

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:) Chapter 11
)
FLEMING COMPANIES, INC., , et al.,) Jointly Administered
) Case No. 03-10945 (MFW)
)
Debtors.) Related Documents: 548, 1008
_____)

CERTIFICATION OF COUNSEL REGARDING MOTION OF ZURICH AMERICAN INSURANCE COMPANY, PACIFIC EMPLOYERS INSURANCE COMPANY AND SUPERVALU, INC. FOR LIMITED RELIEF FROM THE AUTOMATIC STAY TO ALLOW PAYMENT PURSUANT TO SETTLEMENT AGREEMENT

I, Kathleen M. Miller, counsel for Zurich American Insurance Company, certifies as follows:

1. On April 23, 2003 SuperValu, Inc. and SuperValu Holdings, Inc. d/b/a Cub Foods (“SuperValu”), Pacific Employers Insurance Company (“Pacific”) and Zurich Insurance Company (“Zurich Insurance”)(together, the “Movants”), filed a Motion (docket no. 548) for limited relief from the automatic stay to allow the insurance carriers to make certain payments to SuperValu, in accordance with a pre-petition settlement agreement (the “Motion”). There was no opposition to the Motion, however, the Debtors had some comments on the form of order. The Debtors and the Movants agreed to a form of order which they intended to present at the hearing scheduled for May 19, 2003. That hearing was continued to May 20, 2003, at which time the Court requested additional information, relating to the nature of the claim asserted by SuperValu and the coverage under applicable insurance policies.

2. Prior to the petition date, SuperValu filed an action in the District Court for the Second Judicial District in Ramsey, Minnesota (the “Action”), against Fleming Companies, Inc. (“Fleming”), among others. SuperValu asserted that Fleming misappropriated trade secrets and

tortiously interfered with SuperValu's prospective business advantage by obtaining and using SuperValu's advertisements. Fleming denied those allegations.

3. Prior to the institution of the Action, Pacific sold Fleming commercial general liability policies: (i) policy number HDO G19895920, with a policy period from July 1, 2000 to July 1, 2001, with a deductible of \$500,000.00, and (ii) renewal policy number HDO G20296094, with a policy period from July 1, 2001 to July 1, 2002, with a deductible of \$1,000,000.00 (collectively the "Pacific Policy"). Fleming made a claim against Pacific for coverage under the Pacific Policy for defense costs and to pay Fleming's liabilities in connection with the Action. Pacific, however, reserved its rights to deny any obligation to pay for the defense of and to pay Fleming's liabilities in connection with the Action.

4. Also prior to the institution of the Action, Zurich Insurance sold Fleming a Zurich Custom Cover Policy, number AUO2198796-02, with an effective date of July 1, 1996 to July 1, 2003, based on continual policy renewal (the "Zurich Policy" and collectively with the Pacific Policy, the "Policies"). Fleming made a claim for coverage under the Zurich Policy for defense costs and to pay Fleming's liabilities in connection with the Action. Zurich Insurance, however, reserved its rights to deny any obligation to pay for the defense of and to pay Fleming's liabilities in connection with the Action.

5. To resolve the claims asserted by SuperValu against Fleming and Fleming's claims against Pacific and Zurich Insurance (and the carriers' reservation of rights to deny coverage), prior to the petition date, the parties entered a SETTLEMENT AGREEMENT AND RELEASE (the "Agreement"), which was signed by SuperValu, Fleming, Pacific and Zurich Insurance. The

Agreement contains a Confidentiality provision and therefore, the Agreement is being filed with a Motion to File under Seal.

6. Pursuant to the Agreement, Pacific and Zurich Insurance were to make certain payments to SuperValu out of the proceeds of the Policies, no later than April 3, 2003. Pacific and Zurich Insurance, out of concern about the automatic stay, advised the Debtors and SuperValu that they would not make the payments without authorization from the Bankruptcy Court.

7. All parties agree that the payments from Pacific and Zurich Insurance should be paid to SuperValu.

8. Pacific is unaware of any claim currently outstanding against Fleming where the limits of the Pacific Policy available to claimants would be impacted if the Motion is approved. Zurich Insurance is unaware of any claim against the Zurich Policy that would exhaust its limits.

9. Accordingly, the parties request that the Court enter the Order filed with the Court pursuant to Certification of Counsel on May 21, 2003 (docket no. 1008).

Dated: _____
SMITH, KATZENSTEIN & FURLOW LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of May, 2003, a copy of the foregoing *Certification of Counsel Regarding Motion of Zurich American Insurance Company, Pacific Employers Insurance Company and SuperValu, Inc. for Limited Relief From the Automatic Stay to Allow Payment Pursuant to Settlement Agreement* was served by first class mail on the attached 2002 list.

/s/ Kathleen M. Miller _____
Kathleen M. Miller