IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No. 3:06-CV-2136-P**
	§	
ABC VIATICALS, INC., C. KEITH LAMONDA, and JESSE W. LAMONDA, JR.	§	
	§	
Defendant.	§	

ORDER

Now before the Court is Angelo Diaz Gonzalez and Agency's (collectively "Agency") Motion for Reconsideration of Magistrate's Order, Docket No. 179, filed October 13, 2008. Also before the Court is Agency's Emergency Motion for Stay of Magistrate's Order and Sale Closing and for Expedited Treatment of Motion for Reconsideration ("Motion to Stay") , filed October 21, 2008. On October 22, 2008, the Court ordered expedited briefing of Agency's Motion to Stay. Pursuant to the Court's expedited briefing schedule, Receiver[1] and Examiner each filed a Response on October 23, 2008. Agency filed a Reply to Receiver's and Examiner's Responses, respectively, on October 23, 2008 and October 24, 2008. After considering the applicable law, the facts, and the briefing, Agency's Motion for Reconsideration is DENIED. Agency's Motion to Stay is DENIED as moot.

[1]The Securities and Exchange Commission ("SEC") indicated to the Court that it joins in the Receiver's Response.

I. Background

ABC Viaticals, Inc. ("ABC") is a company that operates in the viaticals and life settlement industry. In the viaticals business, brokers buy life insurance policies from insureds, then sell the policies for a profit to companies such as ABC. After purchasing the policies from the brokers, ABC would then sell fractionalized shares to investors.

C. Keith Lamonda and Jesse W. Lamonda (collectively the "Lamondas") directed ABC's operations until this Court appointed Michael J. Quilling as the Receiver for ABC.[2] At the time the Receiver was appointed, ABC's assets primarily consisted of fifty five (55) life insurance policies with a combined death benefit face value of $236,240,033 (the "Policies"). As of September 17, 2008, there were 3,867 active investor claims of interest in the Policies (collectively "Investors") totaling in excess of $119 million.

The Receiver conducted an investigation into ABC's use and allocation of investor funds. The investigation revealed that ABC had been paying the premiums on the Policies with new investor funds, and that such funds had long since been exhausted. In an effort to keep current on the premiums and prevent the Policies from expiring, the Receiver obtained and liquidated other assets owned by the Lamondas and asserted claims against a number of entities on behalf of the Receivership estate. The Receiver also obtained a line of credit from a bank. Currently, the line of credit allows the Receiver to pay the premiums for approximately eight more months.

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[2]The Receivership was appointed at the SEC's request after it brought an action against the Lamondas for securities fraud. The SEC claimed, and the Court agreed, that a Receivership was necessary to protect the interests of the investors and prevent the Lamondas from disbursing ABC's assets.

On February 1, 2008, the Receiver filed an Unopposed Motion to Solicit Bids for Purchase of Policies and Approve Bid Procedures ("Bid Motion"), which the Court approved by an Order dated February 4, 2008 ("Bid Order"). The purpose of the approved bid solicitation methods and procedures was to determine the market value of the Policies. Although a number of entities contacted the Receiver to obtain access to information about the Policies, only three bids were made. The highest bid was for $27.1 million by Silver Point Capital Fund, L.P. ("Silver Point").

In accordance with the Bid Order, the Receiver accepted the high bid and entered a purchase and sale agreement with Silver Point, which provided for an auction and for overbids to occur.[3] The Receiver, thereafter, filed a Motion to Sell all Insurance Policies and Approve Purchase and Sale Agreement ("Sale Motion"). Agency, which represents a group of approximately 400 Investors, filed an objection to the Sale Motion. Agency objected that the Receiver had failed to update the value of the Policies by obtaining updated life estimates of the insureds and had failed to adequately market the sale of the Policies. The vast majority of remaining Investors joined Agency's objection.[4]

On September 23 and 24 Magistrate Judge Ramirez conducted a hearing with respect to the Sale Motion ("Sale Hearing"). The Sale Hearing began with an auction of the Policies, which was attended by three bidders, including Silver Point. The highest bid at auction was $33.5 million, made by Settlement Group, Inc. ("SGI"). Magistrate Judge Ramirez then heard testimony and evidence concerning the viability of the sale of the Policies to SGI under the Sale Motion. Agency

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[3]As the high bidder, under the purchase and sale agreement Silver Point is bound and entitled to a $1 million "break-up"fee. If Silver Point withdraws its bid, it must pay the Receivership estate a $1 million penalty. Similarly, if the Receiver sells the Policies to another bidder at auction, the Receivership estate must pay Silver Point a $1 million penalty.

