

**SAN NICOLAS LAW OFFICE, LLC**  
JOEY P. SAN NICOLAS, ESQ (F-0342)  
3813 Mestisa Ave. Dandan Village, Saipan  
P.O. Box 505335  
Saipan, MP 96950  
Telephone: (670) 288-1073  
Mobile: (670) 287-1973  
Email: jpsn@sannicolaslaw.net

**TSUGAWA LAU & MUZZI LLC**  
CHRISTOPHER J. MUZZI 6939  
Admitted Pro Hac Vice  
Harbor Court  
55 Merchant Street, Suite 3000  
Honolulu, Hawaii 96813  
Telephone No.: (808) 531-0490  
Email: cmuzzi@hilaw.us

Attorneys for LOI LAM SIT

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS  
BANKRUPTCY DIVISION**

In re

Case No.: 1:bk-24-0002

IMPERIAL PACIFIC  
INTERNATIONAL (CNMI), LLC,

STALKING HORSE BIDDER LOI  
LAM SIT'S RESPONSE TO  
OBJECTIONS TO BREAKUP FEE IN  
DKT NOS. 389 AND 390

Debtor and Debtor-In  
Possession

**STALKING HORSE BIDDER LOI LAM SIT'S RESPONSE  
TO OBJECTIONS TO BREAKUP FEE IN DKT NOS. 389 AND 390**



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1 Stalking Horse Bidder LOI LAM SIT (“Mr. Sit”), by and through his  
2 undersigned counsel, respectfully submits this Response to that portion of the  
3  
4 Opposition by Joshua Gray to the Joint Motion of the Debtor and the Committee to  
5 Approve the Sale of the Debtor’s Assets, Dkt. No. 390, opposing a breakup fee to  
6  
7 Mr. Sit, which position was joined in by the Commonwealth of the Northern Mariana  
8 Islands (CNMI”), Dkt. No. 389.

9  
10 **I. BACKGROUND**

11 Originally, Debtor sought to sell substantially all of the assets (excepting  
12 certain gambling receivables that are likely mostly uncollectible) and the assignment  
13 of the CNMI Department of Public Lands lease under which the casino and partially  
14 built hotel facilities sit (the “DPL Lease”) for the sum of \$10,000.00. Dkt. No. 182.

15  
16 In order to address objections that the Debtor’s assets had not been  
17 appropriately marketed, the Committee retained an investment banking firm,  
18 Intrepid Investment Bankers LLC, to market the Debtor’s assets. Dkt. No. 276.

19  
20 Intrepid was unable to obtain a stalking horse bidder for the Debtor’s assets.

21  
22 Debtor’s counsel negotiated with Mr. Sit’s counsel a stalking horse bidder  
23 term sheet for a transaction in the amount of \$12.5 million whereby Mr. Sit would  
24 acquire substantially all of the Debtor’s assets (including certain gambling  
25 receivables that are likely mostly uncollectible); the assignment of the DPL Lease;  
26  
27 and an opportunity to negotiate with the CNMI for an assignment of the casino  
28

1 license, which if successful would result in an additional \$2.5 million to the estate.  
2 The Asset Purchase Agreement, which form was agreed to by the Debtor and the  
3 Committee, memorialized the stalking horse bidder terms and provided for a breakup  
4 fee of \$200,000 payable to Mr. Sit at closing if he was not the winning bidder at the  
5 auction and the sale closed with another buyer. Specifically, the Asset Purchase  
6 Agreement provided for a Breakup Fee to Mr. Sit as follows:  
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9  
10 **Section 8.01. Breakup Fee.** Seller shall pay to Purchaser the amount  
11 of \$200,000 (the “Breakup Fee”) in the event this Agreement is  
12 terminated as a result of either (i) an Event of Default by a Debtor, or  
13 (ii) a breach by a Debtor of a material term of, or failure to timely satisfy  
14 a condition to closing that is a Debtor’s obligation under this Agreement.  
15 The Breakup Fee shall constitute an administrative expense claim. If  
16 this Agreement is terminated because of a superior bid, then the  
17 Breakup Fee shall be payable at the time of Closing from the proceeds  
18 of an alternative transaction.

19 Dkt. No. 359.

20 If Mr. Sit had not entered into the Asset Purchase Agreement, there would not  
21 have been a Stalking Horse Bidder and, consequently, no auction would have been  
22 held on February 26, 2025 ChSt. But, Mr. Sit was designated as the Stalking Horse  
23 Bidder, Dkt. No. 359. Mr. Sit made his good faith deposit of \$1,250,000 into escrow  
24 on or about February 10, 2025 ChSt. And, there was an auction on February 26,  
25 2025 ChST, with an overbid that was \$450,000 more than Mr. Sit’s stalking horse  
26 bid. Dkt. No. 374. The overbidder was declared the winning bidder. *Id.* The form  
27 of the transaction, which was largely as desired by the Debtor and the Committee,  
28

1 and the overbid would not have happened if Mr. Sit had not been designated as the  
2 Stalking Horse Bidder.

