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J Lawrence McCormley
State Bar No 005005
TIFFANY & BOSCO

FIFTH FLOOR VIAD TOWER
1850 NORTH CENTRAL AVENUE
PHOENIX ARIZONA 85004-4546
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Attorneys For Smirnco, Inc

FILED
SEP 15 2003
BMC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re
FLEMING COMPANIES, INC , et al,
Debtor

Case No 03-10945 (MFW)
(Jointly Administered)
Chapter 11 Proceedings
PROOF OF CLAIM

1 The undersigned, whose address is 1850 N Central Avenue, 5th Floor,
2 Phoenix, Arizona 85004, is the attorney/agent for Smirnco, Inc , an Arizona corporation,
3 ("Claimant"), a creditor in the above-captioned case, and is authorized to make this Proof
4 of Claim ("Proof of Claim") on behalf of Claimant

5 2 Claimant Smirnco, was the owner and operator of seven retail grocery
6 locations in the Phoenix, Arizona metropolitan area, six of which were acquired from the
7 Debtor and are listed as Smirnco stores numbers 2 through 7 on the attached Schedule

8 A As a material and unified part of each such transaction, Smirnco became a subtenant
9 of the Debtor in connection with the real estate leases for each location. In connection with
10 each sublease location, the Debtor undertook contractual obligations, including without
11 limitation, those described in a document entitled "Standby Facility Agreement," by which



1 Debtor agreed to supply wholesale groceries and foods for Smirnco's use in connection
2 with each of Smirnco's retail grocery operations. In relation to several specific locations
3 (Stores #3, 4 and 5), the Debtor also provided a subsidy of the lease payment due to the
4 Master Landlord of the respective space

5 3 The Debtor was, at the time of the filing of the Petition initiating this case,
6 obligated under the terms of the Facility Standby Agreement. The Debtor is in breach of
7 its obligation to supply wholesale food to Claimant and as a result, Claimant has been
8 forced to close four stores. The closure of the balance of Claimant's retail stores appears
9 imminent
10

11 4 A true copy of all subleases and Facility Standby Agreements are in the
12 possession of the Debtor and are available upon request

13 5 The Debtor-in-Possession rejected the Lease on Store # 4 on or about
14 August 27, 2003, pursuant to 11 U.S.C. § 365. Despite inquiry of the Debtor's attorneys,
15 employees and agents, it is unclear whether the Debtor has rejected all rights to the assets
16 of Claimant located thereon

17 6 Upon information and belief, the Debtor has not surrendered possession of
18 all of its interest, if any, in the assets of Claimant located at any of the Leased Premises
19 on which Claimant has operated its retail stores

20 7 As a direct result of Debtor's breach of the Facility Standby Agreement(s) and
21 sublease Agreements, Claimant has suffered substantial damage, including without
22 limitation the following

23 a post-petition administrative rent for the rent subsidy due for Store
24 numbers 3, 4 and 5, until the date Debtor is deemed to reject any such executory contract
25 and surrender possession of any right, title, interest or claim Debtor may have against
26

1 property of Smirnco The amount of this claim is estimated at \$1,296,974 and is set forth
2 on Schedule A, attached

3 b for future rejection damages pursuant to 11 U S C § 502(b)(6),
4 resulting from the termination of said all non-residential subleases of real property between
5 the Debtor and Smirnco, such amount being the greater of the rental rate for one year of
6 the unexpired term of the sublease or fifteen percent (15%) (not to exceed three (3) years)
7 of the remaining term of the sublease

8 8 For general unsecured damages resulting directly from Debtor's breach of
9 the Facility Standby Agreement and Debtor's other written agreements with Claimant, all
10 as summarized on Schedule A, attached

11 9 An itemization of the amounts referenced in paragraphs 7 and 8 above are
12 attached hereto as Schedule A

13 10 Although all payments, if any, have been credited and deducted from this
14 Claim, due to the unliquidated nature of the obligations of Debtor to Claimant as described
15 herein, the amount of all future payments due from Claimant to Debtor, if any, have not as
16 yet been calculated and applied as credits and deductions for the purpose of making this
17 Proof of Claim In addition to Claimant's affirmative claim against Debtor, Claimant is
18 entitled to assert offset and/or recoupment as a defense to any liability asserted by Debtor
19 to be due from Claimant

