

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

PROOF OF CLAIM



497309

Bar Date Ref # 2-N-81

In re
Fleming Companies, Inc

Case Number
03-10945

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.

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 this address differs from the address on the envelope sent to you by the court.

Name of Creditor and Address

0354652497309

David Gossel
700 Ellicott Sq Building 295 Main St
Buffalo NY 14203

If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again.

Creditor Telephone Number ()

CREDITOR TAX I.D. #

16-1497781

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR

Check here replaces or amends

a previously filed claim dated _____

1 BASIS FOR CLAIM

- Goods sold
- Personal injury/wrongful death
- Retiree benefits as defined in 11 U.S.C. § 1114(a)
- Services performed
- Taxes
- Wages, salaries, and compensation (Fill out below)
- Money loaned
- Other (describe briefly)

Your social security number _____

Note: Creditor listed is attorney for Susan Vollbrecht, an injured person.

Unpaid compensation for services performed from _____ to _____ (date) (date)

2 DATE DEBT WAS INCURRED February 7, 2000

3 IF COURT JUDGMENT, DATE OBTAINED

4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE

\$ 2,000,000.00

(unsecured) (demanded in pleading)

\$

\$ 2,000,000.00

(unsecured priority) (total)

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 \$ _____

Amount of arrearage and other charges at time case filed included in secured claim above if any \$ _____

6 UNSECURED PRIORITY CLAIM

Check this box if you have an unsecured priority claim.

Specify the priority of the claim

- Wages, salaries, or commissions (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 4/1/01 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.

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 your claim, please enclose a self-addressed stamped envelope and an additional copy of this proof of claim.

The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is received on or before 4:00 p.m., September 15, 2003, Pacific Daylight Time.

BY MAIL TO
Bankruptcy Management Corporation
P O BOX 900
El Segundo CA 90245-0900

BY HAND OR OVERNIGHT DELIVERY TO
Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo CA 90245

DATE SIGNED

Sept 10, 2003

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)

David H. Gossel
att'y for S Vollbrecht

THIS SPACE FOR COURT USE ONLY

SEP 12 2003

BMC

Fleming Companies Claim



11138

Penalty for presenting fraudulent claim is a fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 AND 3571

See Other Side For Instructions

STATE OF NEW YORK
SUPREME COURT . COUNTY OF ERIE

SUSAN SCRITCHFIELD VOLLBRECHT
4529 Camp Road
Hamburg, New York 14075

Plaintiff,

vs.

FLEMING COMPANIES, INC.
6301 Waterford Boulevard
Oklahoma City, Oklahoma 73118

NKM INDUSTRIES INC. d/b/a
HORA BUILDING & MAINTENANCE
73 Stonybrook Road
Lancaster, New York 14086

Defendants

**SUMMONS SERVED
WITH COMPLAINT**

Index No. 2003-1110

FILED

FEB 04 2003

**ERIE COUNTY
CLERK'S OFFICE**

To the above named Defendant(s)

YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon the Plaintiff's attorney, at the address stated below, a written Answer to the attached Complaint

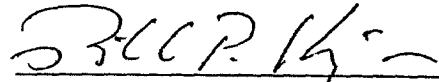
If this Summons is served upon you within the State of New York by personal service you must respond within TWENTY (20) days after service, not counting the day of service. If this Summons is not personally delivered to you within the State of New York you must respond within THIRTY (30) days after service is completed, as provided by law

If you do not respond to the attached Complaint within the applicable time limitation stated above, a Judgment will be entered against you, by default, for the relief demanded in the Complaint, without further notice to you

This action is brought in the County of ERIE because of

[X] Plaintiff's residence, or place of business;

DATED February 4, 2003



GOSSEL KRIEGER LLP

By. Richard P. Krieger

Attorneys for Plaintiff

700 Ellicott Square Building

295 Main Street

Buffalo, New York 14203

Phone (716) 856-0012

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

SUSAN SCRITCHFIELD VOLLBRECHT,

Plaintiff,

VERIFIED COMPLAINT

vs

Index No _____

FLEMING COMPANIES, INC and
NKM INDUSTRIES INC d/b/a
HORA BUILDING & MAINTENANCE,

Defendants

FILED

FEB 04 2003

**ERIE COUNTY
CLERK'S OFFICE**

SUSAN SCRITCHFIELD VOLLBRECHT, by her attorneys, GOSSEL KRIEGER LLP, for her Verified Complaint against Defendants, herein alleges

1. That Plaintiff is a resident of the Town of Hamburg, County of Erie and State of New York.

2 Upon information and belief, at all times hereinafter mentioned, Defendant, FLEMING COMPANIES, INC (hereinafter referred to as "FLEMING"), was a foreign corporation, duly organized and existing under and by virtue of the laws of the State of Oklahoma and was authorized to conduct business in the State of New York

3 Upon information and belief, at all times hereinafter mentioned, Defendant, NKM INDUSTRIES INC (hereinafter referred to as "NKM"), was a corporation, duly organized and existing under and by virtue of the laws of the State of New York.

