

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

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|-----------------------------|---|-------------------------|
| IN THE MATTER OF: |) | CASE NO. BK07-82643-TJM |
| |) | A08-8009-TJM |
| SPORTSSTUFF, INC., |) | |
| |) | CH. 11 |
| Debtor(s). |) | |
| <u>SPORTSSTUFF, INC.,</u> |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| ROSALYNE ATTALI-IN, et al., |) | |
| |) | |
| Defendants. |) | |

ORDER

Before the court for consideration is Filing #457, Motion to Reconsider, Alter and/or Amend Decision concerning this court's Order of September 17, 2009, Filing #448, dissolving the injunction which was entered on April 28, 2008, and which stopped all litigation against the Debtor and its Vendors concerning the Wego-Kite Tube product, and Filing #496, Resistance, filed by Stephanie Bykowski, Thomas Downer and James Feinauer. One of the Vendors protected by the injunction, Land 'N' Sea Distributing, Inc., has requested the court to reconsider, alter and/or amend its Order and provide that the injunction is not dissolved as to Land 'N' Sea pending a ruling on a motion to approve a settlement between the Debtor and Land 'N' Sea. That settlement apparently involves Land 'N' Sea paying a little more than \$500,000 to the Debtor to be used for the benefit of the personal injury and wrongful death claimants in consideration of a permanent injunction being issued against such claimants for the benefit of Land 'N' Sea. Hearing on the proposed settlement is pending. No hearing was held on this motion, but it was discussed at the hearing held October 13, 2009. The parties participating in such hearing were:

- Robert Ginn for the Debtor
- James Cann for Axis Surplus Insurance Company
- David Koukol for Stephanie Bykowski, Thomas Downer, James Feiner
- Jenna Taub for Ace American Insurance Company, Bruce Bosley d/b/a Century Marie, Tige Performance Boats, LLC, and Cramar, Inc., d/b/a/ Duchows Boat Center
- Martin Pelster for Dri-Port Marie, Inc.
- Douglas Quinn for Committee of Unsecured Creditors
- Frank Schepers and Wirt Brock for Robert Dunnam, III
- Charles Hendricks for Wal-Mart Stores, Inc.
- T. Randall Wright for Land 'N' Sea Distribution Systems, Inc.
- Emmett Childers for Rhonda Brown
- Jacob Woodard for Interstate Fire and Casualty Co.
- Richard Myers for Evanston Insurance Co.
- Michael Whaley for Overton's Inc., Bart's Water Ski Center and The Wind Surf Co.

It is the position of Land 'N' Sea that if the dissolution of the injunction is not altered with regard to it, it will suffer financial harm by being required to continue to participate in the litigation,

even though the court may eventually approve its settlement with the Debtor. However, this creditor has been protected from the litigation for more than a year and the wrongful death plaintiff that has objected to the request to alter the order that dissolved the injunction has been delayed in pursuing her state law rights for that period of time. If movant or its remaining insurance carriers are required to spend some money on litigation before its settlement with the Debtor is approved, that is just part of the cost of business.

The motion to reconsider or alter/amend the order dissolving the injunction is denied. The settlement with the Debtor was not formalized prior to the hearing on the modification of the injunction and the possibility of such settlement was only briefly mentioned. Land 'N' Sea has had since April 28, 2008, to enter into settlements either with the personal injury and wrongful death litigants or, as it has apparently done now, with the Debtor, and then request specific and special protection from the court concerning ongoing litigation. Its delay shall not now be the basis for special treatment prior to any settlement with the Debtor being approved.

IT IS ORDERED that Filing #457, Motion to Reconsider, Alter and/or Amend Decision, filed by Land 'N' Sea Distributing, Inc., is denied.

DATED: October 22, 2009

BY THE COURT:

/s/ Timothy J. Mahoney
United States Bankruptcy Judge

Notice given by the Court to:

Robert Ginn
James Cann
David Koukol
Jenna Taub
Martin Pelster
Douglas Quinn
Frank Schepers
Wirt Brock
Charles Hendricks
*T. Randall Wright
Emmett Childers
Jacob Woodard
Richard Myers
Michael Whaley

Movant (*) is responsible for giving notice to other parties if required by rule or statute.