Hall, fired its Editor, William K. Marimow, without Katz's consent. This resulted in significant litigation in the Court of Common Pleas of Philadelphia County, Pennsylvania (the "Philadelphia Court") concerning the employment status of both Hall and Marimow. Since October 2013, the relationship between Katz and Norcross has continued to deteriorate. Because,

pursuant to the terms of the LLC Agreement, IGM cannot take any meaningful action without the consent of both Katz and Norcross, their inability to work together materially has inhibited the Company's ability to function effectively. On December 18, 2013, the Board held a special meeting to determine if the deadlock between Katz and Norcross could be resolved, but no agreement was reached. After the impasse continued for a few more weeks, on January 2, 2014, Intertrust filed a petition in the Philadelphia Court to dissolve IGM. The following day, General American commenced this action by filing a petition to dissolve IGM in the Delaware Court of Chancery.

5. The competing proposals

General American and Intertrust agree that IGM is deadlocked, and that judicial dissolution is necessary. General American and Intertrust also concur that, as part of the dissolution, IGM should be sold by auction.[8] The parties disagree, however, as to the best way to structure an auction of IGM.

a. General American's proposal

General American's proposal contemplates the liquidation of IGM through a private, cash-only auction of its membership interests administered by a liquidating trustee. The auction would be conducted as an "English-style" open-outcry

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[8] As a practical matter, this amounts to an auction of PMN, which apparently is IGM's sole asset.

auction, and the participants in the auction would be limited to the Intertrust Group,[9] the General American Group,[10] and the Guild. Third parties, however, would be allowed to participate in the auction by joining with either group or the Guild to provide financial assistance if they agree to be bound by a non-disclosure agreement and to post a forfeitable security deposit in the amount of $1 million.[11] In addition, the membership interests would be sold on an "as is, where is" basis, with no representations or warranties except as to ownership.

Under the General American proposal, within five calendar days of this Court ordering IGM to be auctioned, both groups and the Guild would be required to notify the liquidating trustee of their intent to participate in the auction and post a security deposit of $5 million. The auction itself would be held within thirty days of that same order[12] among those eligible participants that comply with the notice and deposit requirements.

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9 This group consists of Intertrust GCN, LP, Intertrust GCN GP, LLC, and Lenfest. All of the parties in this group currently are Members of IGM.

10 This group consists of General American Holdings, Inc., Wayne Avenue Investments LLC, and Buckelew Inq LLC. All the parties in this group currently are Members of IGM.

11 General American's proposal does not specify the circumstances under which the deposit would be forfeited or how long the funds must remain on deposit.

12 Because General American's proposal essentially contemplates an auction among IGM insiders, the proposal does not leave room for any third party

The minimum bid to start the auction would be the original purchase price IGM paid for PMN, plus an amount sufficient to satisfy the Company's outstanding debt.[13] Once the minimum bid is satisfied, the participating bidders would submit increasing successive bids in $1 million increments until a winner can be determined. Within forty-eight hours of the close of the auction, the prevailing bidder would be required to make payment in full, which presumably would include surrender of its $5 million deposit, to the liquidating trustee.

b. Intertrust's proposal

Intertrust's proposal, like General American's proposal, also provides for the liquidation of IGM through an auction. The Intertrust proposal, however, calls for a public auction administered by an auctioneer[14] in which bidders submit only a single, sealed bid.[15]

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providing financial backing to one of the groups or the Guild to conduct extensive due diligence. The proposal does not authorize postponement of the auction if there is any due diligence outstanding on the auction date.

[13] At the evidentiary hearing, Norcross testified that this would imply a minimum bid of approximately $77 million.

[14] The proposal also requires the appointment of a receiver to oversee the liquidation of IGM and allows for the possibility that the receiver could also serve as the auctioneer.

[15] Although not specified in the proposal itself, Intertrust represented at the evidentiary hearing that its proposal, like General American's, requires bidders to make their bids on a cash-only basis.

Under the Intertrust proposal, the auctioneer would be required to set an auction date such that the auction of IGM's assets[16] would be held within forty-five days of the Court ordering the Company's sale. For the first thirty days of this forty-five day period, the auctioneer would have two primary responsibilities: (1) soliciting participation in the auction from entities or individuals that it believes might be interested in purchasing IGM; and (2) gathering due diligence information from IGM and consolidating information it deems appropriate into a "data room," which would be made accessible only to "Qualified Bidders."

For a person or entity to be considered a "Qualified Bidder," such person or entity must: (1) provide the auctioneer with proof of assets or financing sufficient, in the sole discretion of the auctioneer, to be capable of submitting a reasonable bid in the auction; (2) execute an "Auction Procedure Agreement" consenting to be bound by a "Purchase and Sale Agreement" if that bidder prevails in the auction; (3) agree to release all of IGM's Members "from any and all claims, including pre-

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[16] Intertrust's proposed "asset sale" arrangement differs from the "stock sale" proposed by General American. On the record before me, it does not appear that IGM has any meaningful assets other than PMN. Therefore, for purposes of deciding the issues before me, the distinction between an "asset sale" and a "stock sale" is not material. I will leave it to the parties and the liquidating trustee to determine which structure best satisfies the interests of IGM's Members. For purposes of simplicity, this Memorandum Opinion refers simply to the "sale of IGM." In doing so, I do not intend to express any view as to whether IGM should be liquidated through an asset sale or a stock sale.

existing lawsuits," if that bidder prevails; (4) submit $4 million along with its bid into an escrow account established by the auctioneer; and (5) execute a confidentiality agreement limiting the potential bidder's use of information contained in the data room.[17] The auctioneer will inform a party no later than two days before the auction whether they meet the requirements of a Qualified Bidder.

At the auction, each Qualified Bidder choosing to bid would submit a single, sealed bid to the auctioneer to purchase all of IGM's assets.[18] Following the submission of all bids, the auctioneer would determine the prevailing (*i.e.*, highest) bid.[19] The prevailing bidder would have three business days to provide payment in full.[20] After full payment is made, the receiver would, within three business days, move the Court to approve the sale.

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17 IGM's Members are bound by the same requirements, and must also execute an agreement providing that they will stipulate to the dismissal, with prejudice, of the ongoing litigation between the Members in this Court and the Philadelphia Court when the sale of IGM is completed.

18 The Intertrust proposal does not include a minimum bid. At the evidentiary hearing, however, Katz testified that he was amenable to requiring a minimum bid as set out in the General American proposal. Katz also indicated that he would abide by the same minimum bid proposed by General American.

19 In the event of a tie, the auctioneer would solicit an additional round of bids from the tied bidders.

20 As in the General American proposal, the assets of PMN would be sold on an "as is, where is" basis under Intertrust's proposal without any representations and warranties except as to ownership.

6. PMN's current condition

After several "years of struggle," PMN is beginning to stabilize somewhat.[21] After experiencing a significant operating loss in 2012, PMN generated meaningful positive adjusted EBITDA in 2013, and is expected to have similar operating results in 2014. In addition, there is evidence that the "bleeding" in PMN's circulation figures largely has subsided.

Although PMN's financial condition has improved recently, it is not a "healthy" entity. Much, if not all, of PMN's recent "success" can be attributed to two factors: improved revenues from charging higher prices and reduced losses through significant cuts in PMN's operating expenses. Of those two factors, neither of which is sustainable in the long run, PMN's cost-cutting appears to have played the more significant role in enhancing its financial position. Because PMN's ability to continue to increase prices and reduce costs will be limited substantially going forward, and because PMN's revenue from advertising, arguably its most significant source of revenue, has continued to follow a decidedly downward trajectory, PMN still faces an uphill battle to achieve sustainable financial stability.

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[21] *See* JX 95 at 10 ("The past several years at *The Philadelphia Inquirer*, *Philadelphia Daily News*, and Philly.com have been tumultuous, but the Company is now producing positive cash flow and is on a positive operating trajectory.").

Based on the record before me, I find that the dispute between Intertrust and General American has affected adversely PMN's business. The dispute has created debilitating uncertainty over the future management and direction of PMN, which, in turn, has undermined employee morale and contributed to PMN's inability to fill several key senior management positions that have been vacant for some time.

On the whole, PMN's financial position appears to be fragile, but not dire. For example, there are no apparent "financial cliffs" that PMN faces at the moment. Thus, while all parties seem to agree (and the record supports the proposition) that it is in the best interests of all of PMN's stakeholders to resolve this severely disabling dispute between General American and Intertrust as soon as reasonably possible, the record does not support the notion that PMN will incur catastrophic harm unless it is auctioned in the absolute shortest time possible.

C. Procedural History

On January 3, 2014, General American filed a verified petition for judicial dissolution of IGM through a private auction. Ten days later, Intertrust moved to dismiss or stay General American's petition in favor of dissolution proceedings that Intertrust had filed on January 2, 2014 in the Philadelphia Court. After full briefing, I heard argument on Intertrust's motion on February 4, 2014. On February 7, the Honorable Patricia A. McInerney of the Philadelphia Court entered

an order declining to exercise jurisdiction over the dissolution petition Intertrust had filed in that court. Based on Judge McInerney's ruling, on February 10, I entered an order denying as moot Intertrust's motion to stay or dismiss General American's petition here.

During the pendency of Intertrust's motion, the Guild petitioned to intervene on February 4, 2014. General American opposed the Guild's petition on both technical and substantive grounds. On April 7, 2014, I issued a letter opinion granting the Guild's petition to intervene pursuant to Court of Chancery Rule 24(b).

On February 19, 2014, the parties submitted letters explaining their competing proposals for how IGM should be dissolved and liquidated. After the Guild was permitted to intervene, on April 9, 2014, General American submitted a revised proposal allowing for Guild participation in any private auction ordered by the Court. On April 14 through 16, 2014, I presided over an evidentiary hearing related to the parties' respective proposals. On April 24, the parties presented their final arguments on the merits of those proposals. This Memorandum Opinion constitutes my ruling on General American's petition to dissolve IGM through a private auction.

D. Parties' Contentions

General American contends first that the terms of, and the intent underlying, the LLC Agreement should be considered when deciding how IGM should be dissolved. Petitioner avers that the LLC Agreement's language as to confidentiality and the restrictions on transfer of ownership interests through April 2016, among other things, support its position that a private auction is most consistent with the parties' agreement. General American argues further that, in contrast, Intertrust's proposal for a public auction would violate the parties' understanding as to how IGM would be dissolved.

Regarding value maximization, General American asserts that its proposal is superior because it can be executed faster and with less expense than a public auction. This, in turn, will help protect the value of PMN, which, according to General American, will suffer an increasing reduction in value the longer the dispute between General American and Intertrust remains unresolved.