4 Upon information and belief, at all times hereinafter mentioned, Defendant, NKM, conducted business under the assumed name, HORA BUILDING & MAINTENANCE, and had received a Corporation - Certificate of Assumed Name from the New York State Department of State pursuant to the General Business Law

AS AND FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANT, FLEMING

5. Upon information and belief, at all times mentioned, Defendant, FLEMING, leased a portion of the premises located at 5999 South Park Avenue in the Town of Hamburg, County of Erie and State of New York from the owner of said real property, Benchmark Hamburg Plaza Associates, LLC.

6. Upon information and belief, at all times mentioned, Defendant, FLEMING, operated a retail grocery store commonly known as "Hamburg Jubilee" at said leased premises that was open to the public (and Plaintiff in particular) for retail purchases

7. Upon information and belief, at all times mentioned, Defendant, FLEMING, operated said retail grocery store, directly or indirectly, with RAECO Foods, Inc and MERJ Foods, Inc , both New York corporations

8 On the 7th day of February, 2000, Plaintiff, SUSAN SCRITCHFIELD VOLLBRECHT, was lawfully proceeding toward said retail grocery store at 5999 South Park Avenue, Hamburg, New York that was leased and operated by Defendant, FLEMING

9. At said time and place, Plaintiff was then exercising ordinary care and caution, when she was caused to fall on ice which had accumulated on the concrete walkway near the entrance to said grocery store, whereby Plaintiff was thrown to the ground with great force and suffered the injuries and damages hereinafter alleged

10 Said accident was caused solely by the reason of the carelessness and negligence of the Defendant, FLEMING, its agents, representatives and/or employees, and without any negligence on the part of the Plaintiff contributing thereto

11 At all times hereinafter mentioned, the Defendant, FLEMING, negligently and carelessly permitted and allowed its leased premises and store, including the entrance area to said grocery store, to be in a dangerous and unsafe condition.

12 Upon information and belief, the negligence of the Defendant, FLEMING, includes, but is not limited to, the following:

a In permitting and allowing the premises at 5999 South Park Avenue, including the entrance to the Hamburg Jubilee store, to become and remain in a slippery and dangerous condition;

b. In permitting and allowing the aforesaid area to become and remain covered in ice,

c. In designing, constructing and/or maintaining the premises and entrance area such that ice was allowed to

develop and remain as a result of drainage from the roof, sign, and/or other areas immediately above the entrance to the store;

d In permitting and allowing the slippery condition and ice to remain after due notice and knowledge on the part of Defendant, FLEMING, its agents, representatives or employees;

e In failing to remove snow and ice from the areas near the store entrance;

f. In improperly removing snow and ice from the areas near the store entrance,

g. In placing or otherwise permitting snow and ice to be placed in areas near the store entrance;

h In maintaining the premises such that snow and ice were not properly removed from the areas near the store entrance, thereby allowing a dangerous and slippery condition to develop and remain near the store entrance;

i In failing to provide safe passageway and/or entrance to the store;

j In failing to give Plaintiff any notice or warning of the dangerous condition; and

k In failing to take the proper means and precautions to prevent the occurrence of the accident

13. Solely by the reason of the carelessness and negligence of the Defendant, FLEMING, herein, Plaintiff was rendered sick,

sore, lame and disabled, as so remains, having suffered, among other things, trauma and damage to the right knee and surrounding tissues.

14 As a result of the negligence of the Defendant, FLEMING, Plaintiff has been, and will be compelled to incur, large expense in providing surgical, medical, nursing and/or rehabilitative care and has suffered and will continue to suffer from loss of wages

15. By reason of the negligence and carelessness of the Defendant, FLEMING, Plaintiff has been injured as set forth above, all to her damage in the amount of Two Million (\$2,000,000.00) Dollars

AS AND FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANT, NKM

16. Plaintiff repeats and realleges each and every allegation contained in Paragraphs "1" to "15" as if more fully set forth herein.

