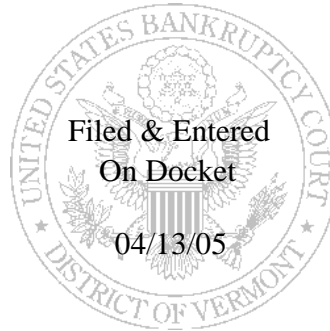


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

**FiberMark, Inc.,
FiberMark North America, Inc., and
FiberMark International Holdings, LLC,
Debtors.**



**Chapter 11 Cases
Jointly Administered
04-10463**

ORDER

DENYING DEBTORS' MOTION

**FOR ORDER ESTABLISHING EXPEDITED PROCEDURES FOR, AND SAFEGUARDING ESTATE RESOURCES
SOUGHT TO BE USED IN CONNECTION WITH, RESOLVING CLAIMS TRADING ISSUES THAT HAVE
AGGRAVATED INTERCREDITOR DISPUTE AND HALTED PLAN CONFIRMATION PROCESS**

On March 21, 2005, the Debtors filed a Motion for an Order Establishing Expedited Procedures for, and Safeguarding Estate Resources Sought to be Used in Connection with, Resolving Claims Trading Issues that have Aggravated Intercreditor Dispute and Halted Plan Confirmation Process (doc. # 1333) (the "Debtors' Procedure Motion"). In the Debtors' Procedure Motion, the Debtors request that the Court establish procedures to initiate and expedite litigation between certain members of the Official Committee of Unsecured Creditors (the "Committee") who are in sharp disagreement over the terms of the post-confirmation governance of the reorganized Debtors¹ and accuse one another of violating this Court's Order Approving Specified Information Blocking Procedures and Permitting Trading in Securities of the Debtors Upon Establishment of a Screening Wall (doc. # 684) (the "Trading Order") and breaching their fiduciary duties as members of the Committee. The Debtors' Procedure Motion requests that the Court order that any costs associated with such litigation be borne by the creditors themselves and not the Debtors' estates.

The Debtors' Procedure Motion provided this Court with its first notice that there might be a violation of the Trading Order.²

¹ Pursuant to an arrangement with the Debtors under the Original Proposed Plan, the Committee assumed responsibility for drafting the governance documents for the reorganized Debtors.

² The Debtors' Procedure Motion did not state that the Debtors suspected a violation of the Trading Order, but rather recited that the Debtors believed AIG and Post suspected that Silver Point had violated the Trading Order (doc. # 1333 at pp. 8-10). The Trading Order specified that:

"to the extent the parties charged with enforcing this screening wall procedure (namely, the Debtor, the Debtor's counsel, the Office of the U.S. Trustee and the Committee's counsel) have reason to believe that any member of the Committee has violated this order of the screening wall process, they are to report such suspicion of violation by filing 'a notice of suspected violation' with the Court promptly..."

None of the parties has filed a notice of suspected violation.

CIRCUMSTANCES AND ALLEGATIONS GIVING RISE TO THE PRESENT STALEMATE

The dispute which was the impetus for the Debtors' Procedure Motion involves three of the four current members of the Committee, AIG Global Investment Corp. ("AIG"), Post Advisory Group, L.L.C. ("Post") and Silver Point Capital, L.P. ("Silver Point"), and revolves primarily around allegations of breach of fiduciary duties and violations of the Trading Order (collectively, the "Allegations"). During the course of this case, Silver Point has traded and acquired a majority of the outstanding claims which, under the terms of the Original Proposed Plan, place Silver Point in the position of majority stockholder in the reorganized Debtors. AIG and Post, which were formerly the first and second largest note holders, respectively, have thus been displaced and now find themselves in the position of minority shareholders in the reorganized Debtors as a result of Silver Point's aggregation of claims. The claims acquired by Silver Point include the claims of various officers and managers of the Debtors as well as the claim of Solution Dispersions, a former member of the Committee. AIG and Post insist that the governance documents for the reorganized Debtors must contain terms that protect minority shareholders; Silver Point rejects these terms. Ostensibly in response to the stalemate, AIG and Post objected to the plan that was filed on November 12, 2004 as a consensual plan (doc. # 740) (referred to herein, including amendments, as the "Original Proposed Plan"). The disagreement among the Committee members regarding the governance documents ultimately resulted in the Debtors' Withdrawal of the Original Proposed Plan (docs. ## 1025 and 1332).

The Committee, and AIG and Post acting together, assert that sufficient facts exist to suspect that Silver Point violated the Court's Trading Order by compromising the screening wall it agreed to construct and honor (docs. ## 733, 1378 and 1375). Silver Point, on the one hand, and AIG and Post, on the other, also accuse each other of breaches of fiduciary duties (docs. ## 1375 and 1377).

On March 29, 2005, the Committee filed an Application to retain Klee, Tuchin, Bogdanoff & Stern, LLP, *Nunc Pro Tunc*, as Special Counsel to the Committee (doc. # 1352) (the "Klee Application"). In the Klee Application, the Committee states that its counsel has a conflict of interest with regard to the dispute among members of the Committee and therefore needs to retain special counsel to assist the Committee in investigating the Allegations. The Committee asserts it has the statutory right and obligation to conduct such an investigation notwithstanding the fact that the Allegations involve primarily the conduct of Committee members. The Committee relies upon the Trading Order as an additional source of authority for it to investigate the Allegations (doc. # 1352 at pp. 3-4).

PROCEDURAL RESPONSE TO THE ALLEGATIONS

After considering the Allegations and the underlying circumstances, as set forth in the Debtors' Procedure Motion, the Klee Application, and the responses to both, the Court *sua sponte* issued an Order

to Show Cause Why an Examiner Should Not Be Appointed (doc. # 1354) (the “Order to Show Cause”). On April 8, 2005, the Office of the United States Trustee (the “UST”) filed a response to the Order to Show Cause which opposed both the Debtors’ Procedure Motion and the Klee Application (doc. # 1392) (the “UST Response”). The UST Response discloses that the UST has conducted a preliminary inquiry of the Allegations and although it has not reached any conclusion, the UST requested entry of an order directing the UST to appoint an independent examiner to investigate the Allegations and report directly to the Court.

In their responsive papers to the Order to Show Cause, the Debtors support the appointment of an examiner and appear to retract the request for the relief sought in the Debtors’ Procedure Motion (doc. # 1393) (the “Debtor’s Response to the Order to Show Cause”). The Debtors point to the “ever-escalating charges and counter-charges” among the Committee members as the basis for their conclusion that the appointment of an examiner is warranted at this time (doc. # 1393, pp.5-6).

RULING


The Court finds the Debtors’ Response to the Order to Show Cause to be tantamount to a retraction of the Debtors’ Procedure Motion. However, since the Debtors have not withdrawn their motion the Court enters this order ruling on that motion.

The Court is persuaded that the procedure proposed in the Debtors’ Procedure Motion would not be as effective, expeditious or comprehensive as an investigation by an independent third party. For this reason, as well as the other grounds set forth in the Debtors’ Response to the Order to Show Cause,

IT IS HEREBY ORDERED that the Debtors’ Procedure Motion is DENIED.

SO ORDERED.

April 13, 2005
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge