

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
CB HOLDING CORP., <u>et al.</u> , ¹)	Case No. 10-13683 (MFW)
)	
Debtors.)	Jointly Administered
)	
)	Re: Docket No. 1079

**ORDER GRANTING LIMITED RELIEF FROM
AUTOMATIC STAY SOLELY TO ALLOW STATE
COURT LITIGATION TO PROCEED**

Upon consideration of the motion of Frances Cacace and Edward Cacace (together, the “Movants” or “Plaintiffs”) to allow Movants to prosecute an action in New Jersey state court

¹ The other Debtors, and the last four digits of each of their tax identification numbers, are: 1820 Central Park Avenue Restaurant Corp. (5151); Bugaboo Creek Acquisition, LLC (4629); Bugaboo Creek Holdings, Inc. (0966); Bugaboo Creek of Seekonk, Inc. (1669); CB Holding Corp. (8640); CB VII, Inc. (9120); CB VIII, Inc. (1468); Charlie Brown North (6721); Charlie Brown’s Acquisition Corp. (8367); Charlie Brown’s at Clifton, Inc. (7309); Charlie Brown’s Mark Corp. (3569); Charlie Brown’s Montclair, Inc. (4223); Charlie Brown’s 1981, Inc. (7781); Charlie Brown’s of Allentown, L.L.C. (8420); Charlie Brown’s of Alpha, Inc. (9083); Charlie Brown’s of Berwyn, LLC (3347); Charlie Brown’s of Blackwood, L.L.C. (5698); Charlie Brown’s of Bloomsburg, LLC (3326); Charlie Brown’s of Brielle, Inc. (8115); Charlie Brown’s of Carlstadt, Inc. (6936); Charlie Brown’s of Chatham, Inc. (2452); Charlie Brown’s of Commack LLC (4851); Charlie Brown’s of Denville, Inc. (1422); Charlie Brown’s of East Windsor, LLC (2747); Charlie Brown’s of Edison, Inc. (8519); Charlie Brown’s of Egg Harbor Twp, LLC (none); Charlie Brown’s of Franklin, LLC (5232); Charlie Brown’s of Garden City, LLC (7440); Charlie Brown’s of Hackettstown, L.L.C. (7493); Charlie Brown’s of Harrisburg, LLC (1085); Charlie Brown’s of Hillsborough, Inc. (0344); Charlie Brown’s of Holtsville, LLC (0138); Charlie Brown’s of Jackson, LLC (3478); Charlie Brown’s of Lacey, L.L.C. (6282); Charlie Brown’s of Lakewood, Inc. (0156); Charlie Brown’s of Langhorne, LLC (3392); Charlie Brown’s of Lynbrook LLC (2772); Charlie Brown’s of Maple Shade, Inc. (0404); Charlie Brown’s of Matawan, Inc. (8337); Charlie Brown’s of Middletown LLC (7565); Charlie Brown’s of Oradell, Inc. (0348); Charlie Brown’s of Pennsylvania, Inc. (6918); Charlie Brown’s of Piscataway, LLC (8285); Charlie Brown’s of Reading, LLC (1214); Charlie Brown’s of Scranton, LLC (9817); Charlie Brown’s of Selinsgrove, LLC (6492); Charlie Brown’s of Springfield, LLC (9892); Charlie Brown’s of Staten Island, LLC (1936); Charlie Brown’s of Tinton Falls, Inc. (6981); Charlie Brown’s of Toms River, LLC (5492); Charlie Brown’s of Union Township, Inc. (8910); Charlie Brown’s of Trexlertown, LLC (6582); Charlie Brown’s of Wayne, Inc. (4757); Charlie Brown’s of West Windsor, Inc. (0159); Charlie Brown’s of Williamsport LLC (8218); Charlie Brown’s of Woodbury, Inc. (0601); Charlie Brown’s of York, LLC (0980); Charlie Brown’s of Yorktown, LLC (7855); Charlie Brown’s Restaurant Corp. (7782); Charlie Brown’s Steakhouse Fishkill, Inc. (9139); Charlie Brown’s Steakhouse Woodbridge, Inc. (1906); Charlie Brown’s, Inc. (4776); Jonathan Seagull Property Corp. (7248); Jonathan Seagull, Inc. (9160); The Office at Bridgewater, Inc. (3132); The Office at Cranford, Inc. (3131); The Office at Keyport, Inc. (1507); The Office at Montclair, Inc. (3128); The Office at Morristown, Inc. (3127); The Office at Ridgewood, Inc. (2949); The Office at Summit, Inc. (3126); and What’s Your Beef V, Inc. (4719). The Debtors’ address is 1450 Route 22 West, Mountainside, NJ 07092.