17 Upon information and belief, at all times hereinafter mentioned, Defendant, NKM, performed certain services, including snow plowing and ice removal/control at selected commercial properties

18 Upon information and belief, Defendant, NKM, entered into a contract under its assumed name wherein it agreed, for the period of November 1, 1999 to March 31, 2000, to plow snow from all sidewalks and paved areas on real property, owned by

Benchmark Hamburg Plaza Associates LLC, that is located at 5999 South Park Avenue in the Town of Hamburg, County of Erie and State of New York

19 Upon information and belief, said contract required Defendant, NKM, to provide ice control of all sidewalks and paved areas of the said premises at 5999 South Park Avenue, Hamburg, New York.

20. Said accident that occurred on February 7, 2000 was caused solely by the reason of the carelessness and negligence of the Defendant, NKM, its agents, representatives and/or employees, and without any negligence on the part of the Plaintiff contributing thereto.

21. At all times hereinafter mentioned, the Defendant, NKM, negligently and carelessly permitted and allowed the premises at 5999 South Park Avenue, Hamburg, New York, including the entrance area to said grocery store, to be in a dangerous and unsafe condition

22. Upon information and belief, the negligence of the Defendant, NKM, includes, but is not limited to, the following.

a. In permitting and allowing the premises at 5999 South Park Avenue, including the entrance to the Hamburg Jubilee store, to become and remain in a slippery and dangerous condition,

b. In permitting and allowing the aforesaid area to become and remain covered in ice,

c In permitting and allowing the slippery condition and ice to remain after due notice and knowledge on the part of Defendant, NKM, its agents, representatives or employees,

d In failing to remove snow and ice from the areas near the store entrance,

e In improperly removing snow and ice from the areas near the store entrance,

f In placing or otherwise permitting snow and ice to be placed in areas near the store entrance,

g In maintaining the premises such that snow and ice were not properly removed from the areas near the store entrance, thereby allowing a dangerous and slippery condition to develop and remain near the store entrance,

h. In failing to provide safe passageway and/or entrance to the store;

i In failing to give Plaintiff any notice or warning of the dangerous condition, and

j In failing to take the proper means and precautions to prevent the occurrence of the accident

23. Solely by the reason of the carelessness and negligence of the Defendant, NKM, herein, Plaintiff was rendered sick, sore, lame and disabled, as so remains, having suffered, among other things, trauma and damage to the right knee and surrounding tissues

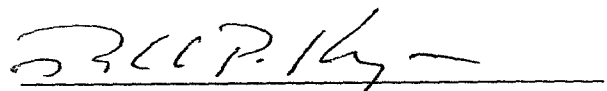
24 As a result of the negligence of the Defendant, NKM, Plaintiff has been, and will be compelled to incur, large expense in providing surgical, medical, nursing and/or rehabilitative care and has suffered and will continue to suffer from loss of wages

25 By reason of the negligence and carelessness of the Defendant, NKM, Plaintiff has been injured as set forth above, all to her damage in the amount of Two Million (\$2,000,000 00) Dollars

WHEREFORE, Plaintiff demands judgment against the Defendant, FLEMING, in the first cause of action in the sum of Two Million (\$2,000,000.00) Dollars, against the Defendant, NKM, in the second cause of action in the sum of Two Million (\$2,000,000 00) Dollars, together with the costs and disbursements of this action

Dated Buffalo, New York
February 4, 2003

Yours, etc


By Richard P Krieger, Esq
GOSSEL KRIEGER LLP
Attorneys for Plaintiff
700 Ellicott Square Building
295 Main Street
Buffalo, New York 14203
Phone (716) 856-0012



GOSSEL KRIEGER LLP

A Limited Liability Law Partnership

September 10, 2003

Via UPS Next Day Air
Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo, CA 90245

Re Fleming Companies, Inc
Case No 03-10945
Creditor David Gossel

Dear Sir/Madam

Enclosed is a Proof of Claim for David Gossel. Please note that David Gossel is the attorney for Susan Scritchfield Vollbrecht in her action for personal injuries that was filed against Fleming Companies, Inc in the New York State Supreme Court, Erie County on February 4, 2003. A copy of the date stamped Summons and Complaint for that action is enclosed as a supporting document.

Also enclosed is a self-addressed stamped envelope and an additional copy of the Notice of Claim. Kindly return an acknowledgment of this claim. Thank you.

Very truly yours,

GOSSEL KRIEGER LLP

A handwritten signature in black ink, appearing to read 'D. H. Gossel', written over the printed name.

David H. Gossel

DHG mlg
enclosures