

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT

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In re:  
FIBERMARK, INC.,  
FIBERMARK NORTH AMERICA, INC., and  
FIBERMARK INTERNATIONAL HOLDINGS, INC.,  
Debtors.

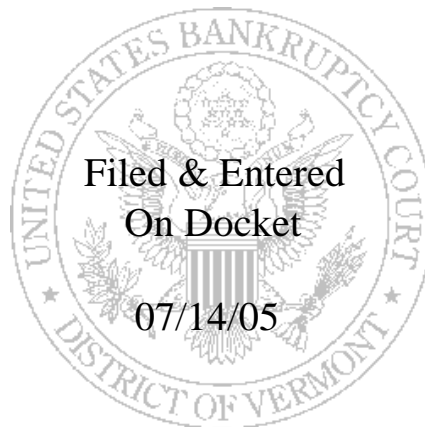
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Chapter 11 Case  
# 04-10463  
Jointly Administered

**CASE MANAGEMENT ORDER**  
**SETTING FORTH THE COURT'S PRELIMINARY RESPONSE TO THE EXAMINER'S REPORT**

**CONFIDENTIAL BY ORDER OF THE COURT**  
**ISSUED UNDER SEAL PURSUANT TO 11 U.S.C. § 107**

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**CASE MANAGEMENT ORDER**  
**SETTING FORTH THE COURT'S PRELIMINARY RESPONSE TO EXAMINER'S REPORT**

On April 19, 2005, the Court directed the United States Trustee to Appoint an Examiner to conduct an investigation and prepare a report and recommendations (the "Examiner's Report") for the Court's review (doc. # 1422). On April 22, 2005, the Court approved the appointment of Harvey R. Miller as Examiner (doc. # 1427). Upon consideration of the emergency motion of the Official Committee of Unsecured Creditors (the "Committee") seeking to have the report kept confidential and certain privileges protected (doc. # 1460) and the record before the Court, the Court ordered that the Examiner's Report be filed under seal subject to further Order of the Court regarding its confidentiality (doc. # 1470). On July 8, 2005, the Examiner filed his Report under seal (docs. ##1623 and 1629) and promptly thereafter served it on those parties authorized by the Court to have access to it. On July 12, 2005, the Court held a Section 105(d) status conference on the Examiner's Report during which the Court indicated its intent to immediately issue proposed findings of fact and conclusions of law based upon the Examiner's Report. Some of the Parties voiced an objection to this approach, asserting that it could compromise essential procedural due process rights. Upon further reflection of the Examiner's recommendations and the unique circumstances of this case, research that reveals no case law specifically addressing the instant issue, and a weighing of the competing interests of the Debtors and those Parties most affected by the Examiner's Report, the Court has concluded that it will, pursuant to 11 U.S.C. §105, postpone issuing proposed findings of fact and conclusions of law until after the Parties have had an opportunity to respond to the Examiner's Report, and instead treat the Examiner's Report as an expert opinion and establish a deliberate process for responding to the Report and addressing the specified recommendations. That process is set forth in a separate Show Cause Order that will be issued later today. The Court issues this Case Management Order in the interim to revise the schedule tentatively articulated on the record at the July 12<sup>th</sup> Section 105(d) Conference.

The Examiner's Report includes several recommendations. The Court intends to act immediately and directly on only a couple of these recommendations, will act upon certain others at a future time and will await action by the U.S. Trustee or the Debtors with regard to the balance. Specifically, the Court categorizes and responds to the Examiner's recommendations as follows:

Several of the Examiner's recommendations are most properly within the domain of the U.S. Trustee's discretion. The Examiner recommends that the Committee be disbanded and that Wilmington Trust be appointed as the general unsecured creditor representative for the remaining administration of these chapter 11 cases. The U.S. Trustee disbanded the Committee by notice dated July 13, 2005, rendering the first component of this recommendation moot. It is within the discretion of the U.S. Trustee

to determine whether it is in the best interest of these estates to reconstitute the Committee and the Court will leave it to her to choose whether and how to implement the Examiner's recommendation regarding Wilmington Trust's future role. The Court sees no compelling reason why it should take action on this particular recommendation.