[4]Only two investors expressed support for the Sale Motion.

renewed its objections and requested that the Sale Hearing be continued for three weeks to allow time for its valuation expert, Scott Gibson, to evaluate the value of the Policies by obtaining updated life estimates on the insureds and to allow dissemination of Mr. Gibson's findings to the bidders. Agency requested that at the conclusion of three weeks a supplemental auction take place starting with SGI's high bid (the "3 Week Proposal"). In an Order dated October 6, 2008, Magistrate Judge Ramirez overruled Agency's objections and 3 Week Proposal and approved the sale of the Policies to SGI by granting the Sale Motion (the "Magistrate's Order").

II. Legal Standards

A. Appeal From Magistrate's Ruling in a Nondispositive Matter

Receiver's Sale Motion is a non-dispositive motion[5] referred to the United States Magistrate Pursuant to 28 U.S.C. § 636. An appeal of a magistrate judge's ruling in a nondispositive matter is governed by Federal Rule of Civil Procedure 72(a), which states that a district court "shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law." "The 'clearly erroneous' standard applies to the factual components of the magistrate judge's decision." *Lahr v. Fulbright & Jaworski, LLP*, 164 F.R.D. 204, 208 (N.D. Tex. 1996) (quoting *Smith v. Smith*, 154 F.R.D. 661, 665 (N.D. Tex. 1994)). The district court may not alter a factual finding of a magistrate judge, unless the court is left with a definite and firm conviction that a mistake has been committed. *Id*. If a magistrate judge's account of the evidence is plausible in light of the record viewed in its entirety, the district court may not reverse it. *Id*.

[5]In her order, Magistrate Judge Ramirez explicitly stated, "No party contends that this motion is dispositive of the case." (Magistrate's Order n.1.)

The "contrary to law" standard applies to the magistrate's legal conclusions. As such, these conclusions are freely reviewable by this Court, which employs a *de novo* standard of review. *See id*. "The abuse of discretion standard governs the review of 'that vast area of . . . choice that remains to the [magistrate judge] who has properly applied the law to fact findings that are not clearly erroneous.'" *Id*. (quoting *Smith*, 154 F.R.D. at 665).

B. Motion for Reconsideration of Judgment

Agency also moves under Federal Rule of Civil Procedure 59(e) for reconsideration of the Magistrate's Order. "Motions for reconsideration have a narrow purpose." *AMS Staff Leasing, N.A., Ltd., v. Associated Contract Truckmen, Inc.,* No. Civ. A. 304CV1344D, 2005 WL 31428484, at * 3 (N.D. Tex. Nov. 21, 2005). Relief pursuant to Rule 59(e) is only appropriate where the movant clearly demonstrates: (1) a manifest error of law or fact; (2) the existence of newly discovered evidence; (3) an intervening change in controlling law; or (4) the motion is necessary to prevent manifest injustice. *See Nat'l Athletic Trainers' Ass'n, Inc., v. U.S. Dep't of Health & Human Servs.,* 394 F. Supp. 2d 883, 897 (N.D. Tex. 2005) (citations omitted). "Such motions are not 'the proper vehicle for rehashing old argument or advancing theories of the case that could have been presented earlier. A motion for reconsideration based on recycled arguments serves only to waste the court's resources." *AMS Staff Leasing, N.A., Ltd.,* 2005 WL 31428484, at * 3 (quoting *Wolf Designs, Inc. v. Donald McEvoy Ltd., Inc.,* No. Civ.A.3:03-CV-2837-G, 2005 WL 827076, at *1 (N.D. Tex. April 6, 2005)).

III. Analysis

Agency's asserted grounds for relief under Rule 59(e) and 72(a) are closely related. Agency claims that three factual findings made by Magistrate Judge Ramirez are clearly erroneous. Agency also contends that Magistrate Judge Ramirez committed clear error by misconstruing Mr. Gibson's expert opinion.

Agency relies exclusively on these same arguments to support its additional claim that the Magistrate's Order contains manifest errors of law or fact. Agency, however, does not cite to a single legal conclusion reached by Magistrate Judge Ramirez that it claims was erroneous. Accordingly, the Court's review will be limited to the clearly erroneous standard reserved for factual components of a magistrate's determinations.

Agency also seeks relief to prevent manifest injustice. For the reasons discussed below, the Court is of the opinion that Magistrate Judge Rameriz's findings of fact are not clearly erroneous and that reversal of the Magistrate's Order will not prevent manifest injustice.

A The Magistrate's Findings of Fact are not Clearly Erroneous

Agency proffers three findings of fact made by Magistrate Judge Ramirez that it claims are clearly erroneous. Agency additionally submits that the manner in which Magistrate Judge Ramirez construed certain statements made by Mr. Gibson constitutes clear error. The Court addresses each of Agency's contentions in turn.

1. Contested Finding No. 1

At the conclusion of the Sale Hearing, Magistrate Judge Ramirez framed her analysis. She stated, "[T]he law requires that I consider the best interests of the investors in this case. And in

doing that I have to weigh the potential benefits and gain of a three week delay versus the potential downside or losses that could result if I were to grant this delay." (Hr'g Tr. Vol. 2 at 160:2-7.) After she framed the issue, she went on to enumerate a few of her considerations.[6] One negative aspect of the 3 Week Proposal that Magistrate Judge Ramirez observed was that granting the 3 Week Proposal "could cause the loss of the current bidders." (*Id.* at 160:17-19.)

Agency seizes on this statement as a "finding of fact" significant to Magistrate Judge Ramirez's decision, notwithstanding that the Magistrate's Order is devoid of an explicit finding regarding the loss of bidders. Agency contends that this finding is contrary to the record and is, therefore, clearly erroneous. Agency relies on the testimony of two witnesses to buttress its contention. First, Agency cites the testimony of SGI's representative at the Sale Hearing, which does did not indicate that SGI would withdraw its bid if the 3 Week Proposal were granted. Second, Agency cherry picks a statement from the transcript in which the Receiver states his belief that SGI will still close the sale even if the 3 Week Proposal were granted. (Mot. Reconsider ¶ 24 (quoting Hr'g Tr. Vol. 2 at 144:12-24).)

To the extent that Magistrate Judge Ramirez's statement that granting the 3 Week Proposal could result in the loss of the current bidders can be considered as a finding of fact, it is not clearly erroneous. At the auction there were three bidders on the Policies. The record unequivocally establishes that one of the bidders, Highland Capital, will no longer stand behind its bid. (Hr'g Tr. Vol. 2 at 145:2-4.) As for SGI, after the Receiver stated his belief that SGI will still "be around" to close if the 3 Week Proposal were granted, he went on to testify that his opinion was informed by

[6]Magistrate Judge Ramirez refrained from making all of her findings from the bench. Instead, the Magistrate's Order contains the entirety of her factual findings.

the very fact that SGI will no longer be committed to closing. Thus, SGI could afford to stand behind their bid for the time being then "[t]hey can simply say, we couldn't close, or delays could come up and they could walk."[7] (*Id.* at 144:25-145:1.) Finally, the Receiver expressed his fear that even Silver Point, the bidder that would suffer a $1million break-up fee if it were to rescind its bid, may withdraw. Indeed, the Receiver testified that he believed all of the bidders will take the position that they are no longer bound by their bids if the 3 Week Proposal were granted.[8] (*Id.* at 145:13-17.) Far from being contradictory, this testimony demonstrates that the record provides substantial support for a finding that granting the 3 Week Proposal *could* (not would) cause the loss of the current bidders. Such a factual finding, therefore, is not clearly erroneous.

2. Contested Finding No. 2

After setting forth in detail the factors she considered that demonstrated the uncertainty and negative consequences of granting the 3 Week Proposal, Magistrate Judge Ramirez found that going forward with the Sale Motion is "the only viable option and is in the best interests of the investors at this time." (Magistrate's Order ¶ 40.) Agency contends that this finding is clearly erroneous because it too is contradicted by the record, which establishes that the 3 Week Proposal is also a viable option. The Court does not agree.

