

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Chapter 11
Wickes Inc.,) Case No. 04 B 02221
Debtor.)
) Honorable Judge Benjamin A. Goldgar
) Hearing Date:
) Hearing Time:

**MOTION FOR TURNOVER OF PROPERTY TO THE ESTATE
PURSUANT TO 11 U.S.C. §543 AND FOR OTHER RELIEF**

Now Comes Liberty Mutual Surety ("Liberty Mutual"), f/k/a Safeco Insurance Company of America ("Safeco"), by its counsel, John E. Sebastian, William J. Connelly and the law firm of Hinshaw & Culbertson LLP and prays this Court for the entry of an Order under 11 U.S.C. §543 directing the turnover of certain property to the estate of the above captioned debtor, and providing other relief, and in support thereof states,

1. Wickes, Inc. (the "Debtor") filed its voluntary Petition for Relief ("Petition") under Chapter 11 of the United States Bankruptcy Code (the "Code") on January 20, 2004 (the "Petition Date"),

2. Subsequent to Petition Date, Wickes continued to manage and operate its business as debtor and debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On or about December 12, 2007, this Court entered an Order (the "Confirmation Order") confirming the Debtor's Modified First Amended Joint Plan of Liquidation proposed by the Debtor (the "Confirmed Plan") whereby, among other things, Darold Weidman was appointed trustee of a liquidating trust for the benefit of creditors entitled to receive distributions under the terms of the Confirmed Plan.

4. On or about December 5, 1978, or approximately 25 years prior to the Petition Date, an entity then known as Aldens, Inc. ("Aldens") entered into a written contract (the "Contract") with Safeco whereby Safeco issued a Self-Insurer's Surety Bond No. 2613990 (the "Bond") in the penal sum of \$50,000.00 on behalf of Safeco's Principal, Aldens, and on behalf of Obligee State of Illinois for the use and benefit of all employees of Aldens who may be entitled to compensation under the Workmen's Compensation Act and Workmen's Occupational Diseases Act of the State of Illinois. The penal sum of the Bond was subsequently increased to \$100,000.00 by Endorsement effective June 20, 1980. In accordance with the Contract, Aldens provided collateral in the sum of \$100,000.00 (the "Fund") to Safeco.

5. Subsequent to the date upon which Aldens provided the Fund to Safeco, Safeco was the subject of a merger and acquisition and ultimately became a part of Liberty Mutual.

6. Pursuant to the terms and conditions of the Contract and the Bond, Safeco/Liberty Mutual was relieved of its obligations to third parties under the Bond and became obligated to return the amount originally deposited, i.e. the Fund, to Aldens upon the latter of several possible events, including the passage of a period of time. Said period of time expired on or about March 25, 2008 ("[Expiration Date]").

7. After the Commencement Date and/or the Expiration Date, Aldens was itself the subject of a series of acquisitions, mergers, spin-offs, divestitures and further mergers and acquisitions such that, it appears, it became part of the corporate structure of the Debtor prior to the commencement of this Chapter 11 case.

8. Liberty Mutual believes that it is a custodian of the Fund.

9. Liberty Mutual believes that it is required to turn over the Fund to the above captioned bankruptcy estate (the "Estate").

10. Liberty Mutual is concerned, however, that one or more other entities, each having themselves been the subject of the same series of acquisitions, mergers, spin-offs, divestitures and further mergers and acquisitions referenced hereinabove, may assert a claim to the Fund and, as a result thereof, might attempt now or in the future to require Liberty Mutual to pay them an amount equal to the Fund.

11. Pursuant to 11 U.S.C. §543, Liberty Mutual as a custodian:

- a) may not make any disbursement from, or take any action in the administration of, property of the Debtor in its possession, custody, or control other than to take such action as is necessary to preserve such property. 11 U.S.C. §543(a); and
- b) must deliver to the Trustee any property belonging to the Debtor that is held by it as custodian. 11 U.S.C. §543(b)(1).

12. Further, pursuant to 11 U.S.C. §543, the Court shall, after a notice and hearing, and among other things:

- a) protect all entities to which a custodian has become obligated with respect to such property; 11 U.S.C. §543(c)(1); and
- b) provide for the payment of reasonable compensation for services rendered and costs and expenses incurred by such custodian. 11 U.S.C. §543(c)(2).

13. Liberty Mutual, as a custodian, is prepared, upon the entry of the Order sought in conjunction with the presentment of this Motion to deliver the Fund to the Trustee pursuant to 11 U.S.C. §543(b)(1).

14. Given then lengthy, convoluted, and oft times uncertain history of the various entities which ultimately coalesced into the corporate form that is the Debtor herein, and the real concern and apprehension on the part of the Debtor and Liberty Mutual, that one or more other entities, having been the subject of the same series of acquisitions, mergers, spin-offs, divestitures and further mergers and acquisitions referenced hereinabove may assert a claim to the Fund and, as a result thereof, might attempt now or in the future to require Liberty Mutual to

pay them an amount equal to the Fund, Liberty Mutual believes that any turnover of the Fund to this Estate must be accompanied by an Order which relieves Liberty Mutual of any further obligation concerning, or liability arising out of the Fund, or any of the transactions by which Liberty Mutual came in to possession thereof.

WHEREFORE, Liberty Mutual Surety prays this Court for the entry of an Order in the form attached hereto and provided herewith directing it, as a custodian, to turn over the money on deposit with it, less such sums as the parties may agree and/or the Court may award as reasonable costs and fees incurred by Liberty Mutual, with such sums as the parties may agree and/or the Court may award as reasonable costs and fees incurred by Liberty Mutual being retained by Liberty Mutual in satisfaction of such fees and costs, and further providing:

(a) that Liberty Mutual shall be and is relieved of any further obligation concerning, or liability arising out of, the Fund, or any of the transactions by which Liberty Mutual came in to possession thereof; and

(b) Such further and/or additional relief as the Court deems appropriate and just under the circumstances.

Respectfully submitted,

/s/ John E. Sebastian

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Notice of Motion

To: All Counsel on Electronic Service List

Please Take Notice that on Wednesday, December 16, 2009 at 9:30 AM, or as soon thereafter as I may be heard, I shall appear before the Honorable Judge Benjamin A. Goldgar. or any judge sitting in his stead in Courtroom 613 of the U.S. Bankruptcy Court of the Northern District of Illinois, Eastern Division, 219 South Dearborn Street, Chicago, Illinois and shall present **Liberty Mutual's Motion For Turnover Of Property To The Estate Pursuant To 11 U.S.C. §543 and for Other Relief, a copy of which is attached hereto.**

Certificate of Service

I, John E. Sebastian, an attorney, certify that I caused a copy of the following **Motion** to be served via email on all persons identified as registrants through the Court's electronic case filing system and, where indicated, if at all, via first class mail, postage prepaid, on or before 12/08/09.

/s/ John E. Sebastian

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