

**TRADEMARK ASSIGNMENT**

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<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	Order Approving Sale of Certain Assets Free and Clear of Liens and Other Interests Pursuant to 11 USC Section 363

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Martin Industries, Inc.		02/07/2003	CORPORATION: DELAWARE

**RECEIVING PARTY DATA**

<b>Name:</b>	Monessen Hearth Systems Company
<b>Street Address:</b>	149 Cleveland Drive
<b>City:</b>	Paris
<b>State/Country:</b>	KENTUCKY
<b>Postal Code:</b>	40361
<b>Entity Type:</b>	CORPORATION: KENTUCKY

**PROPERTY NUMBERS Total: 5**

Property Type	Number	Word Mark
Registration Number:	1130788	MI MARTIN INDUSTRIES
Registration Number:	1162615	MARTIN
Registration Number:	1173069	QUADRA-THERM
Registration Number:	1193112	MI
Registration Number:	1187536	WARM MORNING

**CORRESPONDENCE DATA**

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 Email: jrmix@jonesday.com  
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**ATTORNEY DOCKET NUMBER:** 560255-115140

CH \$140.00 1130788

NAME OF SUBMITTER:	James R. Mix
Signature:	/James R. Mix/
Date:	03/23/2006
<b>Total Attachments: 9</b> source=Martin Industries Order#page1.tif source=Martin Industries Order#page2.tif source=Martin Industries Order#page3.tif source=Martin Industries Order#page4.tif source=Martin Industries Order#page5.tif source=Martin Industries Order#page6.tif source=Martin Industries Order#page7.tif source=Martin Industries Order#page8.tif source=Martin Industries Order#page9.tif	

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHERN DIVISION

In re: )  
)  
MARTIN INDUSTRIES, INC., ) Case No. 02-85553-JAC-11  
EIN: 63-0133054 ) Chapter 11 Proceeding  
)  
Debtor. )

ORDER APPROVING SALE OF CERTAIN ASSETS OTHER THAN  
IN THE ORDINARY COURSE OF BUSINESS FREE AND CLEAR OF  
LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS  
PURSUANT TO 11 U.S.C. § 363

THIS MATTER came before the Court for hearing on January 30, 2003 on the motion (the "Motion") of Martin Industries, Inc., debtor and debtor-in-possession (the "Debtor"), for authority to sell certain of the Debtor's assets other than in the ordinary course of business, free and clear of liens, claims, encumbrances other interests and to assume and assign executory contracts and unexpired leases pursuant to 11 U.S.C. §§ 363 and 365, and Rules 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). Appearances were noted in the record. Upon due consideration of the Motion, the objections filed in opposition to the Motion, the testimony and other evidence presented at the hearing, the pleadings of record, the arguments and representations of counsel, all other matters brought before it, and for good cause shown, the Court FINDS, DETERMINES and CONCLUDES as follows:

1. The Debtor filed a voluntary petition for relief under chapter 11 of title 11, United States Code, 11 U.S.C. § 101, et seq. (the "Bankruptcy Code") on December 27, 2002 (the "Filing Date"). The Debtor is a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware, with its principal place of business in Florence, Alabama. The Debtor is engaged in the manufacture and sale of home heating products. The Debtor has all requisite corporate power and authority to own, lease, operate and sell the Purchased Assets (as defined below). Since the Filing Date, the Debtor has continued to operate its business and manage its assets and affairs as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

No trustee or examiner has been appointed in the Debtor's bankruptcy case. The Debtor brings the Motion pursuant to Sections 363(b), (f) and (m) and 365 of the Bankruptcy Code and Bankruptcy Rules 6004, 6006 and 9014. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334(b). The Motion is a core proceeding under 28 U.S.C. § 157(b)(2).

