

Name of Debtor  
FLEMING FOODS OF TEXAS L P

Case Number  
03 10955(Jointly Admin Under  
03-10945)

This Space for Court Use Only

NOTE This form should not be used 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 other entity to whom the debtor owes money or property)  
CGU INSURANCE COMPANY n/k/a ONEBEACON INSURANCE COMPANY  
Name and address where notices should be sent  
J Michael Franks Esq  
Manier & Herod a Tennessee Professional Corporation  
2200 First Union Tower  
150 Fourth Avenue North  
Nashville TN 37219  
Telephone Number (615) 244 0030

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  
 Check box if you have never received any notices from the bankruptcy court in this case  
 Check box if the address differs from the address on the envelope sent to you by the court

Account or other number by which creditor identifies debtor  
n/a

Check here  
 replaces  
if this claim  amends a previously filed claim dated

1 Basis for Claim

- Goods Sold
- Services performed
- Money loaned
- Personal injury/wrongful death
- Taxes
- Other Surety Bond

- Retiree Benefits as defined in 11 U S C § 1114(a)
- Wages salaries and compensation (fill out below)  
Your SS# \_\_\_\_\_  
Unpaid compensation for services performed  
from \_\_\_\_\_ to \_\_\_\_\_

2 Date debt was incurred Various

3 If court judgment, date obtained N/A

4 Total Amount of Claim at Time Case Filed

\$ 50 000 00 (Contingent)

If all or part of your claim is secured or entitled to priority also complete Item 5 or 6 below

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

Check this box if your claim is secured by collateral (including a right of setoff)  
Brief Description of Collateral  
 Real Estate  Motor Vehicle  
 Other \_\_\_\_\_  
Value of Collateral \$ Unknown \_\_\_\_\_  
(security interest and contingent right of equitable subrogation)  
Amount of Arrearage and other charges at time case filed included in secured claim if any \$ \_\_\_\_\_

6 Unsecured Priority Claim

Check this box if you have an unsecured priority claim  
Amount entitled to priority \$ \_\_\_\_\_  
Specify the priority of the claim  
 Wages, salaries or commission (up to \$4,650) \* 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)  
 Contributions to an employee benefit plan 11 U S C § 507(a)(4)  
 Up to \$2 100\* of deposits toward purchase lease or rental of property or services for personal family or household use - 11 U S C § 507(a)(6)  
 Alimony, maintenance or support owed to a spouse former spouse or child 11 U S C § 507 (a)(7)  
 Taxes or penalties owed to governmental units - 11 U S C § 507 (a)(8)  
 Other - Specify applicable paragraph of 11 U S C § 507 (a) (\_\_\_\_)

\*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment

7 Credits The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim

THIS SPACE IF FOR COURT USE ONLY

8 Supporting Documents Attach copies of supporting documents 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

9 Date-Stamped Copy To receive an acknowledgment of the filing of your claim enclose a stamped self addressed envelope and copy of this proof of claim

Date  
03-05-03

Sign and print the name and title if any of the creditor or other person authorized to file this claim

Michael Fisk

Michael Fisk / XL Specialty Ins attorney in fact for CGU Insurance Company n/k/a OneBeacon Ins Co

FILED  
SEP 11 2003  
BMG



Penalty for presenting fraudulent claim Fine of up to \$500 000 or imprisonment for up to 5 years or both 18 U S C §

## I Summary of Claim

CGU Insurance Company ("CGU") issued surety bond number SB0072881 (the "Bond") at the request of Fleming Foods of Texas, L P and Fleming Companies, Inc ("Debtors") CGU is now known as OneBeacon Insurance Co ("OneBeacon") A copy of the Bond is attached hereto as Exhibit A XL Specialty Insurance Company ("XL") is OneBeacon's true and lawful attorney-in-fact pursuant to the Power of Attorney dated September 7, 2001, a copy of which is attached as Exhibit B Additionally, pursuant to the Assignment dated September 7, 2001, a copy of which is attached as Exhibit C, OneBeacon has assigned to XL all of OneBeacon's rights, ownership, title, and legal and equitable interests in any and all surety bonds issued by OneBeacon during the period 1991-2002, inclusive For purposes of this claim, XL and OneBeacon will be referred to collectively as "OneBeacon "

