

1 also holds that the sales price, which was tested by extensive
2 notice and the opportunity of overbid, is reasonable. Finally,
3 the Court holds that the sale is proposed in good faith under
4 § 363(m). Accordingly, and for the reasons discussed below, the
5 Court grants the Trustee's motion and approves the proposed sale
6 and settlement.

7 **MOTION**

8 The Trustee proposes to sell the bankruptcy estate's rights,
9 title and interest in and to certain assets particularly
10 described in the Asset Purchase Agreement between L-3 and the
11 Trustee (the APA) and in the Motion. The assets to be sold were
12 categorized as Subject Assets and Purchased Documents. Included
13 in the Subject Assets is the estate's right, title and interest
14 in and to certain intellectual property which is the subject of
15 the ongoing litigation between L-3 and Aries ("Intellectual
16 Property"). The proposed sales price is \$15,000 and was subject
17 to overbid. The proposed sale is free and clear of liens.

18 The Conrad Parties object primarily on the ground that the
19 Intellectual Property was not owned by Aries, and hence are not
20 assets of the Aries bankruptcy estate. Rather, argue the Conrad
21 Parties, Aries holds a conditional, non-exclusive right to use
22 the Assets and its ownership is conditional on repayment to
23 Conrad and Cole of \$1.8 million, which has not occurred.
24 Alternatively, to the extent Aries owns the Intellectual
25 Property, it is subject to a first priority security interest in
26 favor of the Conrads.

1 **BACKGROUND**

2 Dr. Conrad is the President of Aries. Dr. Conrad and
3 Dr. Cole are the sole owners of Aries. Since January of 2009
4 Aries and L-3 have been engaged in litigation in district court
5 over ownership of certain decontamination technology (the "CDCA
6 Litigation"). Generally speaking, Aries contends that its
7 principal, Dr. Conrad, created the decontamination technology
8 for chemical and biological weapons which he eventually called
9 "AeROS," and that at least as of the date of the complaint, that
10 technology was owned by Aries:

11 ARIES is the owner of certain patents, trademarks,
12 and trade secrets protecting ideas and technology used
13 in chemical and biological decontamination systems ...
14 ARIES is the owner of certain patents, trademarks, and
15 trade secrets protecting its AeROS... technologies used
16 in chemical and biological decontamination systems.

17 Corrected First Amended Complaint, L-3's Request for Judicial
18 Notice (RJN) Ex. 3 at 2:13-20. In the CDCA Litigation, Aries,
19 through Dr. Conrad, contended that development of what would
20 become the AeROS technology began with Dr. Conrad's work at
21 Chromagen, Inc., and that in March, 2005, he and Dr. Cole formed
22 Aries and assigned to it all rights in the Chromagen technology.
23 See L-3's RJN Ex. 4. In the March 2, 2009, Declaration of
24 Michael J. Conrad, PH.D., in Support of Aries Associates, Inc.'s
25 Motion for Preliminary Injunction, he reiterated under oath:

26 Pursuant to a secured credit agreement dated March 29,
2005, Chromagen assigned certain intellectual property
rights, including patents, trademarks and trade
secrets, to my wife Dr. Cole, and me. We, in turn,
assigned these rights to ARIES. To acquire Chromagen's

1 intellectual property, ARIES agreed to assume
2 responsibility for certain Chromagen debts of
3 approximately \$2.7 million.

4 See L-3's RJN Ex. 2 at 6:26-7:3.

5 L-3, on the other hand, has contended that the technology
6 was created while Dr. Conrad was working for L-3 under "Work for
7 Hire Contracts" and thus belongs to L-3. This battle was being
8 waged in the CDCA Litigation when this bankruptcy case was filed.

9 On March 19, 2010 Conrad filed its chapter 7 petition.
10 A day earlier, Dr. Conrad filed a chapter 7 petition on behalf of
11 Aries. In the Aries case, the debtor scheduled the Intellectual
12 Property as an asset of the estate. The Aries Trustee was able
13 to negotiate a sale of the assets of the Aries bankruptcy estate,
14 including the AeROS technology and the claims against L-3
15 asserted in the CDCA Litigation, to L-3, approval of which the
16 Trustee sought in a concurrent motion. The Trustee in this case
17 negotiated a sale of any interest the Conrad estate held in the
18 same or similar assets, which L-3 desires for complete relief.