2. On the Filing Date, the Debtor served a copy of the Motion upon the Bankruptcy Administrator, AmSouth Bank ("AmSouth"), M-TIN, LLC ("M-TIN"), counsel for the unsecured creditors (the "Committee"), the twenty largest unsecured creditors of the Debtor, all parties claiming a lien or other interest in the property to be sold, and all other parties requesting notice (collectively, the "Initial Service Group"). Pursuant to Bankruptcy Rules 2002(a)(2), (c)(1) and (i), 6004 and 6006, the Debtor provided at least 23 days notice by mail of the hearing on the Motion by serving on the Initial Service Group, all creditors, and approximately 15 entities identified by the Debtor as potential purchasers of the Purchased Assets a bid package (the "Bid Package") consisting of the Motion, written notice of the hearing on the Motion, the Agreement (as defined below) and the Bid Procedures (as defined below). The Debtor has fully complied with the notice and service requirements of the Bankruptcy Code and the Bankruptcy Rules. Service of the Motion and notice of the hearing on the Motion was timely provided to the parties required by the Bankruptcy Code, the Bankruptcy Rules and applicable law. All persons required under the Bankruptcy Code, the Bankruptcy Rules and other applicable law to be given notice of the Motion and the hearing on the Motion have been given such notice in accordance with such laws and rules. Such service and notice was good and sufficient in all respects and no further process or notice of the Motion or the hearing on the Motion is due or necessary.

3. AmSouth holds a security interest in the Purchased Assets. Since the Filing Date, the Debtor has been operating under debtor-in-possession financing agreement with AmSouth, as approved by the Court. By final order dated January 31, 2003, the Court approved the Debtor's financing agreement with AmSouth which, among other things, granted AmSouth a first position, super priority security interest in the Purchased Assets. Since the Filing Date, the Debtor has remained in possession of its assets, has operated its business as a debtor-in-possession according to budgets approved by AmSouth and the Court and has actively marketed its

business as a going concern. M-TIN holds a mortgage on the Debtor's real property, but does not claim an interest in the Purchased Assets.

4. Before the Filing Date, the Debtor marketed its assets for a period of approximately two (2) years, with the assistance of various investment bankers and brokers. In September 2002, the Debtor hired Philip + Co. ("Philip") as managerial and financial consultants. Thereafter, the Debtor continued to market its business and assets with the assistance of Philip. Prior to the Filing Date, the Debtor and Philip's combined efforts identified, solicited or received expressions of interest from over 65 individuals and entities as potential investors or purchasers of some or all of the Debtor's assets. Approximately 50 interested parties executed a confidentiality agreement in favor of the Debtor in order to pursue further discussions with the Debtor concerning the investment or purchase of the Debtor's assets. Approximately 12 parties visited the Debtor's facilities to review the Debtor's assets and to conduct additional due diligence.

5. The only party making a definitive bid for the Debtor's assets was Monessen Hearth Systems Company (the "Buyer"). After substantial arms-length negotiations, on December 20, 2002 the Debtor entered into an Asset Purchase Agreement (the "Agreement") to sell certain assets (as more specifically described in the Agreement, the "Purchased Assets") to the Buyer. Without limitation, the Purchased Assets consists of machinery and equipment, inventory, licenses and permits, intellectual property, rights and interests in sales orders and contracts, accounts receivable, books and records and other intangible and tangible properties. The sale proposed in the Agreement is an arms-length transaction negotiated in good faith by all parties and, if consummated, will be a purchase in good faith by the Buyer

6. The Debtor filed the Motion on the Filing Date, seeking approval of the Agreement and the proposed sale to the Buyer. Also on the Filing Date, the Debtor filed a motion to approve bidding procedures and a break-up fee to govern the bidding process for the Debtor's assets. The Court approved the proposed bidding procedures and break-up fee (the "Bidding Procedures") by order dated December 31, 2002. The bidding procedures established a deadline for bids of January 24, 2003. The Debtor did not receive any competing bids for the Debtor's assets.