The Court places into a second category those recommendations it finds most appropriately addressed in the first instance by the Debtors. This category includes the Examiner's recommendations that (1) the Court disqualify AIG and Post from voting on the Plan; (2) any cash distributions to be made to AIG and Post pursuant to a confirmed plan be reduced by the loss in value suffered by other note holders and general unsecured creditors as the result of AIG and Post's breaches of fiduciary duty; (3) any plan of reorganization confirmed in these chapter 11 cases not provide for releases and exculpation for AIG, Post or Silver Point from any party other than FiberMark; and (4) the costs of the Examiner's investigation and Report be borne by AIG, Post and Silver Point. The Court finds that there is a mechanism for the Debtors to address whether AIG and Post be deprived their right to vote, in a straightforward and efficient fashion, namely a motion for designation of a ballot under 11 U.S.C. § 1126(e). If, based upon the Examiner's Report or other information, the Debtors believe there is a basis for the designation of the claims of AIG and/or Post, they have the right and ample opportunity to pursue that relief and present all probative evidence to the Court through the contested matter process. Therefore, the Court will not address this recommendation on its own initiative based upon the Examiner's Report but rather, allow the Debtors to make a determination as to the value and necessity of this course of action and initiate proceedings consistent therewith. Similarly, and as set forth in the Order to Show Cause of even date, the Court will not make any determinations as to the imposition of sanctions on AIG or Post until after it holds an evidentiary hearing on the issue of whether AIG and Post breached their fiduciary duties. In the event the Court finds AIG and/or Post did breach a fiduciary duty, the Court will then schedule an inquest on damages and determine the proper framework for computing damages and compute the measure of damages appropriate to these cases. If the Debtors deem it appropriate, they have the right to amend their Plan at any time to set forth how any such determination of damages will affect the distribution under the Plan, whether the post-petition conduct of any Party warrants special treatment of their claim under the Plan, what provisions or mechanisms are most suitable for making the estates whole for any breaches of duty they believe to have occurred, and/or how any breach of fiduciary duty or obligation under the Trading Order should affect the allocation of the Examiner's fees and expenses. Lastly, the Debtors also have the right and opportunity to accept and implement the recommendation regarding releases, if they so desire, through an amendment to their plan.

The remaining recommendations are the ones the Court deems appropriate for it to act upon in the context of the contested matter initiated by the Court's Order to Show Cause Why an Examiner

Should not be Appointed (doc. # 1354). The Examiner made his recommendations based upon findings that AIG and Post breached their fiduciary duty as members of the Committee, that Akin Gump breached its fiduciary duty to the Committee, that all Parties could have and should have acted sooner to alert the Court to their suspicion of Trading Order violations, and that the governance issue dispute should never have been deemed a Committee issue. These findings led the Examiner to recommend that the Court require certain Parties to bear their own costs for fees incurred in the course of the corporate governance dispute, that all Parties bear the expenses they incurred in connection with the Examiner's investigation, and that certain sanctions be imposed upon those who breached their fiduciary duties. The Court will address the AIG / Post breach of duty allegations via an evidentiary hearing to be held next month, as set forth in the Order to Show Cause of even date. It will address the Akin Gump breach of duty allegation in the context of the hearing on Akin Gump's pending and final fee applications. The Court will address the issue of whether any party breached the Trading (a/k/a Screening Wall) Order and what, if any, relief would compensate the estates for any breaches that occurred, in due course, but does not perceive this to be determinative to the confirmation process and thus, at this time, does not deem it appropriate to compel the Parties to address them immediately. The Court expects that based upon the Examiner's Report and recommendation, the Parties so identified in the Examiner's Report will bear their own costs with respect to the corporate governance issues and that each Party will, in the interest of justice, bear the costs and expenses it incurred in connection with the Examiner's investigation voluntarily, rather than pursue collection from the estate. In that event, the Court will not need not rule upon or enforce this recommendation.

This Case Management Order will be adjusted as the process identified herein moves forward, the various issues are developed and the Debtors proceed with the confirmation process.

July 14, 2005  
Rutland, Vermont

  
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Colleen A. Brown  
United States Bankruptcy Judge