## 3 4 **II. LEGAL ARGUMENT**

5 Mr. Sit is entitled to a breakup fee in the amount of \$200,000, under either the  
6 § 503(b) standard or the more lenient § 363 standard. *See Off. Comm. of Unsecured*  
7 *Creditors v. Bouchard Transp. Co. (In re Bouchard Transp. Co.)*, 74 F.4th 743, 750-  
8 57 (5<sup>th</sup> Cir. 2023).

### 9 10 **A. § 503(b)**

11 Under § 503(b), Mr. Sit must show that the breakup fee arose  
12 (1) “post-petition and as a result of actions taken by” the debtor; and that the fees  
13 were (2) actual and (3) necessary expenses of preserving the estate. *Bouchard*, 74  
14 F.4<sup>th</sup> at 750 (citations and quotation marks omitted).

15 Like in *Bouchard*, the first element is easily satisfied by the Debtor and  
16 Committee’s agreement to the Asset Purchase Agreement stipulating that Mr. Sit  
17 would receive a breakup fee of \$200,000 if he was not the winner bidder at the  
18 auction and the sale closed to the overbidder. 4 F.4<sup>th</sup> at 750 (concluding that the  
19 stalking horse bidder “made a deal with a debtor in bankruptcy, carried out its half  
20 of the bargain, and now it wants its expenses paid. That is a postpetition transaction  
21 covered by § 503(b).”).

1 Next, the breakup fee provided a number of benefits to the estate. As  
2 repeatedly stressed to the Court by the Debtor, an immediate sale of substantially all  
3 of the Debtor's assets is necessary in order to avoid dire results, likely leaving the  
4 estate very administratively insolvent. Mr. Sit's stalking horse bid allowed for the  
5 Debtor to keep on its critical timeline and to conduct an auction on February 26,  
6 2025 ChSt where an overbid was received. Without it there would have been no  
7 auction and no motivation for other bidders to come forward now, when they might  
8 have the opportunity to pick what they wanted from the Debtor's carcass for cheap  
9 after it collapsed.  
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11  
12

13 Finally, Mr. Sit has always conditioned his moving forward as the stalking  
14 horse bidder on receiving a breakup fee of \$200,000.00 since he initially sought to  
15 purchase substantially all of Debtor's assets and he would not have continued on as  
16 the stalking horse bidder if the Debtor did not seek approval of the breakup fee in  
17 connection with a sale of assets. *See* Dkt. No. 182. Like in *Bouchard*, the Court  
18 pre-authorized Mr. Sit to seek a breakup fee of \$200,000. 4 F.4<sup>th</sup> at 754. The  
19 minimum initial overbid was calculated on the assumption that \$200,000 was  
20 authorized for Mr. Sit's breakup fee. Just like in *Bouchard*, the overbid to beat Mr.  
21 Sit was "the exact amount needed . . . and not a penny more." 4 F.4<sup>th</sup> at 754. This  
22 suggests that the overbidder bid to beat Mr. Sit, meaning that his stalking horse bid  
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1 was necessary to achieve the overbid, which, net of the breakup fee, benefitted the  
2 estate by \$250,000.

3  
4 Thus, Mr. Sit is entitled to the \$200,000 breakup fee under § 503(b).

5 **B. § 363**

6  
7 “Section 363(b) incorporates the business judgment rule, familiar to corporate  
8 law. If the break-up fee and expense reimbursement were ‘necessary’ to provide a  
9 benefit to the estate, then they easily satisfy a deferential reasonableness standard.”  
10  
11 *Bouchard*, 4 F.4<sup>th</sup> at 755 (citation omitted).

12 Here, the breakup fee was 1.6% of the transaction amount. This percentage  
13 is almost half of the rule of thumb limit of 3%. *See* 3 Collier on Bankruptcy  
14 ¶362.02[7] Breakup Fees and Other Buyer Protections (“Courts have adopted as a  
15 rule of thumb a limitation on a breakup or topping fee of about 3 percent of the  
16 consideration the buyer will pay for the assets, including assumption of liabilities,  
17 although courts have approved higher amounts, up to about 5 percent of the  
18 consideration.”).

19  
20 The Debtor’s exercise of its business judgment in agreeing to a breakup fee  
21 of \$200,000 resulted in an overbid of \$450,000, meaning that the Debtor’s estate  
22 was enriched by a minimum of \$250,000 as a result of Mr. Sit serving as a stalking  
23 horse bidder, which also kept Debtor on its necessary time line to close a transaction  
24 to keep this case viable.  
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1 Debtor properly exercised its business judgment and Mr. Sit is entitled to  
2 payment of a breakup fee in the amount of \$200,000.00.  
3

4 **III. CONCLUSION**

5 The Court should approve the breakup fee in the amount of \$200,000  
6 payable at the time of closing from the proceeds of sale to the Successful  
7 Bidder.  
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9 DATED: Honolulu, Hawaii, March 20, 2025.  
10

11 /s/ Christopher J. Muzzi  
12 CHRISTOPHER J. MUZZI  
13 JOEY P. SAN NICOLAS  
14 Attorneys for LOI LAM SIT  
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