7. The Debtor proposes to sell, other than in the ordinary course of business, the Purchased Assets to the Buyer upon the terms and conditions set forth in the Agreement. The consideration for the sale shall be cash at closing as follows: (i) \$1.76 million payable allocated to machinery and equipment; (ii) \$240,000 allocated to the Debtor's intellectual property (iii) an adjustable amount based on collectible accounts receivable; and (iv) an adjustable amount based on usable inventory on the closing date. The Debtor presently estimates that the accounts receivable payment and the inventory payment each will total approximately \$1.0 to \$1.2 million resulting in the total consideration of approximately \$4.0 to \$4.4 million. The Debtor's estimate is subject to change and is without prejudice to the Buyer's rights under the Agreement. The Debtor reserves all rights, claims and defenses. The sale of the Purchased Assets to the Buyer shall be free and clear of liens, encumbrances, charges, claims and interests of every kind and description including but not limited to, the Excluded Liabilities as that term is defined in the Agreement; any claim arising from products sold or warranted prior to the proposed sale; and any claims arising from the litigation and reported claims listed on Exhibit 5.9 to the Agreement, with any and all such liens, encumbrances, charges, claims and interests to attach to the proceeds of the sale in accordance with the Bankruptcy Code and applicable law. Moreover, the Purchased Assets shall be sold as is, where is, without any representation or warranty of any kind or nature by the Debtor, except as may be set forth in the Agreement or this Order.

8. The Purchased Assets do not include real estate. However, the Agreement provides the Debtor will lease to the Buyer the real estate, manufacturing plant and office area located in Athens, Alabama and more particularly described in the lease agreement (the "Athens Property") substantially in the form attached hereto as Exhibit A. The Debtor seeks authority to enter into a lease agreement with the Buyer for the initial term of 12 months with six (6) renewal terms of one (1) month at a rental rate of \$12,500 per month (the "Lease"). Apart from Buyer's rights arising under the lease, the sale pursuant to the Agreement will not affect or prejudice any right or interest of M-TIN or AmSouth in the Debtor's real property. As a condition of the Lease, the Buyer has requested and M-TIN and AmSouth have agreed to execute and deliver nondisturbance agreements to the Buyer, substantially in the form attached hereto as Exhibit B. The proceeds of the Lease, including without limitation, all rents collected thereunder shall constitute cash collateral under § 363(c) of the Bankruptcy Code, subject to the respective interests

of M-TIN and AmSouth and shall not be used by the Debtor without the express written consent of M-TIN; or an order of the Court authorizing such use after notice and hearing pursuant to § 363(c) of the Bankruptcy Code and Bankruptcy Rule 4001(d).

9. AmSouth is the only party asserting an interest in the Purchased Assets. AmSouth consents to the sale on the terms and conditions set forth in the Agreement. Accordingly, the sale shall be free and clear of AmSouth's interests pursuant to Section 363(f)(2) of the Bankruptcy Code. The Debtor is informed and believes that no other entity holds an interest in the Purchased Assets. The Debtor has provided full and complete notice of the proposed sale. Any such interests would be junior to the interest of AmSouth. Accordingly, to the extent any such interests exist, it is subject to bona fide dispute pursuant to Section 506 of the Bankruptcy Code and the sale is due to be approved pursuant to Section 363(f)(4) of the Bankruptcy Code.

10. Based on the foregoing, with respect to each entity claiming a lien, claim, encumbrance or other interest in or to the Purchased Assets, (a) applicable non-bankruptcy law permits sale of the Purchased Assets free and clear of such lien, claim, encumbrance or other interest, (b) such entity consents to the proposed sale, (c) such lien, claim, encumbrance or other interest is in bona fide dispute, or (d) such entity could be compelled, in a legal or equitable proceeding, to accept a monetary satisfaction of such lien, claim, encumbrance or other interest. Accordingly, pursuant to Section 363(f) of the Bankruptcy Code, the Debtor may sell the Purchased Assets under Section 363(b) of the Bankruptcy Code free and clear of any lien, claim, encumbrance or other interest in the Purchased Assets of any entity other than the Debtor's estate.

11. The following parties filed objections to the Motion: the Committee, Dover Furniture Manufacturing Inc. ("Dover"), Zurich American Insurance Group ("Zurich"), Joe and Ruby Richard and M-TIN. AmSouth filed a limited objection. At the hearing on the Motion, AmSouth, M-TIN and Joe and Ruby Richard withdrew their respective objections. For the reasons stated on the record at the hearing on the Motion, the remaining objections to the Motion are due to be overruled.

