

Hybrid offers \$55M for bankrupt Fisker in bid war (Update)

January 13 2014, by Randall Chase

Hybrid Technology, led by Hong Kong billionaire Richard Li, has bid \$55 million for Fisker Automotive's assets, just days after a bankruptcy judge in Delaware rejected Hybrid's plan to take over the failed electric-vehicle maker in a private sale.

Hybrid said in court papers Monday that it's offering \$30 million in cash and would cancel \$25 million in debt that Fisker owes Hybrid as its senior secured lender. Hybrid also promised that at least \$5.5 million of the cash portion will go to Fisker's unsecured creditors if they switch to backing Hybrid instead of rival suitor Wanxiang Group as the so-called "stalking horse bidder" in the auction.

At a hearing Monday afternoon, a Fisker attorney told U.S. Bankruptcy Judge Kevin Gross that Fisker will ask the court to take the uncommon step of designating Hybrid and Wanxiang, the Chinese auto parts conglomerate, as joint stalking horse bidders.

"We are very, very happy with the position that we find ourselves in," said Fisker attorney Ryan Preston Dahl, adding that Fisker is evaluating whether to hire an investment adviser to help it analyze the competing proposals from Hybrid and Wanxiang. Dahl told the judge that attorneys were still trying to reach agreement on whether Hybrid should continue providing financing to Fisker during the bankruptcy case, or be replaced as bankruptcy lender by Wanxiang.

Hybrid attorney Peter Benvenuti said his client is willing to continue in

its role as Fisker's bankruptcy lender, but that it has concerns about proposed bidding procedures and wants "a level playing field." He did not offer details.

In submitting its new proposal Monday, Hybrid also reversed its position on buying the former General Motors site in Wilmington, Delaware, where Fisker had planned to make cars. Previously it said it had no interest in building cars in the state, but Hybrid spokeswoman Megan Grant said in an email Monday that Hybrid plans to use the Delaware plant to "meet consumer demand and address market conditions."

Wanxiang, in making a \$35.7 million cash bid for Fisker, had previously said it would continue developing and designing a second-generation line of Fisker vehicles, and make them at the shuttered GM plant once the cars were ready for mass production in large volumes. In a separate bankruptcy case, Wanxiang recently purchased Fisker's former battery supplier, A123, which is now known as B456 Systems Inc.

Gov. Jack Markell, whose administration provided \$20 million in loans and grants to Fisker as an incentive to build cars in Delaware, has supported efforts that might lead to vehicle production resuming at the plant as the result of Fisker's bankruptcy. Markell spokeswoman Cathy Rossi confirmed that the governor and senior staff officials have talked to representatives of both Hybrid and Wanxiang to convey the state's interest in bringing manufacturing back to the former GM plant.

"Nothing is certain at this early stage in the process, but these are potentially good developments for Delaware," Markell's economic development director, Alan Levin, said in a prepared statement. "The auction process appears already to have led to improved terms for creditors, and also to additional interest in potentially utilizing the Boxwood Road facility."

Fisker filed for bankruptcy protection in November. The move came after the company drew \$192 million on the Obama administration's \$529 million green-energy loan before U.S. energy officials suspended funding in 2011. Federal officials suspended the loans after Fisker failed to meet several sales and production milestones for its \$100,000 Karma luxury car. The Karma's problems included vehicle fires and recalls, problems with battery packs, the bankruptcy of Fisker's primary battery supplier A123 Systems, and inventory losses from Superstorm Sandy, which destroyed hundreds of vehicles at a port in New Jersey.

Hybrid recently paid \$25 million for the DOE's outstanding loan to Fisker, which resulted in a loss to U.S. taxpayers of \$139 million. Hybrid is still looking to recover the remaining loan and, as new senior secured lender, had wanted to take control of Fisker. Unsecured creditors balked and threw their support toward Wanxiang and its \$35.7 million cash offer as the starting bid in a competitive auction.

On Friday, Gross ordered that Fisker assets be sold at auction and capped Hybrid's credit bid ability at \$25 million. Hybrid said Monday in court documents that it is prepared to fight that decision.

"Hybrid believes that the ruling was erroneous, intends to seek appellate review or other relief as promptly as practicable, and expressly reserves all of its rights in that regard," attorneys for the company wrote in the filing.

An attorney for Hybrid asked Gross on Monday to sign a final order and judgment regarding Friday's ruling so that the appeals process could start, but the judge said he needed time to consider the request, as did Fisker attorneys. Attorneys for the creditors committee objected to the request, arguing that Friday's ruling involved only process issues, and that if Hybrid wins the resulting auction, the ruling is irrelevant.

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