

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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

Hearing Date: November 25, 2003 @ 9:30 A.M.

**OBJECTION OF THE ACTING UNITED STATES TRUSTEE TO  
THE JOINT MOTION TO FILE SETTLEMENT AGREEMENTS UNDER SEAL**

In support of her objection to the joint motion of the Debtors and C&S Acquisition LLC and its affiliated assignees or designees (the “Movants”) to file settlement agreements under seal, Roberta A. DeAngelis, Acting United States Trustee (“UST”) for Region 3, by and through her counsel, avers:

**INTRODUCTION**

1. This Court has jurisdiction to hear and determine the motion and this objection.
2. Under 28 U.S.C. § 586, the UST is charged with oversight of the federal bankruptcy system. *See Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6<sup>th</sup> 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 RELIEF**

4. 11 U.S.C. § 107(b) provides:

On request of a party in interest, the bankruptcy court shall, and on the court’s own motion, the bankruptcy court may –

- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or
- (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b).

5. Federal Rule of Bankruptcy Procedure 9018 provides:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or regulation. If an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion.

FED. R. BANKR. P. 9018.

6. There is a strong presumption of open access to judicial records and proceedings in civil matters. *See United States v. Continental Airlines, Inc. (In re Continental Airlines)*, 150 B.R. 334, 340 (D. Del. 1993) (citing *In re Revco D.S., Inc.*, 1990 WL 269887 (Bankr. N.D. Ohio Dec. 30, 1990); *cf. Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 785-86 (3d Cir. 1994) (discussing public interest in access to court records). In rejecting the debtor's motion to file its list of creditors under seal, the United States Bankruptcy Court for the Eastern District of Pennsylvania (Fox, J.) observed in *In re Foundation for New Era Philanthropy*, 1995 WL 478841 (Bankr. E.D. Pa. 1995):

[Section 107(b)] was not intended to save the debtor or its creditors from embarrassment, or to protect their privacy in light of countervailing statutory, constitutional and policy concerns .... Full disclosure of bankruptcy records may help insure that the bankruptcy statute is applied effectively in this case. It may also assist governmental entities in the performance of their duties *vis-a-vis* this debtor and its officers .... Thus, there are significant public concerns

which favor full public access to all documents filed in this case.

*Id.* at \*4, 6.

7. Here, the Movants want a “blank check” from this Court to file under seal settlement agreements which have yet to be consummated. The settlement agreements themselves cover a host of topics that are central to the administration of these cases, such as the assumption and assignment of executory contracts and the compromise of accounts receivable, that are not typically filed under seal and/or are part of a debtor in possession’s reporting requirements. At bottom, the real motivation for the motion appears to be the Movants’ desire to keep settlement terms away from counter-parties with whom they are negotiating. Such desire, by itself, does not justify the sealing of the agreements.

**[Continued on next page – space intentionally left blank]**

**CONCLUSION**

WHEREFORE the UST requests that this Court issue an order denying the motion and/or granting such other relief that this Court deems appropriate.

Respectfully submitted,

**ROBERTA A. DeANGELIS  
ACTING UNITED STATES TRUSTEE**

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