against certain of the above-captioned debtors (the “Debtors”), solely for the purposes of (i) determining the liability, if any, of Charlie Brown’s Corporation and CB VIII, Inc. (the “Defendants”) for allegedly negligent maintenance of property which the Defendants allegedly leased, occupied and managed, and (ii) to the extent liability is established and a judgment is entered or settlement is received, collecting available insurance proceeds, if any; and this matter being submitted on consent; the Court having determined that good and adequate cause exists for entry of this Order; and the Court having determined that no further notice of the Motion must be given;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

2. Movants are hereby allowed a general unsecured claim in the amount of \$250,000.00 (the “Self-Insured Retention Claim”) to satisfy the self-insured retention (the “SIR”) component of the Debtors’ Excess Commercial General Liability Policy #XSL-G24932515 (the “Policy”) issued by ACE American Insurance Company (“ACE”); provided however, if any judgment is entered or settlement is reached in the State Court Action² in an amount less than \$250,000, the amount of the Self-Insured Retention Claim will be reduced concomitantly.

3. With the sole exception of the Self Insured Retention Claim, the Movants hereby waive any rights to collect or receive payment, in whole or in part, on account of the SIR from the Debtors, ACE or any of their affiliates or successors-in-interest.

4. The automatic stay imposed under section 362(a) of the Bankruptcy Code is modified to permit Movants to prosecute the State Court Action solely for the limited purposes of (i) determining the liability of Defendants for allegedly negligent maintenance of property

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

which the Defendants owned, occupied and managed, and (ii) to the extent liability is established and a judgment is entered or a settlement is reached, collecting available insurance proceeds from the Policy, if any.

5. Any judgment or settlement in the State Court Action shall be (i) reduced by \$250,000.00 as to account for the Self-Insured Retention Claim and (ii) limited to any available insurance proceeds, up to the available limits of the Policy.

6. To the extent that a judgment or settlement is not fully satisfied by available insurance proceeds, if any, from the Policy, Movants hereby waive any claim (except the Self-Insured Retention Claim) against the Defendants and Debtors and agree that they will not seek in any manner to receive distribution of money or property of or from the Debtors' estates or any of their agents, affiliates, or successors-in-interest.

7. Upon entry of this Order, any and all claims, proofs of claim, scheduled claims, administrative claims, motions or requests for payment filed and/or asserted, or which could have been filed and/or asserted, by Movants against the Debtors' estates shall be deemed satisfied, waived and/or withdrawn with prejudice, except for the Self-Insured Retention Claim.

8. Nothing herein (i) alters or amends the terms and conditions of any insurance policies issued to the Debtors or of any related agreements; (ii) relieves the Debtors of their obligations to pay any retentions or to pay (or reimburse the insurer for) any deductibles, except that the Self-Insured Retention Claim shall be deemed to satisfy the Debtors' self-insured funding obligations to ACE under the Policy as to Movants' underlying claim against the Debtors; (iii) relieves the Debtors of any of their other obligations under the insurance policies and related agreements, except that the Self-Insured Retention Claim shall be deemed to satisfy the Debtors' self-insured funding obligations to ACE under the Policy as to Movants' underlying

claim against the Debtors; (iv) creates or permits a direct right of action by the Movants against any insurers; (v) precludes or limits, in any way, the rights of any insurer to contest and/or litigate the existence, primacy and/or scope of available coverage under any alleged applicable policy; or (vi) relieves the Movants from their obligation to file proof(s) of claim in the Debtors' bankruptcy cases.

9. Under no circumstances shall ACE be (i) required to pay any portion of the first \$250,000 of any judgment or settlement or (ii) liable for any portion of the first \$250,000 of any judgment or settlement.

10. This Court retains jurisdiction with respect to all matters arising from or related to this Order.

Dated: March 21, 2012
Wilmington, Delaware



THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE