

United States Bankruptcy Court for the District of Delaware		<u>CH 7</u> <u>CH 13</u> <u>X</u> <u>CH 11</u> PLEASE CHECK CHAPTER
Name of Debtor Fleming Companies, Inc		PROOF OF CLAIM
Case Number 03-10945 (KJC)		
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or entity to whom the debtor owes money or property) Gorton's, Inc	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.	
Name and Addresses Where Notices Should be Sent c/o Jason J DeJonker, Esq McDermott, Will & Emery 227 West Monroe Street Chicago, Illinois 60606-5096 Telephone No 312-372-2000	<input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	THIS SPACE IS FOR COURT USE ONLY
Account or other number by which creditor identifies debtor	Check here if this claim <input type="checkbox"/> amends <input type="checkbox"/> replaces a previously filed claim dated _____	
1 BASIS FOR CLAIM	<input type="checkbox"/> Wages, salaries, and compensations (Fill out below) Your social security number _____ Unpaid compensations for services performed from _____ to _____ (date) (date)	
<input checked="" type="checkbox"/> Goods sold <input checked="" type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other Please See Addendum <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a)		
2 DATE DEBT WAS INCURRED Please See Attached Addendum	3 IF COURT JUDGMENT DATE OBTAINED	
4 Total Amount of Claim at Time Case Filed <u>In excess of \$307,472.00</u> If all or part of your claim is secured or entitled to priority also complete Item 5 or 6 below <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5 Secured claim <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff) Brief Description of Collateral <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Value of collateral _____ Amount of arrearage and other charges <u>at time case filed</u> included in secured claim above if any \$ _____	5 Unsecured Priority Claim <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim <input type="checkbox"/> Wages, salaries or commissions (up to \$4,300) *earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business whichever is earlier-11 U.S.C. § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan-11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$1,950* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6) <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other—Specify applicable paragraph of 11 U.S.C. § 507(a) _____ <i>*Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment</i>	
7 CREDITS The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. 8 SUPPORTING DOCUMENTS <u>Attach copies of supporting documents</u> such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. ANY ATTACHMENT MUST BE 8-1/2" BY 11" See Addendum. 9 DATE-STAMPED COPY To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and an additional copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY FILED SEP 08 2003 BMC Fleming Companies Claim  08967
Date 9/04/03	Sign and print the name and title if any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any) Diane J Amero, Credit Manager <i>Diane J Amero</i>	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years or both.		

ADDENDUM TO PROOF OF CLAIM

Gorton's, Inc ("Gorton's") hereby submits this addendum (the "Addendum") to its proof of claim (the "Proof of Claim") against **Fleming Companies, Inc** ("Fleming"), and in support thereof states as follows

General Background

1 On April 1, 2003, Fleming commenced a voluntary case under chapter 11 of title 11, United States Code (the "Bankruptcy Code") in this Court Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, Fleming and its affiliated bankrupt entities (collectively, the "Debtors") continue to operate their businesses and manage their properties as debtors in possession On April 14, 2003, the United States Trustee appointed an official committee of unsecured creditors No trustee or examiner has been appointed or designated in these chapter 11 cases

2 Gorton's and Fleming were parties to numerous transactions prior to the Petition Date pursuant to which Gorton's agreed to sell to Fleming, and Fleming agreed to purchase from Gorton's, various frozen seafood products (the "Gorton's Products")

3 At all relevant times, the Parties' business relationship has included two major components In one component, Gorton's has sold Gorton's Products directly to Fleming for redistribution by Fleming to Fleming's own customers (the "Sale Transactions") In the second component, Fleming has acted as a distribution vehicle for Gorton's to supply Gorton's Products to the United States Military (the "Military Transactions") (the Sale Transactions and Military Transactions shall collectively be referred to hereinafter as the "Transactions")

4 Prior to the Petition Date, the Sale Transactions were business credit transactions pursuant to which (a) Gorton's agreed to sell (and in fact sold) Gorton's Products to Fleming and

