

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



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

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

ORDER
ADDRESSING AKIN GUMP'S ORAL MOTION FOR A STAY

WHEREAS, on August 4, 2005, Akin Gump Strauss Hauer & Feld LLP ("Akin Gump") made an oral motion requesting that the Court impose a stay if it denies Akin Gump's motion to keep the Report under seal; and

WHEREAS the Court took the motion under advisement; and

WHEREAS in order to obtain a stay of the Court's decision, under Bankruptcy Rule 8005, Akin Gump must demonstrate grounds for a stay, see Hirschfeld v. Bd. of Elections, 984 F.2d 35, 39 (2d Cir. 1993); In re County Squire Assocs. of Carle Place, L.P., 203 B.R. 182, 183 (2d Cir. B.A.P. 1996), and Akin Gump had no opportunity to do that prior to issuance of the subject decision; and

WHEREAS the Court has entered a Memorandum of Decision and Order today *inter alia* denying Akin Gump's motion to keep the Report under seal, and thus it appears Akin Gump may wish to proceed on its oral motion for a stay; and

WHEREAS the Court recognizes that once the Report is released from seal and placed on the court's docket, the contents of the Report (with certain redactions made by the Court, based upon privilege), will be made public, and any requests for further relief may thus be equitably moot; and

WHEREAS the Court also recognizes an equally compelling basis for releasing the Report immediately, in that the Debtors have established that they need the Report to be public in order to move forward with their Disclosure Statement, and other parties in interest who were the subject of public accusations, and whom the Examiner has opined are without culpability, have demonstrated that they have been and continue to be prejudiced by the lack of public access to the Report;

Based upon these considerations, THE COURT FINDS that under the unique circumstances of this case, and in particular, after weighing Akin Gump's need for a viable opportunity to present its case for a Rule 8005 stay against the urgent need of other parties and the estate for the immediate implementation of the decision, it is just and proper to treat Akin Gump's oral motion as an emergency

motion for a brief and temporary stay, sufficient to allow Akin Gump to fully present its motion for a stay under Bankruptcy Rule 8005.

THE COURT FURTHER FINDS that in the event Akin Gump wishes to pursue a stay of the underlying decision, it is proper to grant Akin Gump a very brief, temporary, emergency stay specifically for the purpose of allowing Akin Gump the opportunity to

- (a) demonstrate the requisite elements for relief under Bankruptcy Rule 8005;
- (b) specify the scope of the stay it seeks (i.e., all or just portions of the redacted Report); and
- (c) propose a bond sufficient to protect other parties from damage that they have shown is likely to continue until the Report is of public record.

See In re Pine Lake Village Apartment Co., 21 B.R. 395, 398 (S.D.N.Y. 1982).

THE COURT THEREFORE ORDERS that if Akin Gump does not file a motion for a stay, accompanied by a proposal for a bond, and electronically serve that motion and proposal, by 4:00 p.m. E.S.T. on Thursday, August 18, 2005, it will have waived its right to act upon its oral motion for a stay and the Report will be entered on the docket, pursuant to the terms of the decision, at 12:00 p.m. E.S.T. on Friday, August 19, 2005.

THE COURT FURTHER ORDERS that if Akin Gump chooses to proceed on its oral motion for a stay,


- (a) Akin Gump must file its motion, as described above, by 4:00 PM E.S.T. on Thursday, August 18, 2005;
- (b) any party in interest that wishes to respond to Akin Gump's motion shall file its papers either in opposition to or support of the motion by 5:00 P.M. E.S.T. on Friday, August 19, 2005;
- (c) the Court shall determine by noon E.S.T. on Monday, August 22, 2005 whether oral argument shall be entertained, and if so, oral argument shall be presented either in person or via video conferencing at 1:00 p.m. E.S.T. on Tuesday, August 23, 2005 at the United States Bankruptcy Court, 67 Merchants Row, Rutland, Vermont; and
- (d) the Court shall issue a decision on the motion for a stay by 2:00 p.m. E.S.T. on Wednesday, August 24, 2005.

THE COURT FURTHER ORDERS that if the Court denies Akin Gump's motion for a stay, the Court shall enter the Report on the docket at 5:00 p.m. E.S.T. on Wednesday, August 24, 2005.

THE COURT FURTHER ORDERS that in the event (a) the Court grants Akin Gump's motion for a Rule 8005 stay and (b) no further relief is granted to Akin Gump during the period of that stay, the Court shall enter the Report on the docket, as redacted and with the ledger described in the Memorandum of Decision of even date, at 4:00 p.m. E.S.T. on Monday, August 29, 2005.

SO ORDERED.

August 16, 2005
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge