UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

EX PARTE APPLICATION

REQUEST FOR EMERGENCY ORDER

APPOINTING AN INDEPENDENT TRUSTEE

REPRESENTING THE PENSION PLAN;

And

GENERAL MOTION FOR ORDER

IN FIVE PARTS

In Re: **Friendly Ice Cream Corporation et al**
Debtors

Chapter 11

Case # 11-13167 (KG)

Submitted by: **Continental Illinois Holding Corporation,**

pro se

6 The Mews, Westport, CT 06880

Tel. (203) 979-6146; Fax (203) 557-0208

compliance@ContinentalIllinois.com

(1)

Continental Illinois Holding Corporation (Continental Illinois), a duly registered Delaware corporation, by its duly authorized officer Matthew W. Lechner, hereby submits this ***Ex Parte Application, Request for Emergency Order and associated General Motion for Order*** on the basis of the understanding that the Debtor; and the Counsel for the Debtor(s), to wit, one James Stempel, Partner at Kirkland & Ellis; and the law firm Kirkland & Ellis have refused to affirm or disclaim fiduciary status under ERISA, the Employee Retirement Income Security Act of 1974.

Furthermore, the Debtor and its counsel (Stempel individually together with Kirkland & Ellis corporately) have acted to obstruct and confound the efforts of Continental Illinois to submit an offer to purchase the Debtor firm at auction.

Therefore, Continental Illinois requests that the Court act to immediately appoint an Independent Trustee with respect to the Debtor firm's pension plan, and additionally that the Court order the Debtor(s) and its/their counsel Stempel individually and Kirkland & Ellis corporately to perform certain points pursuant to the General Motion for Order which follows within this document.

Continental Illinois believes that in a situation where there is a substantial funding shortfall in a corporate pension plan, the

machinery and protections of ERISA must not be confounded and/or shortchanged by the corporate insolvency proceedings.

It would appear in these proceedings that the Debtor is retaining operational control of the firm during the proceedings, including the pension plan; and that the Debtor is effectively controlling the firm and its pension plan arm-in-arm with its counsel, therefore since ERISA does not excuse plan fiduciaries from their duties upon filing of bankruptcy pursuant to a jurisdiction's laws of insolvency – they are the plan fiduciaries and if they refuse to acknowledge that fact when asked, there is no question that an Independent Trustee for the Plan must be installed.

In addition, Continental Illinois would draw the attention of the Court to the apparently disingenuous legal positions taken by the Debtor(s) to the effect that the firm was forced into insolvency owing to the price of butter, when in fact it was suffocated with debt from Lehman Brothers alumni at Sun Capital Partners, not suffocated with expensive butter. Very funny, very cute. Forced into bankruptcy by butter, not by debt. Ha ha ha. Let's hear it for Lehman Brothers and Kirkland & Ellis.

Also, it would appear the this case brings to light the highly troubling issue in modern finance, which is essentially a fallacy

of finance – whereby persons and firms, generally under the control of pseudo-sophisticated financial operators come forward with the proposition that they have loaned money to themselves, and therefore that despite the fact that they are truly equity holders, they want to exploit the greater protections afforded to creditors and therefore (mis)characterize their financial machinations as lending operations, when in fact their operation is effectively one big stew pot of equity.

To effect the above, the financial operators come forward with various false arguments whereby they portray themselves as generously having made loans to a borrower, when in fact there was no lender-borrower relationship ---- because you can not lend money to yourself. This is often one of the stumbling blocks of fraudulent operators in the world of derivatives, and it is troubling to see this tactic having migrated to a portfolio of ice cream and hamburger stores run by Lehman Brothers alumni.

You can not lend money to yourself, no matter how you dress it up.

These points are important because the managers of Friendly's are persons who are related to the Lehman alumni, in some cases owing their jobs and their associated personal wealth to Sun

Capital. Since Sun Capital is vigorously asserting (we would say potentially false and contrived) creditor claims (which are in fact just scoops in the equity stew pot) ---- ***there is no way that the family of managers associated with Sun Capital will treat the pension plan properly in these proceedings, and in fact they already are not.*** It is highly improper for the Debtor(s) and their legal counsel to sit mum when asked are they fiduciaries of the pension plan. That is serious misconduct.

The plan participants in this matter are not sophisticated Park Avenue lawyers, they are people who serve hamburgers, make milk shakes, ice cream, fried clams, and so forth. They probably can not protect themselves in regard to their plan, and certainly not when confronted by sharp-elbowed Lehman Brothers alumni who have hired a big law firm as their wrench. The pension plan needs its own Independent Trustee, within the insolvency and restructuring proceedings.

The Court owes it to the food servers and ice cream makers to appoint an Independent Trustee for their pension plan. **And it is an emergency issue, because the Lehman alumni are in the process of working over the company financially, sitting mum when asked basic fiduciary questions, and confounding the efforts of independent bidders who are interested in the auction.** It is actually kind of repulsive to see them at work.

THEREFORE, Continental Illinois requests that the Court recognize the emergency nature of the issue, and ORDER the installation of an Independent Trustee to oversee the interests of the pension plan of Friendly's in these proceedings.

FURTHERMORE, Continental Illinois presents the following points, in five parts, in connection with this Ex Parte Application as an Ex Parte GENERAL MOTION FOR ORDER:

PART ONE: Continental Illinois requests that the deadline for bids be extended to February 24, 2012 (a Friday) because the short deadline which has been established by the Debtor is nothing more than a ruse to stifle bidding, to benefit Sun Capital Partners and to unjustly entrench management, and a reasonable amount of time is needed to review the materials and to marshall up a bid effort.

PART TWO: Continental Illinois requests that the Court ORDER Sun Capital Partners to cooperate in Discovery procedures, including answering questions and providing documents, regarding monies invested in, and received back

from (as applicable) from the Debtor(s). This is important because depending on the outcome of the Discovery, it may well be asserted, and properly so, that large portions of the sums which Sun Capital represents as debt, are in fact equity, and therefore subordinate to the interests of the pension plan. And this is highly relevant to the new plan for the company, because accurately determining and characterizing these interests will determine how much financial horsepower is available to propel the firm forward, and that is a financial issue of first magnitude.

PART THREE: Continental Illinois requests that the Court ORDER the Debtor(s) and their Counsel (Stempel individually and Kirkland & Ellis corporately) to cooperate fully with the Petitioner's efforts to come forward with a bid proposal at the auction. It is clear thus far that Stempel and Kirkland & Ellis have no intention on their part, or in the sense of representing the Debtor(s) – to cooperate with interested parties who want to try to make an offer at the auction. They must be *ordered* to cooperate.

PART FOUR: Continental Illinois requests that the Court ORDER the Debtor(s) and their Counsel (Stempel individually and Kirkland & Ellis corporately) to cooperate with the preceding PART THREE *without* imposing self-

serving "Confidentiality" provisions on prospective bidders. There is nothing that should be confidential in this situation, and allowing that self-serving fiction to the effect that everything must be kept confidential, does nothing but confound bidders and unjustly entrench management, and potentially serve to *disenfranchise* employees from their pension rights, which in turn carries a serious prospective cost to the general creditors of the firm because it will *deteriorate* morale. The Court has a duty to prevent this.

PART FIVE: Continental Illinois requests that the Court ORDER the Debtor(s) and their counsel (Stempel individually and Kirkland & Ellis corporately) to furnish the proper distribution list for filings and communications, as was requested in writing; and that they be ordered to furnish that list in email format.

CERTIFICATION OF SERVICE: Continental Illinois Holding Corporation *pro se* and its acting officer Matthew W. Lechner *pro se* hereby certify having delivered this document to the Court, and to the Debtor via its counsel James Stempel, and to the United States Trustee – and notes that request has been made herein for the proper distribution list in email format.

In accordance with accepted Federal *Ex Parte* procedures, the Petitioner will contact opposing counsel (Stempel) and inquire if they wish to oppose the filing, and will attempt to inform the Court Clerk of their answer, and here invites them to make a timely *Ex Parte* answer if they wish to do so.

To the best of the knowledge of the Petitioner, the sum $46 is owed to the Court as a fee for the Filing of a Miscellaneous Paper, and that sum will be enclosed with the copy of this document sent to the Court.

Respectfully submitted (and attested with respect to Certification of Service) by:

Continental Illinois Holding Corporation

CONTINENTAL ILLINOIS HOLDING CORPORATION

Matthew W. Lechner

by, Matthew W. Lechner (DOB 7/20/1962) its appointed officer, Chairman of the Board,

this Wednesday, October 26, 2011.