Finally, General American avers that an "English-style" auction would maximize the value of the Members' interests in IGM in this case because, at a minimum, General American and Intertrust already are owners, and, as a result, they have an incentive to bid more than their internal valuation of IGM because each higher bid also increases the return General American or Intertrust would receive for their holdings should they lose.

In response, Intertrust argues that the LLC Agreement, which does not address specifically how IGM should be dissolved, largely is irrelevant to the key issue before this Court—*i.e.*, how to maximize the value of IGM's assets. Intertrust avers that a public auction with each bidder placing a single, sealed bid is more likely to maximize the value of IGM's Members' interests in the Company because it is more likely to attract the greatest number of "serious bidders," including a potential bidder that values IGM more than General American, Intertrust, or the Guild. According to Intertrust, a single, sealed bid format also would be most conducive to value maximization in the factual context of this case because it would mitigate concerns third party bidders would have about bidding directly and repeatedly against General American and Intertrust, which are "insiders" and have a pre-existing ownership interest in what is being auctioned. Therefore, those third parties would be more likely to enter a sealed bid public auction process and, thereby, increase the amount of competition for IGM. Finally, although Intertrust recognizes that its proposal would take longer and be more expensive than the General American proposal, it argues that these differences are immaterial and, based on PMN's relatively stable position, do not provide a basis for finding General American's proposal to be superior.

II. ANALYSIS

A. Legal Standard

The issue before this Court is a narrow one: how should IGM be dissolved and liquidated? General American and Intertrust are in agreement that IGM should be liquidated in a manner that maximizes the value of its Members' ownership interest in the Company.[22] It is settled Delaware law, however, that there is "no single blueprint" for maximizing the value of an entity through a sale.[23] Therefore, determining the value maximizing process by which an entity should be liquidated is both a fact-intensive and fact-specific endeavor that must be tailored to the particular circumstances and realities in which the entity is operating. Based on that framework, I turn to the merits of the parties' arguments, beginning with General American's assertion that the terms of the LLC Agreement should influence which proposal the Court adopts.

B. The LLC Agreement Has Little, if Any, Bearing on How IGM Should Be Dissolved

It is well-settled under Delaware law that LLCs are creatures of contract rather than statute, and that those who form LLCs are given great latitude in

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[22] *See also Bentas v. Haseotes*, 2003 WL 1711856, at *3 (Del. Ch. Mar. 31, 2003) ("These arguments and counter-arguments boil down to single basic issue: which liquidation method will maximize value for all of the Company's shareholders?").

[23] *Barkan v. Amsted Indus., Inc.*, 567 A.2d 1279, 1286 (Del. 1989).

defining their rights and obligations by mutual agreement. Based on that freedom, the parties to the LLC Agreement were free to craft whatever procedure they wished to govern IGM's dissolution. That freedom included the ability to proscribe the use of judicial dissolution altogether as a means to dissolve the Company.[24] Instead, however, the parties chose not to exercise their contractual freedom in that regard and explicitly recognize the possibility of a judicial dissolution under 6 *Del. C.* § 18-802, and, in that context, submitted themselves to the discretion of the Court to determine how IGM should be dissolved.[25]

The cases cited by General American in support of its argument that the Court should consider sections of the LLC Agreement that do not relate to dissolution are inapposite. None of the cases on which General American relies arose in a factual context similar to the one here where the dispositive issue is *how*, not if, IGM should be liquidated.[26] In addition, it appears that to the extent

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[24] *R & R Capital, LLC v. Buck & Doe Run Valley Farms, LLC*, 2008 WL 3846318, at *4-6 (Del. Ch. Aug. 19, 2008).

[25] During the parties' final argument, counsel for General American conceded that the LLC Agreement does not, as a matter of law, require that PMN be liquidated through a private auction. Arg. Tr. 31.

[26] For this reason, General American's citation to *Haley v. Talcott*, 864 A.2d 86 (Del. Ch. 2004) is misplaced. In *Haley*, the central question before the court was whether, in the face of a deadlock among the members, it was "reasonably practical for the LLC to continue to carry on the business in conformity with the LLC Agreement." *Id*. at 93. The LLC agreement in

Delaware courts have considered the application of an entity's LLC agreement after the entity was dissolved, that consideration has occurred in situations where the issue before the court was addressed explicitly in the LLC Agreement. For example, in *Gonzalez v. Ward*,[27] the Supreme Court rejected a non-participating member of an LLC's challenge to the level of compensation that two active members received for their services in winding up the LLC after the members agreed to dissolve it. When that LLC was created, the members agreed to a formula prescribing how they would be compensated for performing duties on behalf of the LLC. Because the active members continued to follow the formula after the LLC was dissolved to determine how much compensation they were entitled to for their efforts to wind up the LLC, the Supreme Court found that "the Vice Chancellor acted appropriately within his discretion by finding that [the

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> *Haley* contained an "exit provision" in which one member had the right to buy out the other member's interest under certain circumstances. In determining whether, and not how, the LLC should be dissolved and liquidated, the court analyzed the LLC agreement's exit provision because "[w]hen the agreement itself provides a fair opportunity for the dissenting member who disfavors the inertial status quo to exit and receive the fair market value of her interest, it is at least arguable that the limited liability company may still proceed to operate practicably under its contractual charter because the charter itself provides an equitable way to break the impasse." *Id.* at 96. *Haley*, therefore, does not stand for the proposition that the Court must, or even should, consider IGM's LLC Agreement in deciding how a judicial dissolution and liquidation should be conducted.

