

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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	:	Chapter 11
In re	:	
	:	Case No. 03-10945 (MFW)
FLEMING COMPANIES, INC., <i>et al.</i> ,	:	
	:	(Jointly Administered)
	:	
Debtors.	:	
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**MOTION TO SHORTEN NOTICE AND APPROVE
FORM, MANNER AND SUFFICIENCY OF NOTICE
WITH RESPECT TO THE MOTION OF XL SPECIALTY INSURANCE
COMPANY FOR RELIEF FROM THE AUTOMATIC STAY TO TERMINATE BONDS**

XL Specialty Insurance Company (“XL”), by and through its undersigned counsel, respectfully moves for an order under Rule 2002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Del. Bankr. LR 9006-1(e) and Sections 102 and 105 of Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) shortening the time period for notice of the **Motion of XL Specialty Insurance Company For Relief From the Automatic Stay To Terminate Bonds** (the “Motion for Relief from Stay”) and approving the form, manner and sufficiency of such notice. In support of this motion, XL respectfully represents as follows:

In the Motion for Relief from Stay, XL seeks the entry of an order granting XL relief from the automatic stay to terminate certain cigarette and tobacco tax bonds (the “Bonds”) issued on behalf of the Debtors. As set forth more fully in the Motion for Relief from Stay, The Bonds are financial accommodations through which surety credit was provided to the Debtors. As financial accommodations and pursuant to 11 U.S.C. § 365(c)(2), the Bonds may not be assumed or assigned by the Debtors. The Third Circuit has held that relief from the automatic stay is not required in order to

terminate a non-assumable contract. See In re Watts, 876 F.2d 1090, 1096 (3d Cir. 1989). However, in an abundance of caution, XL hereby seeks an order lifting the automatic stay, to the extent required, so that XL may exercise its right to terminate the Bonds

A hearing is currently scheduled in this bankruptcy case on August 4, 2003 at 11:30 a.m. to consider the Debtors' motion to approve the sale of their wholesale division (the "Sale Motion"). The assets to be transferred pursuant to the sale would apparently include the Debtors' cigarette and tobacco inventory, but neither the Debtors nor the purchaser have made provisions for the payment of outstanding pre- and post-petition cigarette and tobacco tax liability. Contemporaneously with the filing of the Motion for relief from Stay, XL is filing an objection (the "Sale Objection") to the Sale Motion. XL is serving the Motion for Relief on July 22, 2003, upon Debtors' counsel, purchaser's counsel, the Office of the U.S. Trustee and parties on the 2002 list.

Because the Sale Motion, the Sale Objection and Motion for Relief from Stay all involve the Debtors' cigarette and tobacco inventory and the Debtor's cigarette and tobacco tax liability, XL submits that they should be heard together at the August 4, 2003 hearing and that no other or further notice is required.

XL seeks to shorten the time period set forth in Rule 2002 of the Bankruptcy Rules so that the Motion for Relief may be heard at the hearing scheduled for August 4, 2003.

XL therefore seeks an order from this Court approving the form, manner and sufficiency of the notice proposed by XL in the Motion for Relief, which requires that objections, if any, to the Motion must be filed with the Court and served upon the Debtor's undersigned counsel on or before July 30, 2003 at 4:00 p.m. and provides that the hearing on the Motion will be scheduled for August 4, 2003 at 11:30 a.m.

XL respectfully submits that the notice procedure described above is sufficient to provide all parties in interest an opportunity to review and, if necessary, respond to the Motion for Relief from Stay..

WHEREFORE, XL respectfully requests the entry of an order approving the form, manner and sufficiency of the notice proposed by the XL in the Motion for Relief from Stay.

Dated: July 22, 2003

Respectfully submitted,

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ATTORNEYS FOR XL SPECIALTY INSURANCE
COMPANY

SO ORDERED:

UNITED STATES BANKRUPTCY JUDGE