19 In response to the Motion the Conrad Parties now argue that
20 Aries does not own the Intellectual Property or any of the
21 assets. Rather, contend the Conrad Parties, Aries has a mere
22 "conditional assignment" of the technology which is contingent
23 upon payment to Conrad and Cole of the obligations assumed from
24 Chromagen. They also argue that to the extent Aries owns the
25 property, it is subject to a first-priority security interest in
26 favor of the Conrads and that the Conrads were given a right of
first refusal.

1 A party asserting a competing interest in property to
2 be sold under § 363 has the burden of proof on the issue of
3 the validity, priority, or extent of such interest. 11 U.S.C.
4 § 363(p)(2). The sole evidence upon which the Conrad Parties
5 base their assertion that Aries does not own the beneficial
6 interest in the Intellectual Property, or that the Conrads have a
7 security interest therein, is a document entitled "Secured Debt
8 Agreement" dated July 5, 2006 (SDA) and the declarations of
9 Drs. Conrad and Cole based thereon.

10 As discussed in the "ORDER ON MOTION FOR ORDER APPROVING
11 SALE OF ESTATE ASSETS AND SETTLEMENT," entered concurrently
12 herewith in the Aries case (Aries Order), the Conrad Parties'
13 position is based solely upon the a document entitled "Secured
14 Debt Agreement" dated July 5, 2006 (SDA) and the declarations of
15 Drs. Conrad and Cole based thereon. In the Aries Order the Court
16 explained that the duplicate copy of the SDA proffered by the
17 Conrad Parties was not admissible under Federal Rules of Evidence
18 1002 & 1003. For the same reasons as set forth in the Aries
19 Order, the duplicate copy of the SDA is similarly not admissible
20 in this case. Since the SDA will not be admitted, the Conrad
21 Parties have not met their burden under 11 U.S.C. § 363(p)(2).

22 The Conrad Parties also argue that the sales price is
23 insufficient. However, the sale was widely publicized and
24 noticed and was subject to overbid, and neither the objecting
25 parties nor anyone else submitted a qualifying bid. A public
26 auction subject to overbid is an acceptable and common method of

1 determining the market value of assets. In re Abbotts Dairies of
2 Penn., Inc., 788 F.2d 143, 149 (3d. Cir. 1986). Notice of the
3 sale was published and the parties most likely to be interested
4 in the assets, including the Conrads, received notice of the
5 proposed sale and an opportunity to overbid. The Conrad Parties
6 submitted neither a valid overbid nor evidence of the value of
7 the Subject Assets. The Court finds the sales price is fair and
8 reasonable.

9 Likewise, there is no evidence that the deal struck between
10 L-3 and the Trustee was other than a good faith arm's length
11 deal. The Trustee has declared that the sales price and
12 settlement were the result of negotiations with L-3, and the
13 Court has no evidence or cause to discount that testimony.

14 With respect to the Purchased Documents, the Conrad Parties
15 had objected that the scope was overly broad. At the hearing
16 counsel for Dr. Conrad explained that any problems relating to
17 the scope of the Purchased Documents could be resolved so long as
18 he was given an opportunity to sign off on the order.

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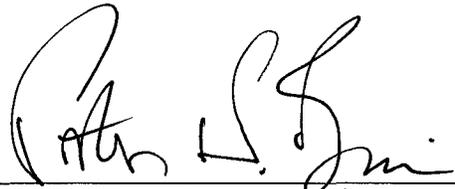
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CONCLUSION

For all of the foregoing reasons and those set out in the Aries Order, the Court grants the Trustee's Motion and approves the sale of the Subject Assets and Purchased Documents to L-3 and the related settlement. Counsel for the Trustee or L-3 shall submit an order consistent herewith to counsel for the Conrad Parties for their signature within thirty (30) days of the entry of this Order. If the parties are unable to agree on a form of order counsel for the Trustee or L-3 shall lodge an order consistent herewith, to which opposing parties are free to object.

IT IS SO ORDERED.

DATED: APR 27 2012



PETER W. BOWIE, Chief Judge
United States Bankruptcy Court