[27] 841 A.2d 307 (Del. 2004) (TABLE).

active members] had the authority to increase their compensation during the winding up period."[28] Similarly, in *TIFD III-X LLC v. Fruehauf Prod. Co.*,[29] the issue before the court was the proper interpretation of a contractual formula in the limited partnership agreement that allocated the "economic benefits and burdens generated by" the partnership. It is unsurprising, therefore, that the court in that case looked to the limited partnership agreement to decide which of the parties' interpretations of the provisions governing the contractual formula was more reasonable.

Unlike in *Gonzalez* and *Fruehauf*, the key issue in this case—namely, how IGM should be dissolved and liquidated—is not addressed by the plain terms of the LLC Agreement. Nevertheless, General American asserts that the parties' failure to address specifically the process by which IGM should be dissolved does not preclude the Court from looking to non-liquidation provisions of the LLC Agreement for guidance in fashioning an appropriate remedy. This contention is without merit for at least three reasons. First, the argument that the "intent of the parties" as to how IGM should be dissolved and liquidated can be gleaned from the

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[28] *Id.* at *2.

[29] 883 A.2d 854 (Del. Ch. 2004). *Fruehauf* involved a limited partnership, not an LLC, but that distinction is immaterial here, because limited partnerships are analogous to LLCs in that they, too, are defined by contract.

LLC Agreement's non-dissolution provisions ignores the fact that the parties to the LLC Agreement actually did express their intentions regarding the Company's dissolution by agreeing to allow for judicial dissolution, and, moreover, by not specifying any process by which IGM should be wound up. Stated differently, General American's argument overlooks the fact that there is no need to attempt to determine how the parties intended to dissolve IGM in the event of a deadlock because the LLC Agreement makes that intent clear by: (1) stating that this Court may make that determination; and (2) not purporting to seek to influence or restrict the Court's ability to exercise the full breadth of its discretion in doing so.

Second, the majority of provisions in the LLC Agreement that General American cites as allegedly evidencing the parties intent with respect to dissolution and liquidation, are, in fact, unrelated to those subjects. Section 6.8 and Article 7 of the LLC Agreement, relied on by General American, address the confidentiality obligations of IGM's members and their ability to transfer their membership interests, respectively. Regardless of whether General American's or Intertrust's proposed liquidation procedures are "consistent" with Section 6.8 or Article 7 of the LLC Agreement, neither of those provisions discusses dissolution or liquidation at all. Moreover, on its face, Article 7 presupposes that IGM has a

functioning board that is not subject to deadlock.[30] General American has not advanced any persuasive argument as to why these portions of the LLC Agreement, which appear to be based on the assumption that IGM is a viable, functioning entity, are relevant to the question of how IGM should be dissolved and wound up.

The only provision in the LLC Agreement relied on by General American to support its argument that explicitly relates to the dissolution or winding up of IGM is Section 13.4. Section 13.4(a) states in relevant part that upon dissolution, a "liquidating trustee":

> shall carry out the winding up of the Company and shall immediately commence to wind up the Company's affairs; provided, however, that a reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the satisfaction of liabilities to creditors so as to enable the Company to minimize the normal losses attendant upon a liquidation.

Nothing in the plain language of Section 13.4(a) suggests that a public or private auction is more "consistent" with the terms of the LLC Agreement. General American interprets Section 13.4(a) as prioritizing immediacy and minimizing losses, which it argues favors its proposal because it would be faster

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[30] *See* JX 1 § 7.5(c) ("no Transfer of Units may be effected unless the transferor of such Units shall deliver to [the] Company an opinion of such transferor's counsel (which opinion and counsel *shall be reasonably satisfactory to the Board*")) (emphasis added).

and less expensive to execute than Intertrust's proposal. I consider it more reasonable, however, to interpret Section 13.4(a) as indicating that a dissolution and winding up of IGM should be conducted such that it maximizes the value of the entity. While speed and cost are important factors in achieving that goal, Section 13.4(a) expressly allows for a "reasonable time" to liquidate the Company so that value need not be sacrificed in the name of expediency.[31] I also do not read Section 13.4(a) as prohibiting a more "expensive" method of winding up IGM if that method would generate a higher value for the Company. Thus, Section 13.4(a) merely emphasizes that the Court's task in this case is to maximize the value of IGM. Beyond that, Section 13.4, like the other provisions of the LLC Agreement cited to by General American, offers little in the way of helping the Court determine how IGM should be dissolved and wound up.

Finally, by the time of the evidentiary hearing, both General American and Intertrust had agreed that the Guild could participate in any auction ordered by the Court, assuming that it could procure the requisite financial backing. The Guild, however, is not now, nor has it ever been, a party to the LLC Agreement. By agreeing to amend its proposal to allow the Guild to participate in any private auction for IGM, General American effectively jettisoned many of its criticisms of

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[31] In this case, it probably would take at least fifteen days longer to execute Intertrust's proposal than General American's proposal.

the Intertrust proposal as being "inconsistent" with the LLC Agreement.[32] For example, allowing the Guild and its financial backer to conduct due diligence presents similar confidentiality and expense concerns as those raised by General American regarding a public auction. More fundamentally, the possibility that the Guild could win the private auction undermines completely General American's assertion that its proposal is consistent with the LLC Agreement's purported expression in Article 7 of the parties' intent to ensure continuity of IGM's ownership in the event of a dissolution.[33]

In sum, rather than address upfront in the LLC Agreement how IGM should be dissolved and wound up in the event of a deadlock, the parties instead agreed to leave open the possibility of judicial dissolution, which has the effect of allowing the Court to make that determination using its discretion. Because the LLC Agreement does not offer any meaningful guidance as to how the parties' dispute

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[32] The lone exceptions to this are that General American's proposal still would take less time and be at least somewhat less expensive to execute.

