

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:)
)
FLEMING COMPANIES, INC., et al.,)
)
Debtors.)
_____)

Chapter 11
Case No. 03-10945 (MFW)
(Jointly Administered)

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

LIMITED OBJECTION OF PFIZER INC.
TO DEBTORS' MOTION TO ENTER INTO A REPLACEMENT
DEBTOR-IN-POSSESSION FINANCING FACILITY

Pfizer Inc. ("Pfizer"), 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. § 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. §§ 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), 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, Pfizer states as follows:

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

2. On, about, or after April 1, 2003, Pfizer, for its divisions and subsidiaries, Pfizer Consumer Goods and Pharmacia sent letters to the Fleming Companies and Core-Mark Convenience Stores affiliates seeking reclamation of certain goods (the "Reclamation Demands"), identified with particularity on a detailed schedule attached to each letter. The Reclamation Demands related to goods approximating the sum of \$4,000,000.00

3. The Debtors have filed several motions seeking procedural and substantive relief in connection with reclamation claims in these cases. The latest was a 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 were general unsecured claims as a matter of law and, second, to disallow all or part of certain identified reclamation claims.

4. Until the Valuation Motion was brought by the Debtors, Pfizer was unaware that the Debtors intended to do anything but pay the reclamation claims.

5. On December 12, 2003, the Court denied the Valuation Motion. The Court further ruled that the Debtors must file adversary proceedings to request such relief. In the Replacement Financing Motion, the Debtors stated that they intended to file adversary proceedings against each of the approximately 600 reclamation claimants herein. Instead of accepting the Court's ruling, Debtors thereafter filed the Replacement

Financing Motion in a further attempt to have the reclamation claims subordinated to general unsecured claims.

6. The Debtors also have filed several motions relating to financing their operations in Chapter 11. Each prior order 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 deny in the Valuation Motion. In fact, 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) providing for a valuation procedure in order to determine the actual claims of reclamation claimants.

7. The proposed order granting the Replacement Financing Motion (the "Proposed Replacement DIP Order") does not preserve any of the rights of reclamation creditors. To the contrary, the Proposed Replacement DIP Order specifically requests that the liens to secure the replacement facility "prime any lien, claim, rights, and interests of the Reclamation Claimants" pursuant to section 364(d) of the Bankruptcy Code.

8. These Cases have been complex with multiple parties and documents involved. Pfizer as a reclamation claimant, has not been a very active party in these Cases, believing until recently that the Debtor intended to pay reclamation claims. There are many substantive issues raised by the instant motion that prevent Pfizer from timely responding in a sound and worthwhile manner.

9. What becomes apparent, however, is that the Debtors wish to disregard the Court's earlier rulings on the Valuation Motion, and have chosen this instant motion to virtually deny the rights and claims of over 600 reclamation claimants.

10. The rights of reclamation claimants in relation to secured creditors depend on the valuation of the goods that are both collateral for the lenders and the subject of the reclamation claims. 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 § 364(d) without affording adequate protection.

11. If, on all the other bases required by the Bankruptcy Code, the Debtors prove their need for the replacement financing, the Replacement Financing Motion should not be granted unless the rights of reclamation creditors are preserved as they have been in each prior financing motion. For these reasons, Pfizer submits this Limited Objection.

12. Pfizer has received a copy of the language proposed by McKesson, another reclamation creditor, and concurs that proposed paragraph 26 of the Proposed Replacement DIP Order should be replaced with the following language:


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 or 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) .

WHEREFORE, Pfizer prays that the Court deny the Debtors' Replacement Financing Motion unless language is contained in the Replacement DIP Order preserving the rights of Reclamation Claimants, and grant such other relief in favor of Pfizer as may appear just.

Dated: December 29, 2003
Wilmington, Delaware

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