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[7]Subsequent events have shown the Receiver's appraisal of SGI's position to be predictive. In its Response to Agency's Motion to Stay, the Examiner states that SGI has indicated that it "would very likely not close [on the sale of the Policies] if afforded any excuse to be released from the current contract." (Examiner's Mot. Stay Resp. ¶ 4.)

[8]The legitimacy of the Receiver's concern is reinforced by the plain language of the Bid Order, which all the parties are operating under. Upon completion of the initial bidding and receipt of a high bid, the Bid Order calls for a single auction in which a winning purchaser is to be declared. (Bid Order ¶ 9.) The Bid Order further states that the winning purchaser must enter a purchase and sale contract within three days of the auction. (*Id.)* The Bid Order does not provide for the contingency of more than one auction or that the initial high bidder—Silver Point in this case—remain bound to its break-up fee if it was not declared the winning purchaser at auction.

As Magistrate Judge Ramirez framed the issue, the viability of the options before the court—either moving forward with the Sale Motion or granting the 3 Week Propsal—turns on what is in the best interest of the investors. This finding requires balancing the benefits and detriments of each option. The record demonstrates that the benefit of granting the 3 Week Proposal is that it provides the Investors with the opportunity to recover the fair value of their investment in the Policies. (Mot. Reconsider ¶ 27 (citing record evidence).) This recovery, however, is far from certain. Agency's own valuation expert, Mr. Gibson, testified that the current bidders have likely already done the valuation assessments that are at the heart of Agency's 3 Week Proposal. (Hr'g Tr. Vol. 148:20-149:2.) At best, the 3 Week Proposal "*may*" hold the current bidders "a little more accountable , and . . . *may* bring in some additional bidders." (*Id.* at 149:5-9.) This uncertainty underscores the detriment of granting the 3 Week Proposal. As discussed above, the 3 Week Proposal risks losing the current bids and, if no additional bids are brought in, then "the Receiver will be forced to crawl back to others who have expressed interest and plead with them to buy the [Policies] as quickly as possible to avoid financial ruin." (Receiver's Mot. Stay Resp. ¶ 9.) One year from now, the Policies will be a complete loss. (Hr'g Tr. Vol. 2 at 34:21-23.)

In contrast, the benefits and detriment of granting the Sale Motion are identical. Moving forward with the sale to SGI provides the investors with the certainty of closing on SGI's $33.5 million bid. On the other hand, the Investors will also be certain that they will be closing on a sale for substantially less than the approximate $236 million face value of the Policies.[9]

[9]The Receiver estimated that the Investors' net recovery would be approximately 10% of the face value of the Policies and 20% of their investment. While this recovery is no doubt far below what the investors hope for, the Receiver testified that, to his knowledge, 26.53% of face value is the highest return ever received in similar cases. (*Id.* at 36:7-14.)

Magistrate Judge Ramirez determined that the certainty of the Sale Motion was in the best interest of the investors over the uncertainty of the 3 Week Proposal. The Court will not engage in a *de novo* review of her factual finding. Magistrate Judge Ramirez's finding as to the best interest of the investors, and thus, the viability of the each of the two proposals is supported by substantial evidence in the record. Accordingly, it is not clearly erroneous.

3. Contested Finding No. 3

The Magistrate's Order includes a finding that the solicitation process utilized by the Receiver was designed to solicit the maximum sale price for the Policies. Agency submits that this finding is clearly erroneous in that, like its other contested findings, the record demonstrates otherwise. As support, Agency cites the fact that the Receiver marketed the policies in an "as-is" condition and Mr. Gibson's testimony that the Receiver should have updated the value of the Policies to maximize the sale. Agency also cites the Receiver's acknowledgment that he did not retain an expert to update the value of the Policies, nor did he actively advertise the sale.

As an initial matter, the Court notes that the bid solicitation procedures were approved by this Court in the Bid Order. The Bid Order summarily adopted the procedures proffered by the Bid Motion. Among the bidding procedures proffered and approved by the Court was the Receiver's intention to "immediately try to sell" certain of the Polices and to also sell the rest of the Policies immediately if an acceptably high price could be obtained. (Bid Mot. ¶ 5.) No mention of marketing or updating the value of the Policies was made in the approved solicitation procedures and Agency did not object to these procedures at that time.