12. The proposed sale of the Purchased Assets on the terms and conditions set forth in the

Motion and the Agreement is due to be approved. The Debtor has operated at a loss for a number of years. Since the Filing Date, the Debtor has operated at a reduced level, employing only a part of its work force, pursuant to weekly budgets approved by AmSouth. The Debtor reduced its operations to minimize continuing losses. The Debtor does not have access to sufficient funding to preserve the value of its assets or to operate as a going concern over the long term. Further operations will not generate sufficient income to pay expenses and allow the Debtor to service pre-petition debt pursuant to a plan of reorganization. If unable to sell the Purchased Assets pursuant to the Agreement, the Debtor will be unable to continue as a going concern and faces the piecemeal liquidation of the Purchased Assets. Such a piecemeal liquidation would reduce the sales value of the Purchased Assets. The sale of the Purchased Assets on a going concern basis pursuant to the Agreement will maximize the recovery and return to the Debtor's estate. A sale on the terms and conditions set forth in the Agreement is preferable to a liquidation of the Purchased Assets and is in the best interests of the Debtor, the estate, creditors, and all parties in interest. In addition to maximizing the return to the estate, the proposed sale provides the opportunity to continue the Debtor's operations and preserve jobs. Accordingly, the sale of the Purchased Assets on a going concern basis is in all respects preferable to a general liquidation, which is the only alternative to the sale proposed herein. Any delay in the closing of the proposed sale would be harmful to the Debtor's estate and its creditors.

13. The Debtor has made a concerted, good-faith effort to find purchasers willing and able to pay a fair and reasonable price for the Purchased Assets on a going concern basis. The Debtor has found such a purchaser in the Buyer. After extensive marketing efforts by the Debtor, the Buyer's proposed purchase is the highest and best bid for the Purchased Assets. The Debtor reached the Agreement after extensive, good-faith, arms-length negotiations with the Buyer. The consideration the Buyer proposes to pay for the Purchased Assets represents a fair value for the Purchased Assets. The sale of the Purchased Assets on the terms proposed herein represents the highest and best use for the Purchased Assets and will result in a good faith sale and in the greatest possible benefit to the estate, creditors and other parties in interest. After substantial investigation and research, the Debtor is unaware of any party willing, ready and able to pay a higher price for the Purchased Assets than the Buyer. The Bidding Procedures approved by the Court preserved the right and opportunity for any interested party to make a higher and better bid for the Purchased Assets. However, the Buyer's bid remains the highest and best



offer for the Purchased Assets. No other party has matched or exceeded the Buyer's offer. The Debtor and the Buyer have acted in good faith with respect to the proposed transaction. Accordingly, the Debtor, the Buyer and the proposed transaction are protected by the provisions of Section 363(m) of the Bankruptcy Code.

14. The terms of the Lease for the rental of the Athens property are fair and reasonable under the circumstances. The Debtor's entry into the Lease is necessary to consummate the closing of the sale pursuant to the Agreement. Accordingly, approval of the Lease pursuant to the Agreement is in the best interests of the Debtor, its estate and creditors and is due to be approved.

15. To preserve the going concern value of its business, the Debtor must move quickly to conclude the sale. The Debtor cannot operate indefinitely on its limited resources under its current level of funding. Among other things, under present circumstances the Debtor faces continued erosion of business and good will and negative morale of personnel caused by uncertainty of future job security. The Debtor already has lost a number of key employees. Over time, the defection of employees may render the Debtor unable to maintain its business as a going concern. In addition, the Debtor's projections show continued losses and continued erosion in the going concern value of the Purchased Assets. Because of the critical stage of the Debtor's business, on information and belief the Buyer is unwilling to defer the proposed sale for any period longer than that required to consummate a sale under Section 363(b). If forced to conclude the sale only after approval of a disclosure statement and confirmation of a plan, the Debtor believes that it will lose the opportunity to make the sale to the Buyer and the sales value of the Purchased Assets will be significantly lower. Accordingly, business exigencies justify the Court's approval of the proposed sale. See In re Lionel Corp., 722 F.2d 1063 (2d Cir. 1983).

