

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

PROOF OF CLAIM



443873

Bar Date Ref # R2790

In re **Fleming Companies, et al** Case Number **03-10945 (MFW)**

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 and Address

0354653443873

Fresh Express Inc
Gail M Cordes
Meuers Law Firm
5395 Park Central Ct
NAPLES, FL 34109-5932

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.

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 ID # **94-2591533** ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR

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

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) **Breach of contract dated 12/20/00** Your social security number _____

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

2 DATE DEBT WAS INCURRED **3 IF COURT JUDGMENT, DATE OBTAINED**

4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE \$ 11,994,150.00 (unsecured) \$ _____ (secured) \$ 11,994,150.00 (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

THIS SPACE FOR COURT USE ONLY

FILED

SEP 15 2003

BMC

Fleming Companies Claim

DATE SIGNED 9/12/03 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)
Lawrence H. Meun attorney

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



12739

TOU
GREY CHRISTIE



FLEMING & FRESH EXPRESS Contract Amendment

The following is a list of amendments to the existing contract, (executed in September 1999), between The Fleming Companies and Fresh Express. All elements of the original contract will not change, with the exception of those listed below. The amendments listed have been discussed and agreed to by The Fleming Companies and Fresh Express.

Contract Amendments:

1. Lump Sum Monies.

- Originally, Fresh Express agreed to pay Fleming a lump sum payment of \$1.0MM once Fleming purchased & shipped 2.5MM & 5.0MM 12 pack equivalent cases from Fresh Express, (total \$2.0MM with a total case commitment of 7.5MM case).
- In Lieu of the Lump Sum Monies stated above, Fresh Express is proposing the following Amendment to the agreement between Fleming & Fresh Express
 - Fresh Express will pay Fleming a non-refundable lump sum payment of \$725,000 for extending the length of contract
 - Beginning in 2001, Fresh Express will pay Fleming an annual rebate at a rate of \$22 per 12 pack case (excluding military), for shipments made to Fleming. This rebate will be paid in December of each year, beginning with 2001, for shipments between January 1st through December 31st, (estimating December volume). This rebate will be paid on an estimated 5,754,654 cases, which is the balance of the original commitment and total number of cases shipped to date, (i.e. 7.5MM cases less 1,745,346 cases shipped between 10/99-12/00, November & December volume estimated at 230,000 cases).
 - Total lump sum and rebate payment to Fleming, (i.e. \$725,000 + \$22/case stated above), will not exceed \$2MM.
 - The agreement with Fleming will be automatically extended through 2004 or until Fleming ships 7.5MM cases, (per the original agreement)
 - The check will be issued and delivered to Fleming prior to December 31st of each year.
- The above is based on all other elements of our original agreement be met, (i.e. Fresh Express being Fleming's primary national salad partner, volume commitments, minimum ad & distribution support, etc.), including Fresh Expressing staying within stated financial parameters outlined in the original agreement.

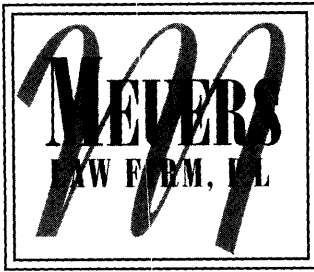
The Fleming Companies
By [Signature]
Date 12/18/00

Fresh Express
By [Signature]
Date 12/20/00

FLEMING CORPORATE

Contract start date	10/1/99	
Contractual agreement based on fulfilling	7,500,000	12-ct cases
Contract to date volume purchased	4,630,562	
Volume left to fulfill	2,869,438	
Revenue left to fulfill *	\$ 11,994,150	

* Based on the terms of the agreement (e g , price, rebates, promotions)



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Naples, Florida 34109
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* Lawrence H Meuers
Priscilla W Grannis
† Katy L Koestner

* Also admitted in CA & MN
† Also admitted in IL

Via Federal Express

September 12, 2003

Claims Agent
Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo, CA 90245

Re Case No 03-10945 (MFW)
In Re Fleming Companies, Inc, et al

Dear Claims Agent

Please find enclosed for filing the following Proofs of Claims

Fresh Express Inc

I have also included a copy to be conformed and returned to me in the stamped, self-addressed envelope enclosed

Thank you for your assistance

Sincerely,

A handwritten signature in cursive script, appearing to read "Gail M Cordes".

Gail M Cordes
Firm Administrator/Paralegal

GMC/jep

Enclosures (2)