Moreover, the record provides substantial support for Magistrate Judge Ramirez's determination that the solicitation procedures were designed to solicit the maximum sales price. The Receiver testified that he did not actively advertise the sale of the Policies because "[t]he people who buy these types of [Policies] are a fairly small community" and even less people could afford to pay for a portfolio the size of the Policies. (Hr'g Tr. Vol. 2 at 37:25-38:5.) The best way to market the Policies, according to the Receiver, was word of mouth advertising. (*Id.* at 38:17-18.) To that end, the Receiver testified that both he and the Examiner had numerous contacts in the industry with whom they had communicated and that he had retained National Viatical, a company that is also well-known in the industry. (*Id.* at 38:14-20.) Additionally, the Receiver was contacted early-on by Silver Point, an eventual bidder, and a number of banks inquiring about the Policies. (*Id.* at 38:6-13.) No less than sixteen presumably interested parties signed a confidentiality agreement and paid a fee to gain access to information concerning the Policies that the Receiver had posted on a website pursuant to the Bid Order. (*Id.* at 40:4-13; Hr'g Ex. 85.) The Receiver succinctly concluded, "And so I really believe most people in the industry that want to buy a portfolio of this size and nature were aware of it. . . . I don't think it was worth advertising in the USA Today or the Wall Street Journal, because . . . they cost a lot of money and I don't think it's necessary." (*Id.* at 38:21-39:2.) Not only does this record evidence support the Magistrate's Order, but Agency has not cited a single item of evidence in the record that refutes the Receiver's decision as to how best and most cost efficiently market the Policies.

Similarly, the Receiver's testimony supports his decision not to obtain an updated estimate of the Policies' value. Throughout his testimony the Receiver listed several reasons justifying his

decision. First, the Receiver testified at length as to his opinion, based on being a receiver and special counsel in other viaticals cases, that life expectancy estimates are simply a guess, and they are usually wrong. (Hr'g Tr. Vol. 1 at 121:17-125:6; Hr'g Ex. 67.) Second, the Receiver stated his belief that different industry participants use different methods of valuation, and that life expectancy certificates are not the "standard measure." (Hr'g Tr. Vol. 2 at 65:11-17; 72:10-13) ("Everybody out there in this business has their own way of evaluating life expectancies, whether they use actuary tables, whether they use some other methodology."). The Receiver's opinion was that the fair market value of the Policies was best established by determining what the market was willing to pay. (*Id.* at 73:8-19.) Finally, while the Receiver acknowledged that life expectancy certificates are "tied to value" he opined that the bidders on the Policies had likely obtained a value estimate based on similar methodologies advocated by Agency in its 3 Week Proposal. Indeed, Mr. Gibson confirmed the Receiver's belief and testified that an updated valuation may not have any influence on the current bidders. (*Id.* at 148:20-149:2.)

Agency persists that Mr. Gibson's testimony that a sale of the Policies would be maximized by updating the life expectancies undercuts Magistrate Ramirez's factual finding. However, "where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *In re Luhr Bros. Inc., v. Shepp,* 157 F.3d 333, 337 (5th Cir. 1998) (quoting *Anderson v. City of Bessemer City,* 470 U.S. 564, 574 (1985)).

Additionally, Magistrate Judge Ramirez was, in effect, called upon to make a credibility determination between the two conflicting opinions of the Receiver and Mr. Gibson. Agency flagrantly attacks the credibility and bias of the Receiver's opinion as to the Sale Motion because he

"admitted that his fear of being sued under the purchase and sale agreement he had signed with [Silver Point] precluded him from supporting the 3 Week Proposal." (Mot. Reconsider ¶¶ 10, 22, 32.) Magistrate Judge Ramirez's decision to give more weight to the opinion of the Receiver is entitled to great deference by this Court. *See In re Luhr Bros. Inc.,* 157 F.3d at 338 (greater deference given to fact finder's credibility determinations). This finding of fact was not clearly erroneous.

4. Contested Reliance on Expert's Testimony

Agency contends that Magistrate Judge Ramirez committed clear error by giving undue weight to Mr. Gibson's admission that the current bidders have likely already engaged in an analysis similar to the one submitted in the 3 Week Proposal. Agency argues that Magistrate Judge Ramirez misconstrued this statement to conclude that the 3 Week Proposal would not draw in any additional bidders and that it would not have the potential of increasing the current bidders' bids.