20 11 This claim is subject to any setoff or counterclaim for amounts due from
21 Claimant to Debtor arising out of Claimant's acquisition of Store numbers 2-7 from Debtor

22 12 The claim described in paragraph 7(a) is entitled to priority as a Chapter 11
23 administrative expense pursuant to 11 U S C § 503

24 13 The claims described in Sections 7(b) and 8 hereof are entitled to general
25


1 unsecured status

2 14 No security is held for this claim

3 15 The undersigned has read this Proof of Claim and is advised by the Claimant
4 that Claimant has accurately compiled the facts and amounts set forth herein from
5 business records of Smirnco believed to be accurate, and that on that basis, the
6 undersigned believes the facts and amounts stated herein are true and correct

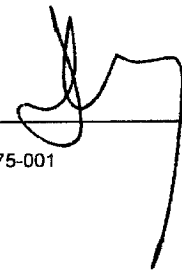
7 DATED this 12th day of September, 2003

8 TIFFANY & BOSCO, P A

9
10
11 By 
12 J Lawrence McCormley
13 Fifth Floor Viad Tower
14 1850 North Central Avenue
15 Phoenix, Arizona 85004-4546
16 Attorneys for Smirnco, Inc

17 Original of the foregoing e-mailed
18 and mailed via overnight delivery
19 this 12th day of September, 2003, to

20 Bankruptcy Management Corporation
21 1330 East Franklin Avenue
22 El Segundo CA 90245

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SCHEDULE A

**Retail Grocery Locations in the
Phoenix Metropolitan Area**

Fleming Store #	Smirnco Store #	Address
unknown	#2	4410 W Union Hills Drive, Suite 1, Glendale, AZ 85308
unknown	#3	3434 W Greenway Road, Phoenix, AZ 85053
unknown	#4	710 E Union Hills Drive, Phoenix, AZ 85024
unknown	#5	15472 N 99 th Avenue, Sun City, AZ 85351
unknown	#6	Tatum and Cactus, Phoenix, AZ
unknown	#7	1845 N Scottsdale Road, Tempe, AZ 85281-1563

SCHEDULE B

Damage/Cure Summary
Smirnco, Inc

	Store #1	Store #2	Store #3	Store #4	Store #5	Store #6	Store #7	TOTAL
Store Closure Expense			\$250,000	\$250,000		\$250,000		\$750,000
Lost Net Sales Revenue (Future)					\$611,104			\$611,104
Lost Rent Subsidy			\$624,000 ¹	\$468,000 ²	\$204,974 ³			\$1,296,974
Increased Supply Costs	\$324,491	\$690,736			\$665,152		\$511,582	\$2,191,960
Lost Net Sales Revenue (Past)	\$194,120	\$403,105	\$203,073	\$360,128	\$164,412		\$216,023	\$1,540,861
Loss Relating to Delay in Location Sale							\$206,175	\$128,337
Operating Losses						\$244,521		\$238,596
	\$518,611	\$1,093,840	\$1,077,073	\$1,078,128	\$1,645,641	\$494,521	\$933,779	\$6,841,594

227950/11775 001

¹ \$3,000/week

² \$2,250/week

³ \$985.45/week

Christopher Trindade

From Rhonda J Glazebrook [RJG@tblaw.com]
Sent Monday, September 15, 2003 3:22 PM
To 'ctrindade@goldenstatelegal.com'
Subject Fleming Companies, Inc Bankruptcy Filing



Smirnco-Proof of
Claim and Sch

Chris,

Confirming our telephone conversation, I represent Smirnco, Inc, a creditor in the above-referenced Fleming bankruptcy. Attached to this e-mail is a scanned version of the Smirnco Proof of Claim which must get filed by delivery to

Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo, CA 90245
Telephone (888) 909-0100

on or before 4:00

Your help in this filing is greatly appreciated. Please send your statement for the charge incurred to my address listed below.

If you have any questions, please contact me immediately at (602) 255-6000.

Thank you,

Larry McCormley

<<Smirnco-Proof of Claim and Schedules (PDF format) (227968).PDF>>

Rhonda Glazebrook (602-255-6023)
Secretary to J Lawrence McCormley
Tiffany & Bosco, P A (<<http://www.tiffany-bosco.com/>>)
1850 North Central Avenue, Fifth Floor
Phoenix, Arizona 85004-4546
Fax 602-255-0103

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