OneBeacon is the holder of a contingent claim against the Debtors herein in the estimated amount of \$50,000 00, which contingent claim represents the penal limit of the Bond issued by CGU on behalf, or at the behest, of the Debtors, exclusive of interest, costs, and attorney's fees OneBeacon files this Proof of Claim under a full reservation of its rights, remedies, and defenses both at law and in equity, including without limitation the penal limit of the Bond and the rights and defenses, whether arising from contract, or in law or at equity, of any or all of Bond principals, which rights and defenses OneBeacon may assert pursuant to its rights of equitable subrogation

**This claim has been filed in the name of CGU as a precautionary measure only A similar claim has been filed in the name of OneBeacon Only one of these claims should be entitled to distribution in this case**

## II Contingent Claim

OneBeacon is unable, at the present time, to determine the total loss, if any, arising from OneBeacon's contingent claim, because the Bond may remain effective, and as such may be vulnerable to claims which may have arisen or accrued, or may arise or accrue, during the period for which the bond is effective, but which claims have not been made against the Bond to date

## III Basis of Claim

OneBeacon, as surety, issued a Bond on behalf of Fleming Foods of Texas, L P , as principal, and at the behest of Fleming Foods, Inc , and accordingly, it is entitled to reimbursement therefrom from any loss incurred by it as a result of having issued the Bond OneBeacon further reserves all rights and remedies it may be entitled to pursuant to contract and any and all applicable statutory, equitable and common law remedies and defenses, under the Bankruptcy Code or otherwise, including, but not limited to, Exoneration and Subrogation

**EXHIBIT A**

**Bond No SB0072881**

STATE OF NEW MEXICO  
TAXATION AND REVENUE DEPARTMENT  
CIGARETTE TAX SURETY BOND FOR DISTRIBUTOR  
OR DIRECT BUYING RETAILER

Amount \$ 50,000 00

Bond Number SB0072881

*need address*  
*CIG TX UNL 25/23 8/5/14*  
*POB SAN ANTONIO NM*

That we Fleming Foods of Texas L P  
as principal CGU Insurance Company

are duly authorized under the laws of the State of New Mexico to do a general surety business in the State of New Mexico, as surety\*, are held and firmly bound unto the STATE OF NEW MEXICO in the sum of Fifty Thousand Dollars and no/100 Dollars, lawful money of the United States, to be paid to said State of New Mexico or its assignees, and, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by this document. Said amount represents the estimated monthly Cigarette Tax payable. Additional Security may be required at any time.

NOW, THEREFORE, THE CONDITIONS OF THE ABOVE OBLIGATION ARE THAT The above principal shall timely file true reports, and make timely payment of any and all taxes, together with any and all penalties and/or interest thereon, which are already due or which may become due by reason of application of Sections 7-1-1 thru 7-1-82 NMSA 1978 as amended and all regulations and rulings of the Taxation and Revenue Department of the State of New Mexico, and shall faithfully comply with the Statutes of the State of New Mexico and any amendments thereof. Failure of the principal to comply with any of these conditions shall render the surety liable for payment of any taxes, penalty and interest for which the principal is liable by reason of such failure to comply, up to the amount specified in this bond. Payment shall be made by the surety within 30 days of a final determination of the principal's liability (1) by a court from which no appeal can be or is taken, (2) by the Taxation and Revenue Department, or (3) by the failure of the principal to pursue its statutory remedies, whichever occurs latest. A surety may be released and discharged from any and all liability to the State of New Mexico after the expiration of ninety (90) days from the date upon which such surety shall have filed with the Taxation and Revenue Department a written request to be released and discharged. However, such requests shall not operate to release or discharge such surety from any liability already due or which may become due before the expiration of said ninety (90) day period. As used herein the phrase "already due or which may become due" includes but is not limited to taxes, penalty and interest, the liability for payment of which arose during the period that this bond is in force even though the final determination of liability by a court, an administrative agency or the failure of the principal to pursue its statutory remedies or by any other reason, occurs after the period in which this bond is in force.

