

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

BELLWRIGHT INDUSTRIES, INC.,

Debtor(s).

C/A No. 08-01597-JW

Chapter 11

SUPPLEMENTAL ORDER

FILED
at ___ O'clock & ___ min ___ M
JUN 18 2008
United States Bankruptcy Court
Columbia, South Carolina (26)

ENTERED

JUN 20 2008

R. S. S.

This order is being entered in order to supplement the Court's Order Authorizing the Sale of Assets of Debtor Bellwright Industries, Inc. Pursuant to §§ 363, and is intended to provide guidance to the Bar.

Despite finding that the Sale should be approved, the Court is concerned with the procedure employed by the Debtor in a few respects, which could have been fatal to the motion had there not been such uniform creditor support and clear evidence indicating that the Sale should be approved. In this case, Debtor sought to reduce the notice period for the Sale to less than twenty (20) days even though it appeared such reduction was not critical to the success of the Sale. Notice, particularly in sales prior to the filing of a plan and disclosure statement, must be full and complete and a reduction that is not absolutely critical may not be appropriate.

Debtor also noticed a break-up fee of \$250,000, which had not been previously approved by the court. See In re Paintball, Inc., C/A No. 03-08807-W, slip op. (Bankr. Oct. 16, 2003). While the lack of other bids did not trigger the application of the break-up fee in this case, it is possible that a break-up fee could discourage other bidders who believe that any competitive bid would have to exceed the initial offer and the break-up fee in order for the court to find a greater benefit to the estate. Break up fees should be affirmatively approved in advance of a notice of sale.

Finally, while it is not uncommon for the need to sell assets to arise before the time necessary to approve a disclosure statement and plan, the filing of those documents before a sale better informs all creditors of what to expect in the case, including the details of their treatment and anticipated distribution. While the Court recognizes that counsel in this case filed and served a Memorandum in support of the sale, the providing of such information in the form of the plan and disclosure statement is generally a better method.

The Bar is cautioned that the failure to consider these factors in future cases could be fatal to the efforts to sell assets.

AND IT IS SO ORDERED.

Columbia, South Carolina
June 18, 2008


UNITED STATES BANKRUPTCY JUDGE