

Exhibit II-4. Guidelines on Sale of All or Substantially All Assets

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

**GUIDELINES FOR EARLY DISPOSITION OF ASSETS
IN CHAPTER 11 CASES**

**THE SALE OF SUBSTANTIALLY ALL ASSETS UNDER SECTION 363
AND OVERBID AND TOPPING FEES**

The following guidelines are promulgated as a result of the increasing use of pre-negotiated or pre-packaged plans and 11 U.S.C. § 363 sales to dispose of substantially all assets of a Chapter 11 debtor shortly after the filing of the petition. The guidelines recognize that parties in interest perceive the need at times to act expeditiously on such matters. In addition, the guidelines are written to provide procedural protection to the parties in interest. The court will consider requests to modify the guidelines to fit the circumstances of a particular case.

OVERBIDS & TOPPING FEES

1. Topping Fees and Break-up Fees. Any request for the approval of a topping fee or break-up fee provision shall be supported by a statement of the precise conditions under which the topping fee or break-up fee would be payable and the factual basis on which the seller determined the provision was reasonable. The request shall also disclose the identities of other potential purchasers, the offers made by them (if any), and the nature of the offer, including, without limitation, any disclosure of their plans as it relates to retention of debtor's employees.
2. Topping fees, break-up fees, overbid amounts and other buyer protection provisions will be reviewed on a case-by-case basis and approved if supported by evidence and case law. Case law may not support buyer protection provisions for readily marketable assets.
3. In connection with a request to sell substantially all assets under § 363 within 60 days of the filing of the petition, buyer protections may be considered upon motion, on an expedited basis.

**THE SALE OF SUBSTANTIALLY ALL ASSETS UNDER SECTION 363
WITHIN 60 DAYS OF THE FILING OF THE PETITION**

4. The Motion to Sell. In connection with any hearing to approve the sale of substantially all assets at any time before 60 days after the filing of the petition, a motion for an order authorizing a sale procedure and hearing or the sale motion itself when regularly noticed, should include factual information on the following points:

- a. Creditors' Committee. If a creditors' committee existed prepetition, indicate the date and manner in which the committee was formed, as well as the identity of the members of the committee and the companies with which they are affiliated.
- b. Counsel for Committee. If the prepetition creditors' committee retained counsel, indicate the date counsel was engaged and the selection process, as well as the identity of committee counsel.
- c. Sale Contingencies. Statement of all contingencies to the sale agreement, together with a copy of the agreement.
- d. Creditor Contact List. If no committee has been formed, a list of contact persons, together with fax and phone numbers for each of the largest 20 unsecured creditors.
- e. Administrative Expenses. Assuming the sale is approved, an itemization and an estimate of administrative expenses relating to the sale to be incurred prior to closing and the source of payment for those expenses.
- f. Proceeds of Sale. An estimate of the gross proceeds anticipated from the sale, together with an estimate of the net proceeds coming to the estate with an explanation of the items making up the difference. Itemize all deductions that are to be made from gross sale proceeds and include a brief description of the basis for any such deductions.
- g. Debt Structure of Debtor. A brief description of the debtor's debt structure, including the amount of the debtor's secured debt, priority claims and general unsecured claims.
- h. Need for Quick Sale. An extensive description of why the assets of the estate must be sold on an expedited basis. Include a discussion of alternatives to the sale.
- i. Negotiating Background. A description of the length of time spent in negotiating the sale, and which parties in interest were involved in the negotiation, along with a description of the details of any other offers to purchase, including, without limitation, the potential purchaser's plans in connection with retention of the debtor's employees.
- j. Marketing of Assets. A description of the manner in which the assets were marketed for sale, including the period of time involved and the results achieved.
- k. Decision to Sell. The date on which the debtor accepted the offer to purchase the assets.
- l. Relationship of Buyer. A statement identifying the buyer and setting forth all of the buyer's (including its officers, directors and shareholders) connections with the debtor, creditors, any other party in interest, their respective attorneys, accountants, the United States Trustee or any person employed in the office of the United States Trustee.
- m. Post-Sale Relationship with Debtor. A statement setting forth any relationship or connection the debtor (including its officers, directors, shareholders

and employees) will have with the buyer after the consummation of the sale, assuming it is approved.

- n. Relationship with Secured Creditors. If the sale involves the payment of all or a portion of secured debt(s), a statement of all connections between debtor's officers, directors, employees or other insiders and each secured creditor involved (for example, release of insider's guaranty).
 - o. Insider Compensation. Disclosure of current compensation received by officers, directors, key employees or other insiders pending approval of the sale.
 - p. Notice Timing. Notice of the hearing on the motion to approve the motion to sell will be provided as is necessary under the circumstances.
5. Proposed Order Approving Sale. A proposed order approving the sale must be included with the motion or the notice of hearing. A proposed final order and redlined version of the order approving the sale should be provided to chambers twenty-four hours prior to the hearing.
 6. Good Faith Finding. There must be an evidentiary basis for a finding of good faith under 11 U.S.C. § 363(m).
 7. Competing Bids. Unless the court orders otherwise, competing bids may be presented at the time of the hearing. The motion to sell and the notice of hearing should so provide.
 8. Financial Ability to Close. Unless the court orders otherwise, any bidder must be prepared to demonstrate to the satisfaction of the court, through an evidentiary hearing, its ability to consummate the transaction if it is the successful bidder, along with evidence regarding any financial contingencies to closing the transaction.
 9. Hearing and Notice Regarding Sale. Unless the court orders otherwise, all sales governed by these guidelines, including auctions or the presentation of competing bids, will occur at the hearing before the court. The court may, for cause, including the need to maximize and preserve asset value, expedite a hearing on a motion to sell substantially all assets under § 363.