[33] This argument also is belied by the fact that nothing would restrict the winner of General American's private auction from immediately re-selling IGM to a third party. In fact, Norcross specifically noted this feature of the General American proposal in attempting to convince Katz to agree to a private auction. *See* JX 76 ("If you do not want to buy the company and want to realize the highest price for yourself, you can still achieve that result in an auction among current members. If you won the bidding, you would, of course, be free to sell an outsider a portion or even the entirety of the company.").

in this case should be resolved, I conclude that the Agreement is essentially irrelevant to the dispositive issue currently before me. Accordingly, I turn next to an evaluation of whether a public or private auction would maximize the value of the Members' ownership interest in IGM.

C. The Value of IGM's Members' Ownership Interests in the Company Will Be Maximized Through a Private Auction

As stated previously, the critical issue in this case is which of the competing proposals will maximize the value of IGM's Members' ownership interest in the Company. In support of their argument that a public auction is most likely to achieve value maximization, Intertrust relies heavily on this Court's decision in *Bentas v. Haseotes*.[34] In *Bentas*, parties that each owned a 50% stake in a corporation became deadlocked, and the court appointed a custodian to attempt to end the dispute. After the parties failed to resolve their issues, the custodian recommended that the corporation be sold, and solicited proposals from the two parties as to the best way to liquidate the company. In response, one side proposed that the company's assets be divided equally between the two parties; the other side proposed that the company be auctioned publicly, either as a whole or in parts. The party favoring the asset division argued that an auction would not maximize value for the company's shareholders because adverse market conditions would

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[34] 2003 WL 1711856 (Del. Ch. Mar. 31, 2003).

not support a favorable valuation for the company and a sale through an auction would result in significant tax liabilities for the company's shareholders.

Lamenting the fact that he had to decide which proposal to approve on a paper record rather than after a trial, Justice Jacobs, then writing as a Vice Chancellor, ordered that the custodian conduct an auction for the company. In doing so, the court reasoned that on the record before it an auction was the only way to determine whether a viable market for the company existed and whether a sale would generate bids that reflected the company's intrinsic value, "without forcing the parties to incur irreversible risk."[35] Another important consideration the court noted in ordering an auction in *Bentas* was that if the auction failed to attract any bidders willing to offer a fair price, the court was "free to decline to approve any sale, and to order a division of the assets."[36]

The facts of this case differ from *Bentas* in several significant respects. First, both proposals in this case require the parties to "incur irreversible risk." Unlike in *Bentas*, neither the General American nor the Intertrust auction plan provides the Court with the luxury of being able to choose it with the knowledge that if it fails, the Court can go back and select the other proposal. Once either of

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35 *Id.* at *4.

36 *Id.*

the proposals in this case is implemented, the sale of IGM will be irreversible. Second, the differences between the competing proposals in *Bentas* were more extreme than the differences in the competing proposals in this case. Whereas in *Bentas* one party was attempting to avoid a competitive bidding process altogether, here both parties agree that a competitive bidding process is appropriate, but disagree as to how that process should be structured.

The most important difference between this case and *Bentas*, however, is that this case is being decided on an evidentiary, rather than a paper, record. As such, unlike the court in *Bentas*, I am in a position to "adjudicate the relative merits of the experts' conflicting analyses and conclusions concerning the strength of the market [for IGM] . . . and the other aspects of the competing plans."[37] Intertrust's argument that a public auction would maximize value for IGM's members in this case is premised largely on the concept that a public auction has the highest likelihood of attracting the largest number of "serious bidders" for IGM.[38] Because more "serious bidders" would increase the amount of competition for an asset, it is expected that this would result in a sale price that is higher than what

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[37] *Id.*

[38] According to Intertrust's expert Professor Jeremy Bulow, a "serious bidder" is an individual or entity that would enter an auction with a thought that it had at least some possibility of winning. Bulow Dep. 33.

would be achieved in a less competitive environment. The question then becomes, does the record support Intertrust's assertion that there is a reasonable probability that a "serious bidder" in addition to General American and Intertrust would emerge to participate in a public auction of IGM? For the following reasons, I conclude that it does not.

It has been public knowledge for quite some time that IGM or its apparently sole asset, PMN, "is in play." As early as October 2013, the Guild, in combination with an undisclosed partner, expressed publicly an interest in purchasing the Company. By the first week in January 2014, when Intertrust and General American filed their competing dissolution actions, it became even more widely known that IGM was up for sale. Moreover, the fact that the Company is for sale has been repeated often in both the national and local media coverage this litigation has received since it began. In addition, I held a two-and-a-half-day evidentiary hearing in this action from April 14 to 16 that was open to the public. On the last day of the evidentiary hearing, the Guild announced that it had received indications of interest from as many as six potential financial backers and publicly identified two of those possible backers. As discussed *infra*, none of those potential bidders continue to be interested. The end result is that despite all the attention this matter has received, and the fact that it has been known for months that the Company is for sale, Intertrust cannot point to a single individual or entity beyond the parties to

the LLC Agreement that is, at this time, interested in participating in a public auction for IGM.

