UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
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INSUL COMPANY, INC.,	*	
	*	**CASE NUMBER 02-43909**
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Debtor.	*	
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ANDREW W. SUHAR, TRUSTEE,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	**ADVERSARY NUMBER 04-4100**
	*	
TRAVELER'S CASUALTY AND SURETY COMPANY, *et al.*,	*	
	*	
Defendants.	*	
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O R D E R

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This matter came on upon the Limited Appearance and Motion to Quash Purported Service upon Kelley & Ferraro, LLP, Combined with Motions to Dismiss for Lack of In Personam Jurisdiction and for Improper Venue ("Motion to Dismiss") filed by Kelley & Ferraro, LLP ("Kelley & Ferraro"). On May 25, 2004, Andrew W. Suhar ("Suhar"), Trustee for Insul Company, Inc. ("Insul"), Debtor herein, filed Adversary Number 04-4100 (the "Adversary Proceeding") to determine the validity, priority or extent of a lien or other interest in property; to obtain a declaratory judgment relating to the foregoing, for injunctive

relief and other relief. Suhar filed this Adversary Proceeding against "approximately 36,297 asbestos claimants and claims represented by the following lawyers and/or law firms" and also specifically named 47 Defendants. Eight of the named Defendants are insurance companies. The remaining named Defendants are law firms that allegedly represent asbestos claimants who have filed lawsuits or asserted asbestos related injury claims against Insul. Kelley & Ferraro is one of the named Defendants that are alleged to be lawyers or law firms that represent one or more of the 36,297 asbestos claimants (collectively, the "Asbestos Claimants"). All such Asbestos Claimants assert pre-petition claims. There has been no bar date for pre-petition claims against Insul.

Insul filed a Chapter 7 bankruptcy petition on or about September 4, 2002. Insul sold all of its operating assets to Cast Powder LLC on June 30, 2002 for Six Hundred Sixty-Four Thousand Dollars ($664,000.00) in cash plus the assumption of Insul's remaining liability to National City Bank, Insul's secured creditor. All of the cash proceeds of sale were paid to National City Bank, but National City Bank was still owed over One Million Dollars ($1,000,000.00). Pursuant to the complaint in the Adversary Pro-ceeding, Insul states that it has no assets to pay claims asserted by the Asbestos Claimants except for certain policies of insurance, as set forth in the Adversary

Proceeding.

On July 22, 2004, this Court held a hearing on Suhar's motion for preliminary injunction, which sought to enjoin the law firm of Kelley & Ferraro, one of the Defendants in the Adversary Proceeding, from continuing certain pre-petition lawsuits asserting claims by certain Asbestos Claimants by reimposing a stay on such pre-petition lawsuits. It was necessary to reimpose a stay because, on or about October 21, 2003, Insul had agreed with Kelley & Ferraro, pursuant to a stipulation that was so ordered by the bankruptcy court, to modify the automatic stay imposed by § 362 of the Bankruptcy Code so that the pre-petition asbestos lawsuits could proceed to judgment or settlement. The stipulation further pro-vided that no payment could be made to the Asbestos Claimants from any applicable insurance proceeds without further order of the bankruptcy court. This Court denied the motion for preliminary injunction on due process grounds, citing the fact that the Asbestos Claimants represented by the Kelley & Ferraro law firm were not before the Court and also that there appeared to be no change in circumstances that would warrant the reimposition of a stay that Insul had voluntarily modified nine months earlier.

On December 9, 2004, Kelley & Ferraro filed the Motion to Dismiss. Kelley & Ferraro made a limited appearance pursuant to FED. R. BANKR. P. 7012(h). The basis for the Motion to Dismiss

is that "(1) service of the complaint upon Kelley & Ferraro was merely a courtesy notice of the lawsuit; or (2) it is the Trustee's attempted improper and void service on each of the over 11,000 injured claimants represented by Kelley & Ferraro."

A motion for withdrawal of the reference was filed by Cincinnati Insurance Company, Crum & Forster Indemnity Co., Firemen's Fund Insurance Company, United States Fire Insurance Company and Zurich American Insurance Company of Illinois on September 17, 2004. On that same date, these same parties also filed a memorandum in support of the motion for withdrawal of the reference.

The gravamen of the Motion to Dismiss is that Suhar has not obtained service upon any of the approximately 11,000 claimants represented by Kelley & Ferraro and although Kelley & Ferraro represents persons whose rights are purportedly to be affected by the Adversary Proceeding, Kelley & Ferraro is not itself a proper party to this Adversary Proceeding. Because the Trustee failed to serve the individual Asbestos Claimants, the Motion to Dismiss argues that the Court does not have *in personam* jurisdiction over such persons. The Motion to Dismiss notes that Suhar did not even purport to attempt service upon Kelley & Ferraro's clients by service upon the named clients in care of the law firm, but rather named the law firm itself as a Defendant. The Motion to Dismiss argues that such service is

improper and, therefore, the Adversary Proceeding must be dismissed as to Kelley & Ferraro and/or its clients for inadequate and insufficient service of process.

To date, Suhar has filed no response to the Motion to Dismiss. This Court finds that the Motion to Dismiss is well taken because Suhar has not obtained service of process on any of Kelley & Ferraro's individual clients and Kelley & Ferraro is not a proper Defendant to the Adversary Proceeding since Suhar cannot obtain relief from the law firm itself. The complaint fails to state a claim upon which relief can be granted against Kelley & Ferraro and this Court does not have *in personam* jurisdiction over the individual clients of Kelley & Ferraro because there is inadequate service of process. Therefore, the Adversary Proceeding must be dismissed as to Kelley & Ferraro pursuant to FED. R. BANKR. P. 7012(b)(6). To the extent that the Adversary Proceeding has purported to obtain service of process upon the personal injury clients represented by Kelley & Ferraro that are or may be Asbestos Claimants asserting asbestos claims against Insul, such service of process is inadequate and insufficient and, therefore, ineffective under FED. R. BANKR. P. 7012(b)(4) and (5). Accordingly, the Motion to Dismiss is granted, the purported service upon Kelley & Ferraro's clients is quashed and the complaint in the Adversary Proceeding is dismissed as to Defendant Kelley & Ferraro.

IT IS SO ORDERED.

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HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE