

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

<i>In re</i>	:	Chapter 11
FLEMING COMPANIES, INC., <i>et al.</i> ,	:	
Debtors.	:	Case Number 03-10945 (MFW)
	:	Jointly Administered

Hearing Date: September 18, 2003 @ 2:00 P.M.

**OBJECTION OF THE ACTING UNITED STATES TRUSTEE TO THE DEBTORS’
MOTION TO AMEND ORDER WAIVING CERTAIN REQUIREMENTS UNDER 11
U.S.C. § 345(b) REQUIRING THE DEBTORS TO POST A BOND IN ORDER TO USE
AND MAINTAIN CERTAIN NEW AND EXISTING BANK ACCOUNTS
(RELATED TO DOCKET ENTRY # 3462)**

In support of her objection to the Debtors’ motion to amend order waiving certain requirements under 11 U.S.C. § 345(b) requiring the Debtors to post a bond in order to use and maintain certain new and existing bank accounts, Roberta A. DeAngelis, Acting United States Trustee for Region 3 (“UST”), by and through her counsel, avers:

INTRODUCTION

1. This Court has jurisdiction to hear and determine this objection.
2. Pursuant to 28 U.S.C. § 586, the UST is charged with the administrative oversight of cases commenced pursuant to Title 11 of the United States Bankruptcy Code. This duty is part of the UST’s overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that UST has “public interest standing” under 11 U.S.C. § 307, which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the UST as a “watchdog”).

3. Under 11 U.S.C. § 307, the UST has standing to be heard on the issues raised in this objection.

GROUND/BASIS FOR OBJECTION

4. The UST questions why, several months after the Debtors were obligated to comply with 11 U.S.C. § 345(b), the Debtors are now getting around to requesting a waiver under that subsection for J.P. Morgan Chase accounts that (a) have been open since these cases were filed on April 1 and (b) have contained amounts which exceed the FDIC insurance limit. Those accounts should have been bonded by now.

5. The requirements of 11 U.S.C. § 345(b) are permitted to be waived “for cause.” The mere fact that the banks requested the waiver sought by the Debtors does not constitute “cause,” nor does the fact that compliance with 11 U.S.C. § 345(b) will take some effort constitute “cause.”

[Continued on next page – space intentionally left blank]

CONCLUSION

WHEREFORE the UST requests that this Court deny the motion.

Respectfully submitted,

ROBERTA A. DeANGELIS
ACTING UNITED STATES TRUSTEE

BY: /s/ Joseph J. McMahon, Jr.
Joseph J. McMahon, Jr., Esquire
Trial Attorney
United States Department of Justice
Office of the United States Trustee
J. Caleb Boggs Federal Building
844 King Street, Room 2207, Lockbox 35
Wilmington, DE 19801
(302) 573-6491
(302) 573-6497 (Fax)

Date: September 16, 2003