Although admittedly there has been uncertainty as to what type of auction this Court would order since news of the Company's imminent sale became public knowledge, I am unconvinced that that uncertainty has caused any potential serious bidders to avoid expressing an interest in purchasing the Company. To the extent an individual or entity was interested in acquiring IGM, it would have worked to that individual or entity's benefit to make that fact known, even anonymously through a representative or through Intertrust, because the more potential bidders that expressed such interest, the more likely it would be that this Court would order a public auction to attract outside bidders. Furthermore, it is unclear what a potential bidder would lose by making its interest in participating in an auction known, at least confidentially as several of the Guild's potential sponsors did, at a time when the Court is trying to determine whether a public or private auction would maximize value for IGM's Members. Thus, I find that the failure of an interested third-party bidder for the Company to materialize in the more than three months since it has been known that IGM is for sale strongly supports the conclusion that a public auction in this case would be unlikely to attract a "serious bidder" beyond General American and Intertrust.

The failure of another viable "serious bidder" to emerge is particularly telling in this case based on the public actions taken by the Guild. Not only did the Guild move successfully to intervene in this litigation, but after doing so, General American revised its proposal to allow the Guild to participate in any private auction for the Company that the Court might order. These developments put potentially interested bidders on notice that this Court, and possibly even General American, would be receptive to learning about legitimate expressions of interest in participating in any court-ordered auction.

The Guild's more recent actions further support the conclusion that a public auction would not attract additional "serious bidders" for the Company for a separate and independent reason. At the evidentiary hearing, William Ross, the Guild's Executive Director, testified that the Guild was in discussions with approximately six different potential financial backers that had expressed an interest in joining with the Guild to make a bid for the Company.[39] The six potential backers consisted of the Guild's parent company, the Newspaper Guild Communications Workers International Union, Raymond Perelman, and a mix of private equity firms and "philanthropists." Ross testified that all of the Guild's

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[39] Tr. 593. References in this form are to the evidentiary hearing transcript. Where the identity of the testifying witness is not clear from the text, it is indicated parenthetically after the page citation.

potential backers wanted to see the Company's financials before making a firm commitment to partner with the Guild to submit a bid for IGM.

Between the conclusion of the evidentiary hearing and the parties' final arguments, IGM provided the Guild copies of the relevant financial information its potential partners requested. At the beginning of final argument on April 24, 2014, counsel for the Guild informed the Court that, "[w]e've received the [Company's] financials and spoken with our potential investors. Given the $77 million floor that we believe is going to be imposed, there is no interest of our investors."[40] Thus, the Guild and its potential backers, which on the record before me constitute the only third parties who have expressed an interest in participating in an auction for IGM, no longer wish to pursue an acquisition of the Company.[41] This development is highly relevant. The Guild's potential partners (a union, at least one wealthy individual with prominent ties to the Philadelphia community, private equity firms, and "philanthropists") represent almost exactly the types of buyers that the record in this case indicates might be expected to be interested in acquiring IGM. The fact that several of these differing types of likely buyers have seen the

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40 Arg. Tr. 3–4.

41 This is particularly noteworthy as it relates to Perelman, who Intertrust has long asserted is a credible bidder for PMN and held out as its primary example of the type of bidders PMN possibly would attract in a public auction.

Company's financials and decided that they are not interested in purchasing the Company at or above the $77 million dollar minimum level buttresses my conclusion that a public auction for IGM probably would not attract any additional "serious bidders" beyond General American and Intertrust.

The Guild's potential partners' unwillingness to bid for IGM at the $77 million level also comports with the testimony of General American's expert John Chachas, who had by far the greatest amount of experience in valuing media and newspaper companies among the witnesses presented to the Court. Chachas testified that the minimum bid of $77 million effectively valued IGM at eight times its forecasted cash flow or adjusted EBITDA. With one exception,[42] no major daily newspaper in the United States has been sold at a comparable valuation multiple since before the onset of the Financial Crisis in 2008.[43] Major newspapers sold since the Financial Crisis have been purchased for between 3.5 and 3.8 times

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[42] In 2013, Jeff Bezos, founder and CEO of Amazon.com, purchased the Washington Post for $250 million, valuing the paper at 17 times its projected EBITDA. Chachas testified credibly that this was a "vanity" purchase driven by Bezos's close relationship with the paper's prior owners and his interest in a newspaper that covered Washington D.C. Although Intertrust attempted to cast Perelman as a Bezos-like figure in this case, Perelman reportedly now has withdrawn his interest in acquiring IGM.

[43] JX 95 at 9.

their forecasted EBITDA.[44] Therefore, on a precedent transaction basis, it would be very "expensive" for a bidder to buy IGM for in excess of $77 million. Because IGM has, from the perspective of a potential purchaser, an unfavorable valuation relative to the auction's minimum bid, and because the minimum bid has been known publicly for more than a week, I find that a public auction is highly unlikely to attract any additional "serious bidders."

