

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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

**Related to Docket No. 5034**  
**Hearing: 2:00 p.m., January 5, 2004**

LIMITED OBJECTION OF MCKESSON CORPORATION  
TO DEBTORS' MOTION TO ENTER INTO A REPLACEMENT  
DEBTOR-IN-POSSESSION FINANCING FACILITY

McKesson Corporation ("McKesson"), through its counsel, hereby files this Limited Objection to the Motion for an Order (I) (A) Authorizing Debtors to Obtain Replacement Post-Petition Financing Under 11 U.S.C. Section 364 and Bankruptcy Rule 4001(C) and Del. Bankr. LR 4001-2 and Assign the Existing Secured Lenders' Liens to the Replacement Lenders, and (B) Authorizing Debtors to Pay Certain Commitment and Related Fees and Expenses Relating to the Replacement Post-Petition Financing, (II) Granting Adequate Protection Pursuant to 11 U.S.C. Sections 361 and 363; and (III) Authorizing Debtors to Repay Certain Outstanding Obligations Under the Pre-Petition Credit Agreement and the Post-Petition Loan Agreement (the "Replacement Financing Motion") on the grounds that the proposed order granting the Replacement Financing Motion (annexed thereto as Exhibit B), unlike previous orders, does not reserve the rights of reclamation claimants and, moreover, appears to seek a ruling on issues that have yet to be adjudicated. In further support of its limited objection, McKesson states as follows:

1. Fleming Companies, Inc. and various affiliates (collectively, the "Debtors") commenced these cases (the "Cases") on April 1, 2003.

2. On April 3, 2003, McKesson sent letters to various of the Debtors (the "Reclamation Demands") seeking reclamation of certain goods, identified with particularity on a detailed schedule attached to each letter. At the Debtors' request McKesson provided additional information to the Debtors' financial advisors, Alix Partners LLC ("Alix"), to further substantiate its Reclamation Demands.

3. The Debtors have filed several motions seeking procedural and substantive relief in connection with reclamation claims in these cases. The latest was the Combined Amended Reclamation Report and Motion to Determine That Reclamation Claims are Valueless (the "Valuation Motion") (Docket No. 4596). In the Valuation Motion, the Debtors asked the Court, first, to rule that all reclamation claims are general unsecured claims as a matter of law and, second, to disallow all or part of certain identified reclamation claims, including McKesson's claim of approximately \$725,000 (which the Debtors seek to allow for approximately \$40).

4. The Court denied the Valuation Motion at a hearing on December 12, 2003. The Court further ruled that the Debtors must file adversary proceedings to request such relief. In the Replacement Financing Motion, the Debtors state that they intend to file adversary proceedings against each of the approximately 600 reclamation claimants herein.

5. The Debtors also have filed several motions relating to financing their operations in chapter 11. The orders granting such motions reserved the rights of reclamation claimants, which the Debtors had placed on hold in a first-day motion to

allow them time to examine and verify the reclamation claims, and which the Debtors later sought to defer (See Docket Nos. 2050 and 3635)<sup>1</sup> and, in the Valuation Motion, to deny.

6. The final order allowing the Debtors' first-day motion for authority to enter into a secured postpetition financing facility and to use cash collateral of their prepetition secured lenders (the "Final DIP Order") (Docket No. 743) included a reservation of rights of reclamation claimants and further provided that "[t]he protections afforded by this Order shall not be deemed a limitation, waiver, relinquishment or election of rights or remedies against the Debtors or any non-Debtor third parties which are otherwise available to the Reclamation Claimants under applicable law." Final DIP Order, ¶¶59-60. A more recent order granting a motion to authorize partial payment to the prepetition lenders (the "Payment Order") (Docket No. 4776) provided that "[n]either the fact of the Court's approval herein of the payment of \$325 million to the Pre-Petition Lenders nor the payment pursuant to such approval shall have any adverse effect on the reclamation claims asserted by various reclamation claimants," and that the order "shall not in any way modify the prior Orders of this Court, including, without limitation the provisions in the [Final DIP Order]." Payment Order, ¶5.

7. By contrast, the proposed order granting the Replacement Financing Motion (the "Proposed Replacement DIP Order") includes no such reservation of rights. It provides that the rights of reclamation claimants "remain subject" to liens securing

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<sup>1</sup> Docket No. 2796 is the Notice to Parties-in-Interest With Respect to Update on Status of Debtors' Motion for Entry of an Order With Respect to the Reclamation Claims Filed in the Debtors' Cases. Docket No. 3635 is the Motion for Entry of an Order to Establish Procedures to (i) Disallow Reclamation

existing facilities, and that the liens securing the replacement facility “expressly prime any lien, claim, rights, and interests of the Reclamation Claimants” pursuant to section 364(d) of the Bankruptcy Code. Proposed Replacement DIP Order, ¶26.

8. These provisions beg the questions for the Court’s decision in connection with adversary proceedings that the Debtors have not yet filed. The rights of reclamation claimants in relation to secured creditors depend on the valuation of the secured lenders’ claims and, at least, inventory collateral. Pursuant to the Final DIP Order, this valuation must be performed as of the Petition Date. Final DIP Order, ¶60. If this valuation determines that the reclamation claimants have rights in the goods or their proceeds, the replacement financing may not prime them pursuant to section 364(d) without affording adequate protection.

9. Unlike the Debtors, McKesson is not asking the Court to rule on these issues at this time without benefit of evidence and legal argument.<sup>2</sup> This limited objection may be resolved simply by replacing paragraph 26 in the Proposed Replacement DIP Order with one that expressly preserves the rights of the reclamation claimants in goods or their proceeds, as such rights existed on the Petition Date.

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Claims for Which Supporting Documentation is not Provided and (ii) Bar the Filing of New Reclamation Claims.

<sup>2</sup> See Replacement Financing Motion, ¶¶62 et seq.

WHEREFORE, McKesson prays that the Court:

1. Excise paragraph 26 of the Proposed Replacement DIP Order and replace it with a paragraph providing as follows:

The protections afforded by this Order shall not be deemed a limitation, waiver, relinquishment or election of rights or remedies against the Debtors or any non-Debtor third parties which are otherwise available to the Reclamation Claimants under applicable law. Neither the fact of the Court's approval herein of payments to the Pre-Petition Lenders and Post-Petition Lenders nor the payment pursuant to such approval shall have any adverse effect on the reclamation claims asserted by various reclamation claimants. This Order shall not in any way modify the prior Orders of this Court, including, without limitation, the Final Order Authorizing (I) Post-Petition Financing Pursuant to 11 U.S.C. §364 and Bankruptcy Rule 4001(c); (II) Use of Cash Collateral Pursuant to 11 U.S.C. §363 and Bankruptcy Rules 4001(b) and (d); (III) Grant of Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363; and (IV) Approving Secured Inventory Trade Credit Program and Granting of Subordinate Liens, Pursuant to 11 U.S.C. §§105 and 364(c)(3) and Rule 4001(c).

and

2. Grant such other relief in favor of McKesson as may appear just.

Dated: December 29, 2003  
Wilmington, Delaware

MORRIS NICHOLS ARSHT & TUNNELL

/s/ William H. Sudell, Jr.

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