16. The Debtor does not propose the Motion as a substitute for a plan. Rather, by the Motion the Debtor seeks authority only to conclude the sale to preserve the value of the Purchased Assets for the benefit of the estate. After the closing of the sale, significant assets will remain in the Debtor's estate, including, without limitation, the Debtor's real property. The Debtor proposes to file a liquidating plan to provide for the distribution of the proceeds of the sale and the disposition of the Debtor's remaining assets.

17. Based on the foregoing, the transactions proposed in the Motion satisfy all requirements of Sections 363(b), (f) and (m) of the Bankruptcy Code. The Motion is due to be granted and the Agreement, and the transactions contemplated thereby, is due to be approved.

WHEREFORE, based on the foregoing findings of fact and conclusions of law, it is hereby ORDERED, ADJUDGED and DECREED:

- A. The Motion is GRANTED.
- B. All objections to the Motion not resolved by the terms of this Order or withdrawn are OVERRULED.
- C. The proposed sale of the Purchased Assets free and clear of liens, claims, encumbrances and other interests is APPROVED and CONFIRMED on the terms and conditions set forth in the Motion and the Agreement.
- D. Pursuant to Section 363 of the Bankruptcy Code, the Debtor is AUTHORIZED and DIRECTED to sell and convey the Purchased Assets to the Buyer free and clear of liens, claims, encumbrances, subject to the terms of this Order and the Agreement.
- E. The Debtor is AUTHORIZED and DIRECTED to consummate the sale of the Purchased Assets to the Buyer subject to the terms of the Agreement and, pursuant to Bankruptcy Rule 6004(f)(2), to execute any instrument or document necessary or appropriate to consummate the sale of the Purchased Assets to the Buyer.
- F. The Lease is APPROVED pursuant to Section 363 of the Bankruptcy Code and the Debtor is AUTHORIZED and DIRECTED to enter the Lease with the Buyer on the terms and conditions set forth in the Agreement.
- G. The Debtor and each other person or entity having duties and responsibilities under the Agreement or this Order and their respective representatives and attorneys are hereby AUTHORIZED and

DIRECTED to carry out all provisions of the Agreement and the Order and to issue, execute, deliver, file and record, as appropriate, the Agreement and such additional documents as may be reasonable and necessary to consummate the sale of the Purchased Assets and to take any action contemplated by the Agreement or this Order.

H. At closing, all of the Debtor's right, title and interest in and to the Purchased Assets immediately shall vest in the Buyer free and clear of all liens, claims, interests, charges and encumbrances of any type or nature whatsoever pursuant to Section 363(f) of the Bankruptcy Code. Except as otherwise provided herein, any and all liens, claims, interests, charges or encumbrances of any type or nature whatsoever on or in the Purchased Assets shall attach to the proceeds of the sale in the order of their priority, to the same extent, and with the same validity, force and effect, as if the Purchased Assets had not been sold. Without limitation of the foregoing, neither the Buyer nor the Purchased Assets shall be subject to any claims as defined in Section 101(5) of the Bankruptcy Code arising before the date of the closing of the sale under the Agreement including but not limited to the Excluded Liabilities as that term is defined in the Agreement; any claim arising from products sold or warranted prior to the proposed sale; and any claims arising from the litigation and reported claims listed on Exhibit 5.9 to the Agreement.

I. Upon the filing of this Order with the clerk of the court of the respective counties or the secretary of state for any state in which any lien, claim, interest, charge or encumbrance shall have been filed on or in the Purchased Assets, this Order shall constitute a satisfaction and release of all such liens, claims, interests, charges and encumbrances from the Purchased Assets.

J. The parties to the sale have acted in good faith and are entitled to the protections of Section 363(m) of the Bankruptcy Code. The Buyer is a good faith purchaser within the meaning of Section 363(m) of the Bankruptcy Code.

K. The Court retains exclusive jurisdiction to interpret and enforce the provisions of this Order, the Agreement, the Lease and any related agreement to which the Debtor is a party.

L. The 10-day stay provided by Bankruptcy Rule 6004(g) shall not apply to this order.

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ENTERED 2-17-03  
UNITED STATES  
BANKRUPTCY COURT  
DECATUR, ALABAMA  
DEPUTY CLERK  
(80)

DONE this 17th day of February, 2003  
JACK CADDELL  
UNITED STATES BANKRUPTCY JUDGE