Fleming agreed to purchase (and in fact purchased) Gorton's Products from Gorton's on credit, and (b) Gorton's invoiced Fleming for Gorton's Products as they were delivered to Fleming

5 Pursuant to the Military Transactions, Fleming and Gorton's agreed that Fleming would purchase Gorton's Products from Gorton's for delivery by Fleming to the United States Military Gorton's agreed that once Gorton's Products that were purchased by Fleming for this purpose were in fact delivered to the United States Military, Gorton's would issue a credit or remit a direct refund to Fleming in a dollar amount equal to the price of the Gorton's Products that were in fact so delivered Gorton's would thereafter invoice the United States Military directly for these Gorton's Products

6 Gorton's records of account demonstrate that Gorton's is owed a total of \$307,472 00 based on Sale Transactions that were completed prior to the Petition Date This amount includes (a) a claim in the amount of \$257,408 44 for Gorton's Products that were shipped to and received by Fleming before the Petition Date and for which Gorton's has not received payment, and (b) a claim in the amount of \$50,063 56 for deductions and credits that have been claimed by Fleming, but for which no legitimate basis or bases exist True and accurate copies of Gorton's records of account which substantiate these claims were previously submitted to the Court and Fleming as Exhibit 1 and Exhibit 2 to the *Motion of Gorton's, Inc for Relief from Stay under Section 362 of the Bankruptcy Code to Exercise Right of Setoff Pursuant to 11 USC § 553*, filed on or about June 13, 2003 (the "Lift Stay Motion"), and are available upon request from Gorton's Based on the foregoing, Gorton's hereby demands allowance and payment from Fleming and its bankruptcy estate of the amount of \$307,4172 00 ¹

¹ Pursuant to the Lift Stay Motion, Gorton's seeks to setoff a portion of its claim against Fleming (\$205,728 82) against amounts owed by Gorton's to the Fleming (\$205,728 82) In addition, Gorton's claim includes \$71,120 24 for Gorton's Products that are subject to reclamation rights that Gorton's has asserted by its reclamation demand tendered on April 1, 2003 and the *Response of Gorton s, Inc To Debtors' Motion for Entry of*

Reservation of Other Claims and Rights

7 In addition to the foregoing, Gorton's expressly reserves its rights, remedies, interests, priorities, protections, and claims against the Debtors under Sections 510, 544, 545, 548, 549 and 550 of the Bankruptcy Code

8 Gorton's reserves its right to amend and supplement the foregoing Proof of Claim and to file additional claims against the Debtors for any reason

9 The filing of this Proof of Claim is not and should not be construed as (1) an election of remedy, (2) a waiver of jury trial rights, or (3) a waiver or limitation of any right, interest, or cause of action held by Gorton's

10 Gorton's further reserve any and all rights against parties other than the Debtors based on the foregoing facts and circumstances

an Order with Respect to the Reclamation Claims filed in the Debtors Cases, filed on August 8, 2003 (the "Reclamation Response") In the event this Court grants Gorton's the relief sought in the Lift Stay Motion and in the Reclamation Response, Gorton's shall amend this proof of claim accordingly

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MCDERMOTT, WILL & EMERY

September 5, 2003

VIA FEDERAL EXPRESS

Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo, California 90245

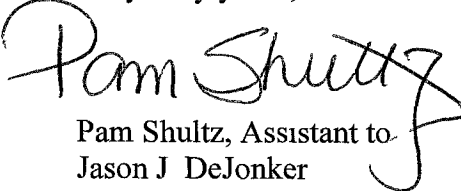
Re *In re Fleming Companies, Inc*
Case No 03-10945 (KJC)

Dear Sir or Madame

Enclosed please find an original and four (4) copies of the Proof of Claim of Gortons, Inc in the above-captioned case. Please file the original with the court and retain such copies as you may need. Please file stamp the extra copies and return them to me in the enclosed stamped, self-addressed envelope.

Please call with any questions. Thank you.

Very truly yours,


Pam Shultz, Assistant to
Jason J DeJonker

pjs

Enclosure