Finally, in addition to the relatively expensive minimum bid price, another factor that is common to both sides' proposals here has convinced me that another "serious bidder" is unlikely to emerge for IGM in Intertrust's proposed public auction. Regardless of whether a private or public auction is ordered, General American and Intertrust both agree that IGM will be sold on an "as is, where is" basis without any representations or warranties, except as to ownership. In addition, both sides' proposals call for the winner of the auction to relinquish all claims they may have against any of IGM's Members. IGM is a complex business with an uncertain financial future. The record is devoid of any evidence that suggests that a third party actually would be willing to acquire IGM on that decidedly seller-friendly basis.[45] Thus, not only has there been no continuing

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44 *Id.*

45 While I agree with Intertrust's assertion that due diligence can at times serve as an adequate substitute for representations and warranties, Intertrust's

expression of interest by a potential "serious bidder" in participating in an auction for IGM, but under either proposal the auction would have two elements, the minimum bid and the absence of representations and warranties, that probably would discourage third parties from wanting to acquire the Company.

On the record before me, it is more likely than not that a public auction would not result in the emergence of an additional "serious bidder" for IGM. While this is the most important factor that weighs against Intertrust's proposal for a public auction, it is not the only one. First, a private auction can be conducted faster than a public auction. General American and Intertrust are well-acquainted with PMN's business and could bid in an auction against one another without the need to retain an investment bank, set up a "data room," or conduct extensive due diligence.[46] Throughout this litigation, both General American and Intertrust have

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proposal calls for a relatively expedited due diligence process. I am skeptical that a third party with no inside information regarding PMN or IGM could conduct sufficient due diligence in the time allotted in Intertrust's proposal to get comfortable with acquiring the Company without any representations or warranties and with having to relinquish its potential claims against IGM's Members. Instead, I consider it far more likely that the new bidder either would require more time for due diligence or would insist on certain representations and warranties and limitations to the release. Either of these developments likely would prolong the sale process.

[46] General American's proposal allows either side to join with a third party to make a bid. Even assuming one or both sides actually partners with an outsider, and that outsider wishes to conduct due diligence, it is reasonable to infer that, given their relationship with a Company insider, the scope of

emphasized the importance of resolving the deadlock between the two sides by dissolution as expeditiously as possible. In addition, Christine Bonanducci, PMN's Vice President of Human Resources, George Loesch, PMN's Senior Vice President of Sales and Marketing, and Ross testified credibly that the ongoing dispute between General American and Intertrust has affected adversely PMN's business and, thus, has jeopardized its value. The adverse effects include making it harder to sell advertising space at a competitive rate and to fill key senior management positions that currently are vacant. Bonanducci, Loesch, and Ross also stated that the sooner this dispute is resolved, the better it will be for PMN and its employees.

Although I recognize that the approximately fifteen day difference in timing between the two proposals is not particularly significant, that assumes that Intertrust's proposed public auction can be executed as it is written. Intertrust's proposal, however, has many moving parts, ranging from setting up and managing the data room, to soliciting potential bidders, to determining whether bidders are "qualified," and to negotiating any issues regarding due diligence, the "as is, where is" requirement, and the release of claims againsts IGM Members. In my view,

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their due diligence would be significantly more narrow and could be completed much faster than due diligence for an independent third party bidder in the public auction context.

there is a material risk of delay inherent in Intertrust's proposed timetable, especially if a potential bidder, assuming one actually exists, wished to attempt to negotiate for at least some representations and warranties. In contrast, it is more reasonable to expect that General American's proposal could be executed well within its proffered thirty-day timetable. The fact that it is more certain that General American's proposal can be executed on time and that it probably will require less time to implement than the Intertrust proposal also weighs in favor of a private, rather than public, auction in this case because of the real harm to the Company's value that may result from prolonging this dispute unnecessarily.[47]

Second, conducting a private auction for IGM would be less expensive than conducting a private auction. More likely than not, a public auction would require IGM to retain both an investment bank and legal counsel to assist it through the transaction. When IGM purchased PMN in 2012, it spent over $2 million on legal and investment banking fees, equal to approximately 4% of the value of the transaction. A private auction between General American and Intertrust would obviate almost entirely the need for IGM to incur such fees. Assuming that a

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[47] In addition to being faster, a private auction also would be less disruptive to PMN's business than a public auction. For example, a public auction likely would require PMN's executives to make themselves available for interviews with any potential bidders, assuming those bidders exist. Based on the fragile state of PMN's business, its interests would be better served by allowing management to focus their attention on running the Company.

public auction would not produce any other "serious bidder," this savings would help maximize the value of IGM and benefit IGM's Members.[48]

In sum, although this case is distinguishable in many respects from the decision in *Bentas*, its emphasis on maximizing value is equally applicable to this dispute between General American and Intertrust. Based on the record before me, I conclude that a public auction is unlikely to yield an additional "serious bidder" for IGM. Because IGM more likely than not would not realize any benefit from a public auction and because a public auction would both take longer and be more expensive to execute than a private auction, the value of IGM, and, thus, the value of IGM's Members' ownership interests, will be maximized by a private auction conducted among its interested Members, General American and Intertrust. I turn next to the issue of whether the private auction should be conducted as an "English-style" open outcry auction or a single, sealed bid auction.

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[48] The record is unclear as to the extent to which the benefit of obtaining an additional bidder would outweigh the costs of the process that would be necessary to bring that new bidder to fruition. Because in this case the expense of running a public auction would be reasonably certain but the benefits of finding another bidder are highly uncertain because of the unlikelihood of finding an additional "serious bidder," I conclude that, at best, conducting a public auction would be a "wash" in terms of the money additional money IGM would spend and the benefit IGM would realize.

D. The Value of IGM's Members' Ownership Interests in the Company Will Be Maximized Through an "English-style" Open Outcry Auction

Having determined that IGM should be sold in a private auction between General American and Intertrust, the factors that Intertrust argues would weigh in favor of holding a single, sealed bid auction are less relevant than they otherwise would have been. For example, a sealed bid's ability to level the playing field between bidders when their access to information about the asset is asymmetrical is of no moment in this case because General American and Intertrust have equal knowledge of, or at least equal access to, the Company's key information. In addition, the opinion of Intertrust's auction expert Professor Bulow that a single, sealed bid would maximize value in this case was based on the assumption that IGM would be sold in a public auction process.[49]

In support of its argument that an auction should be conducted using a single, sealed bid, Intertrust relies heavily on auction theory, which states that the winner of an "English-style" auction often pays the second highest value plus the bid increment, and not necessarily its maximum value for the asset. For example,

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[49] Intertrust's other expert witness, Professor Guhan Subramanian, offered an opinion rebutting General American's assertion that an "English-style" auction always maximizes value. JX 96 at 28–30. Professor Subramanian, however, did not offer an opinion as to whether a single, sealed bid or "English-style" auction would maximize value in a private auction between General American and Intertrust. *See* Subramanian Dep. 146 ("I don't take any view as to whether a sealed bid is preferable to an open outcry.").

assume Party A and Party B are the only two bidders for an asset. A values the asset at 70 and B values the asset at 100. If the bid increment is 5, Intertrust avers that in an "English-style" auction B will win the auction at 75, and, thus, the owner of the asset will have lost out on the additional 25 that B, in theory, was prepared to pay. In contrast, in a single, sealed bid auction, Intertrust argues that B will be incentivized to present its best possible bid (*i.e.*, 100) for fear of losing the auction at a price that it was prepared to beat.

I am not persuaded, however, that Intertrust's hypothetical applies to the facts of this case. First, the hypothetical does not account for the fact that both General American (54%) and Intertrust (26%) have sizeable ownership stakes in IGM, which Professor Bulow referred to as "toeholds." Because of their "toeholds," General American and Intertrust simultaneously are buyers and sellers in this auction. Consequently, when one side reaches the highest price it was willing to pay for the asset, it still has an incentive to keep bidding because even if it ultimately loses the auction, because it is also a seller, it will benefit from driving the price as high as possible.

Additionally, there is no evidence in the record that suggests General American and Intertrust have widely divergent perspectives on IGM's value. Both parties have equal access to the Company's information and employees, both parties have expressed an interest in continuing to run the Company, and it appears

that neither party owns any other businesses that they could combine with IGM to realize material synergies or other financial benefits. There also has been no argument by either party that the other side has some material advantage, fair or otherwise, in terms of its ability to obtain financing and win an auction on that basis, rather than on the basis of bidding the maximum value for IGM. Therefore, on the record before me, I cannot conclude that the hypothetical posited by Intertrust actually is, or is likely to be, applicable to a private auction between General American and Intertrust.

General American and Intertrust both are backed by exceptionally successful and astute businessmen. Each of them is familiar with IGM's business and neither has any discernable advantage in an "English-style" auction such that the Court should consider and attempt to dampen that advantage. In the absence of any expert testimony that a single, sealed bid would be the more value maximizing process in a private auction held solely between General American and Intertrust,[50]

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[50] To the extent the issue was addressed at all, Professor Bulow did not give a definitive opinion. *See* Bulow Dep. 98-99 ("Q: I want to ask you a hypothetical. Assuming that it turned out, for whatever reason, that there were no serious bidders that enter the - - or that sought entry, and you had - - you just had the two owner groups bidding against each other, are the circumstances under which the open outcry auction in that hypothetical would be better relative to the sealed bid process for maximizing value? A: So assume we just had the two bidders and we're competing, they're competing in an auction and we're choosing open outcry versus sealed bid, *it could easily go either way*.") (emphasis added).

I see no reason why the parties should not engage in an "English-style" open outcry auction between them for control of IGM.

III. CONCLUSION

For the foregoing reasons, I will order the dissolution of IGM. In addition, I will order IGM to be sold in a private, "English-style" open ascending auction between General American and Intertrust. The minimum bid for the auction shall be set at $77 million in cash. I hereby direct General American and Intertrust promptly to confer and submit a proposed form of order implementing these rulings consistent with the other terms of the proposed private auction that were discussed at the conclusion of the evidentiary hearing and during the final argument on April 24, 2014.[51] I further order that in no event shall the auction for IGM be held later than May 28, 2014; that is, no more than thirty calendar days from, and inclusive of, Tuesday, April 29, 2014.

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[51] Based on the representations by both sides at the final argument, it appears that an important step, the selection of a mutually acceptable liquidating trustee, has occurred already. In addition, General American and Intertrust also appear to have agreed already to numerous other features of how the auction should be structured, such as the bid increment and the amount of the security deposit the bidders must provide to the liquidating trustee. One point of disagreement, however, was whether a third party wishing to join with either General American or Intertrust would have to submit a $1 million forfeitable deposit to be eligible to do so. I find this requirement to be vague, unhelpful, and unnecessary. Therefore, it shall not be included in the parties' final order.