IN WITNESS WHEREOF, the principal has hereunto set its hand and seal and or caused its corporate name to be hereunto signed and its corporate seal attached by its duly authorized officers, and the surety has likewise caused its corporate name to be hereunto signed and its corporate seal attached by its duly authorized officers this 11th day of July 13 2001

Fleming Foods of Texas L P

PRINCIPAL

SEAL

CGU Insurance Company

SURETY

Leslie K. Hudgens  
Leslie K. Hudgens, Attorney-in-fact

\* Copy of Power of Attorney must accompany bond if signed by Attorney-in-fact.

ACKNOWLEDGEMENT OF PRINCIPAL  
(IF A CORPORATION)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_, being first duly sworn states under oath that signatory is the \_\_\_\_\_ of the \_\_\_\_\_ and is authorized to act on behalf of the corporation and that the seal affixed to the foregoing instrument was affixed voluntarily by the corporation, on behalf of the corporation, and pursuant to the authority of the Board of Directors

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

My Commission Expires: \_\_\_\_\_  
\_\_\_\_\_  
Notary Public

ACKNOWLEDGEMENT OF PRINCIPAL  
(IF AN INDIVIDUAL OR PARTNERSHIP)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_ and \_\_\_\_\_, being first duly sworn, state under oath that they are the persons who executed the foregoing instrument as principal, that they are authorized to act on behalf of \_\_\_\_\_, and that the instrument was executed voluntarily as their free act and deed

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

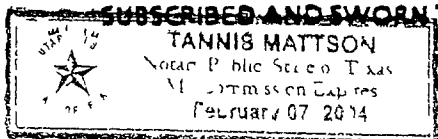
My Commission Expires: \_\_\_\_\_  
\_\_\_\_\_  
Notary Public

ACKNOWLEDGEMENT OF SURETY

STATE OF Texas  
COUNTY OF Harris

Leslie K Hudgens, being first duly sworn states under oath that signatory is the Attorney-in-Fact of CGU Insurance Company, a corporation described in and having executed the foregoing bond of CGU Insurance Company, as surety, and that Leslie K Hudgens a resident of Houston, Texas has authority to enter into a surety bond in New Mexico Leslie K Hudgens further states that CGU Insurance Company is duly and legally incorporated under the laws of the State of Pennsylvania, that the corporate seal affixed to the foregoing instrument was affixed pursuant to the authority of the Board of Directors that signatory is authorized to act as Attorney-in-Fact on behalf of said corporation and that the signature of Leslie K Hudgens, subscribed to the instrument is true and genuine and was subscribed thereto by order and authority of the Board of Directors Leslie K Hudgens further states that the assets of the CGU Insurance Company corporation, unencumbered and subject to execution, exceed the claims, debts and other liabilities of whatever nature of the corporation by more than \$ 1,997,678,000.00 and that the corporation has complied with all laws of the State of New Mexico relating to surety companies doing business in the State and is duly licensed and legally authorized by the State to qualify as sole surety on the foregoing instrument.

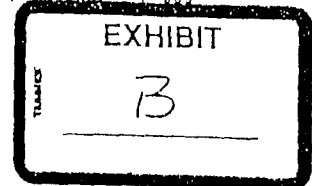
SUBSCRIBED AND SWORN TO before me this 11th day of July, 19 2001



*[Handwritten Signature]*

**EXHIBIT B**

**Attorney-in-Fact**



POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS THAT, OneBeacon Insurance Company (f/w/a CGU Insurance Company), CGU Corporation OneBeacon America Insurance Company (f/k/a Commercial Union Insurance Company), Pennsylvania General Insurance Co (f/w/a General Accident Insurance Company) (hereinafter referred to as the "Companies"), do constitute and appoint XL Specialty Insurance Company (XL), and its representatives, and its successors, affiliates and assigns, its true and lawful attorney-in-fact and authorized representative, for them and in their name to receive, endorse and collect from any and all the companies' agents and brokers, or directly from their principals and insureds, any and all premiums, invoices, checks and drafts or other forms of remittance payable to the Companies, and issued in payment of money earned or to be earned, or to become due and payable covering any and all surety bonds executed by the Companies since 1991 through December 2002, including, by way of example and not limitation, advances, prepayments, final and partial premium payments, premium adjustments, and any other monies now due or which may become due in payment for issuance of any and all surety bonds, and all other Funds as defined in the Asset Purchase Agreement( between the Companies and XL Specialty Insurance Company, Dated December 29, 2000 (the "Agreement"), which may require endorsement for deposit and collection.

The Companies do hereby authorize and empower XL, and its successors, affiliates and assigns, as their said attorney-in-fact and authorized representative, to give full discharge and acquittance for the same and hereby ratify and confirm all that lawfully may be done by virtue of this Power of Attorney This Power of Attorney is coupled with an interest and is irrevocable

IN WITNESS WHEREOF, the Companies have caused this instrument to be executed and sealed by its duly authorized officers this 7th day of September, 2001

WITNESS/ATTEST

[Signature]

WITNESS/ATTEST

[Signature]

WITNESS/ATTEST

[Signature]

OneBeacon Insurance Company  
f/w/a CGU Insurance Company

By Rogan M. Singer (SEAL)  
Senior Vice President

OneBeacon America Insurance Company  
f/k/a Commercial Union Insurance Company

By Rogan M. Singer (SEAL)  
Senior Vice President

Pennsylvania General Insurance Co  
f/k/a General Accident Insurance Co

By Rogan M. Singer (SEAL)  
Senior Vice President

STATE OF MASSACHUSETTS COUNTY OF SUFFOLK to wit

I HEREBY CERTIFY that on this 7th day of September 2001, before me, the subscriber, a Notary Public of the State of Massachusetts, personally appeared Roger M. Singer, the <sup>Senior Vice</sup> President of Pennsylvania General Ins Co, who is personally known to me, who, being duly sworn, did depose and say that he is the <sup>Senior Vice</sup> President of Pennsylvania General Ins Co, the corporation described in and which executed this Assignment, and that he has been duly authorized by all proper and necessary corporate actions to execute this Assignment

AS WITNESS, my hand and Notarial Seal

[Signature]

Notary Public, Arthur A. Crowe

Notary Expires June 14, 2002



STATE OF MASSACHUSETTS, COUNTY OF SUFFOLK, to wit

I HEREBY CERTIFY that on this 7th day of September, 2001, before me, the subscriber, a Notary Public of the State of Massachusetts, personally appeared Roger M. Singer, the <sup>Senior Vice</sup> President of Che Beacon Insurance Company, who is personally known to me, who, being duly sworn, did depose and say that he is the <sup>Senior Vice</sup> President of Che Beacon Insurance Company, the corporation described in and which executed this Assignment, and that he has been duly authorized by all proper and necessary corporate actions to execute this Assignment

AS WITNESS, my hand and Notarial Seal

[Signature]  
Notary Public, Andrew R. Crowe  
Notary Expires June 14, 2002

STATE OF MASSACHUSETTS, COUNTY OF SUFFOLK, to wit

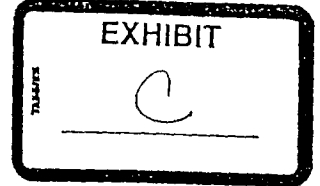
I HEREBY CERTIFY that on this 7th day of September, 2001, before me, the subscriber, a Notary Public of the State of Massachusetts, personally appeared Roger M. Singer, the <sup>Senior Vice</sup> President of Che Beacon America Ins. Co., who is personally known to me, who, being duly sworn, did depose and say that he is the <sup>Senior Vice</sup> President of Che Beacon America Ins Co, the corporation described in and which executed this Assignment, and that he has been duly authorized by all proper and necessary corporate actions to execute this Assignment