The record does not support Agency's perception of the Magistrate's Order. As discussed at length above, Magistrate Judge Ramirez recognized the potential of the 3 Week Proposal allowing the investors to achieve a greater return. However, she balanced this against the uncertainty involved. Her citation to Mr. Gibson's admission merely indicates her logical recognition that the uncertainty is magnified by the fact that the current bidders have already engaged in an analysis similar to the one championed by Agency and Mr. Gibson. There is no clear error in Magistrate Judge Ramirez's interpretation of Mr. Gibson's testimony.

B. The Motion is Not Necessary to Prevent a Manifest Injustice

The Court agrees with Agency that the magnitude of the Investors' loss in this case is disheartening. Agency, however, erroneously places the blame for the imminent loss on the Magistrate's Order approving the Sale Motion, rather than directing its ire where it properly belongs—at the Lamondas who syphoned approximately $19 million in Investor funds for personal use instead of applying it to pay the Policies' premiums.

Furthermore, the record does not reflect that granting Agency's Motion for Reconsideration and implementing their 3 Week Proposal will necessarily prevent a manifest injustice. The loss the Investors will suffer by the Sale Motion does not appear to be as significant as Agency makes out. Agency and the Investors are seemingly operating under the assumption that the 3 Week Proposal may net the Investors something close to the $236 million face value of the Policies or the 2:1 return on their investment guaranteed by the Lamondas. (*See* Examiner's Rep. Mot. Sell ¶¶ 10-12 (summarizing Investor objections to the Sale Motion).)

While the Court is sympathetic to the Investors' plight, the Examiner's Report indicates a number of factors that lead to the conclusion that under no realistic circumstances could the Investors ever recover anything close to the face value of the Policies. First, it must be recognized that these investments are a product of fraud perpetrated by the Lamondas. The investments were marketed as a guaranteed 2:1 payout within a three to six year period. (*Id.* at ¶ 16.) In actuality, the bonds that purportedly guaranteed Investor return at the end of the holding period were not real. (*Id.* at ¶¶ 23-34.) In addition, the life expectancy estimates on the Policies are inaccurate; perhaps off by as much as 100%, which indicates an inflated face value. (*Id.* at ¶ 45.) Second, even if all of the Policies

were to immediately mature, the Investors would still face attendant costs and tax consequences. After policy and premium costs, the Examiner estimated that the net income on the roughly $236 million face value wold be reduced to $146 million. (*Id.* at ¶ 42.) Significantly, the Investors would then be liable for another 30-35% tax on their return. (*Id.* at ¶¶ 35-40.) Thus, even if the Policies immediately matured—a best case scenario—at most the net revenue of the Policies is under $100 million. (*Id.* at ¶ 42.) Finally, the Examiner's Report indicates that, as a general rule, "the secondary market for life settlement contracts is only 10-15% of its face value." (*Id.* at ¶ 42.) Viewed in this light, a $33.5 million bid for the Policies is a decidedly more enticing option than the bleak picture Agency paints.

Even more significant, for the reasons previously discussed, it is possible that the 3 Week Proposal could result in a greater injustice by causing additional, if not total, Investor loss. The possibility of greater loss is highlighted by the fact that four weeks have elapsed since the issuance of the Magistrate's Order and no new bidders have come forward and committed to submitting a bid in excess of $33.5 million.[10] During the intervening time the SEC and the Examiner have changed their position from previously being unopposed to the 3 Week Proposal to now supporting the Receiver and vehemently opposing any further delays to a sale of the Policies.

In contrast to the 3 Week Proposal, the Magistrate's Order assures the Investors at least a partial return of their investment. Magistrate Ramirez heard from the parties and engaged in a

[10]Agency states that it has identified a "party with interest in *possibly* submitting a bid for substantially more than the $33.5 million purchase price offered by SGI." (Mot. Stay ¶ 6) (emphasis added). This contention is too vague to convince the Court that the 3 Week Proposal now poses any less of a risk to the Investors' interest than at the time of the Sale Hearing.

thoughtful analysis as to the best interest of the Investors. Overruling the Magistrate's Order will not prevent a manifest injustice.

IV. Conclusion

For the foregoing reasons, the Court DENIES Agency's Motion for Reconsideration. Agency's Motion to Stay is DENIED as moot.

IT IS SO ORDERED.

Signed this 30th day of October 2008.

JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE