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**UNITED STATES BANKRUPTCY COURT
IN AND FOR THE DISTRICT OF ARIZONA**

In Re)
)
TODD McFARLANE PRODUCTIONS,)
INC.,)
)
Debtor.)

Chapter 11 Proceedings

Case No. BR-04-21755-PHX-CGC

Adv. No. 06-804

HANOVER INSURANCE COMPANY,)
)
Plaintiff,)
)
v.)
)
TMP INTERNATIONAL, INC., et al.,)
)
Defendants.)

**UNDER ADVISEMENT
DECISION RE: EMPLOYERS
INSURANCE OF WAUSAU'S
MOTION FOR SUMMARY JUDGMENT
AGAINST THE HANOVER INSURANCE
COMPANY**

I. Introduction

Employers Insurance of Wausau (“Wausau”) seeks summary judgment against The Hanover Insurance Company (“Hanover”). In Count III of the First Amended Complaint, Hanover seeks contribution from Wausau in connection with the defense of the Missouri litigation filed in 1997 by Tony Twist (“Twist litigation”) against numerous parties, including Todd McFarlane, Todd McFarlane Productions, Inc. (“McFarlane Productions”), TMP International, Inc. (“TMP International”), and Image Comics, Inc. (“Image”). In a nutshell, the Twist litigation involved claims related to the alleged unlawful use of Tony Twist’s name as a symbol of his identity in connection with a fictional character in the Spawn comic book series.

The history behind the Missouri proceedings are long and complicated. For purposes of this motion, it is enough to know the following. The Twist litigation resulted originally in a \$24.5 million verdict against all the defendants. The trial court then entered a judgment notwithstanding

1 the verdict, and Twist appealed. Ultimately, the Missouri Supreme Court reversed the judgment
2 notwithstanding the verdict, announced the elements of a Missouri right of publicity claim, and
3 remanded for a new trial. The second trial resulted in a \$15 million verdict against Todd McFarlane
4 and McFarlane Productions only. A defense verdict was returned for Image, TMP International and
5 McFarlane Entertainment. With respect to Image, this judgment is now final. With respect to all
6 other defendants, the judgment has been satisfied in full through a settlement that included payment
7 from Hanover, among others.

8 **II. Discussion**

9 Hanover and the McFarlane Parties each sought summary judgment on the underlying issues
10 of whether Hanover had a duty to defend and to indemnify. In a March 31, 2008, Under Advisement
11 Decision, this Court ruled that Hanover did not have either duty. That ruling was incorporated in a
12 judgment entered on May 12, 2008 which is now final. Therefore, Count III of Hanover's First
13 Amended Complaint seeking contribution from Wausau is moot and Wausau entitled to summary
14 judgment. As stated by Hanover in their response to the motion for summary judgment, "[f]rom a
15 practical perspective, Wausau's Motion should not be ruled on by the Court until the Court rules on
16 the cross-motions submitted by Hanover, Citizens and the McFarlane Defendants, since a ruling in
17 favor of Hanover and Citizens on those motions would essentially moot the issue presented by
18 Wausau." (Hanover's Resp. Mot. Summ. J. P. 6).

19 **III. Conclusion**

20 Accordingly, the Court grants Wausau's Motion for Summary Judgment. Counsel for
21 Wausau is to upload a form of order consistent with this decision.

22 So ordered.

23 **DATED:** June 2, 2008

24 
25 CHARLES G. CASE II
26 UNITED STATES BANKRUPTCY JUDGE
27
28

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