AS WITNESS, my hand and Notarial Seal

[Signature]  
Notary Public, Andrew R. Crowe  
Notary Expires June 14, 2002

**EXHIBIT C**

**Assignment**



ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS THAT, OneBeacon Insurance Company (f/k/a CGU Insurance Company), OneBeacon America Insurance Company (f/k/a Commercial Union Insurance Company), CGU Corporation, and Pennsylvania General Insurance Company (f/k/a General Accident Insurance Company (hereinafter referred to as the "Companies"), hereby intending to be legally bound, and in consideration of One Dollar (\$1 00), and other good, valuable and sufficient considerations the receipt and adequacy whereof being hereby acknowledged by the Companies and for the Companies' successors, affiliates and assigns, do hereby irrevocably assign, transfer, and set over to XL Specialty Insurance Company (XL), its successors, assigns and affiliates, pursuant to the terms and conditions contained in the Asset Purchase Agreement among CGU Corporation, CGU Insurance Company, Commercial Union Insurance Company, General Accident Insurance Company and XL Specialty Insurance Company), Dated December 29, 2000, all of the Companies' rights, ownership, title, and legal and equitable interest in any and all surety bonds issued by the Companies since 1991 and to be issued through December 31, 2002, including the right to issue replacement bonds and/or change the name on existing bonds to XL Specialty Insurance Company and/or XL Reinsurance Company, their affiliated, assigns and successor companies, and all of the Companies' rights, ownership, title and legal and equitable interest in all agreements of indemnity executed or entered into by the Companies since 1991 and to be executed through December 31, 2002, together with all rights of action accrued or which may accrue thereunder, and the Companies do hereby constitute and appoint said XL as the Companies' true and lawful attorney-in-fact, irrevocably, to do and perform all acts, matters, and things concerning said bonds and agreements of indemnity, in like manner, and to all intents and purposes as the Companies could do if personally present

IN WITNESS WHEREOF, the Companies have caused this instrument to be executed and sealed by its duly authorized officers this 7th day of September, 2001

WITNESS/ATTEST

[Signature]

WITNESS/ATTEST

[Signature]

WITNESS/ATTEST

[Signature]

OneBeacon Insurance Company  
f/k/a CGU Insurance Company

By Roger M. Swann (SEAL)  
Senior Vice President

OneBeacon America Insurance Company  
f/k/a Commercial Union Insurance Company

By Roger M. Swann (SEAL)  
Senior Vice President

Pennsylvania General Insurance Co  
f/k/a General Accident Insurance Co

By Roger M. Swann (SEAL)  
Senior Vice President

STATE OF MASSACHUSETTS, COUNTY OF SUFFOLK, to wit

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AS WITNESS, my hand and Notarial Seal

Andrew A. Crowe  
Notary Public, Andrew A. Crowe  
Notary Expires June 14, 2002

STATE OF MASSACHUSETTS, COUNTY OF SUFFOLK, to wit

I HEREBY CERTIFY that on this 7th day of September, 2001, before me, the subscriber, a Notary Public of the State of Massachusetts, personally appeared Roger M. Singer, the <sup>Senior Vice</sup> President of Che Beacon America Ins. Co, who is personally known to me, who, being duly sworn, did depose and say that he is the <sup>Senior Vice</sup> President of Che Beacon America Ins. Co, the corporation described in and which executed this Assignment, and that he has been duly authorized by all proper and necessary corporate actions to execute this Assignment

AS WITNESS, my hand and Notarial Seal

Andrew A. Crowe  
Notary Public, Andrew A. Crowe  
Notary Expires June 14, 2002

STATE OF MASSACHUSETTS, COUNTY OF SUFFOLK, to wit

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AS WITNESS, my hand and Notarial Seal

[Signature]

Notary Public Andrea L. Crow

Notary Expires June 14, 2002