

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

PROOF OF CLAIM



483927

Bar Date Ref # 2-G1-4190

YOUR CLAIM IS SCHEDULED AS

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.

Name of Creditor and Address

0354651483927

KENWOOD FOODS INC
C/O PLAZA MANAGEMENT CO
15 SOUTH 13TH AVENUE EAST
DULUTH MN 55805

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.

ORIGINAL

The amounts reflected above constitute your claim as scheduled by the Debtor. If you agree with the amounts set forth herein and have no other claim against the Debtor, you do not need to file this proof of claim EXCEPT as stated below.

If the amounts shown above are listed as Contingent Unliquidated or Disputed, a proof of claim must be filed.

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 (218-725-6840)

CREDITOR TAX ID #
41-1748294

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
- Services performed
- Money loaned
- Personal injury/wrongful death
- Taxes
- Other (describe briefly)
Breach of contract and failure to pay sums due claimant.
- Retiree benefits as defined in 11 U.S.C. § 1114(a)
- Wages, salaries and compensation (Fill out below)
Your social security number _____
Unpaid compensation for services performed from _____ to _____ (date) (date)

2 DATE DEBT WAS INCURRED varied

3 IF COURT JUDGMENT, DATE OBTAINED

4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE \$ 1,172,157.24 (unsecured) \$ _____ (secured) \$ 1,172,157.24 (total) (unsecured priority)

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 \$200 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. See attached.

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



13546

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).

Martha M. Markusen, Attorney for Claimant

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

EXHIBIT A

1	Name of Claimant	Kenwood Foods, Inc
2	Description of Claim	Breach of Service Agreement and Lease Guaranty and claim for sums owed claimant
3	Claim for monetary defaults by Debtor	

<u>Nature of the Claim</u>	<u>Amount</u>
Failure to pay the following rebates	
• private label	\$ 12,000 00
• produce	\$ 2,936 00
Failure to pay incentives arising out of the following fairs	
• Buyer's fair	\$ 10,824 44
• PL Buyer's fair	\$ 213 46
• Meat Buyer's fair	\$ 4,739 00
• Speciality Foods Buyer's fair	\$ 1,692 00
Refunds due for merchandise billed and paid for but not received (merchandise on hold)	\$ 6,423 00
Reimbursement due for delivery costs advanced to Mehmert Equipment	\$8,000 00
Failure to refund overpayment on equipment purchased pre-petition but delivered post-petition	\$ 99,200 00
Sums advanced by Kenwood and due from Fleming for Deli Hood Rotisserie Hood & tax	\$ 19,610 00
Reimbursement due for costs of construction advanced by Kenwood following bankruptcy (Kastner Construction)	<u>\$ 4,700 00</u>
SUBTOTAL	\$170,337 90

4 Claim for breach of service agreement

<u>Nature of the Claim</u>	<u>Amount</u>
Lost gross profit from lost sales	\$10,011 00
Lost benefit of teamwork score	\$323 74
Freight	\$541 60
Lost product contract	\$3,385 00
Costs of advertising product which was unavailable	\$17,558 00
Additional payroll	\$10,000 00 <u>(estimate)</u>
SUBTOTAL	\$41,819 34

5 Claim for breach of lease guaranty

Damages claimed by claimant's landlord arising from breach of lease due to breach of lease guaranty	\$960,000 00 <u>(estimate)</u>
Damages are not yet fixed and range from a low of \$26,500 to a high of \$960,000, based upon amount claimed by landlord to compensate for breach	
SUBTOTAL	\$960,000 00
GRAND TOTAL	\$1,172,157 24

6 If available, a true and correct copy of any applicable contract is attached

SERVICE AGREEMENT

THIS AGREEMENT made as of May 7, 1993 between KENWOOD FOODS, INC., a Minnesota corporation ("Buyer"), and GATEWAY FOODS OF TWIN PORTS, INC., a Wisconsin corporation ("Gateway").

RECITALS

Gateway is in the wholesale grocery business with its principal office at One Gateway Court, Superior, Wisconsin. Buyer operates a retail grocery supermarket located at 1316 Arrowhead Road, Duluth, Minnesota (the "Store").

Buyer desires to purchase food products and merchandise from Gateway which it intends to resell in the course of its operation of the Store.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

1. SUPPLY OF PRODUCT.

1.1 Buyer agrees to maintain at least a fifty percent (50%) purchase concentration with Gateway (i.e. the dollar value of products purchased from Gateway, including groceries, meats, produce, frozen foods, dairy products, bakery products, other food lines, supplies and non-food items such as health and beauty aids and general merchandise, at wholesale cost, equal or exceed fifty percent (50%) of all retail sales made from the Store determined on a quarterly basis throughout the term of this Agreement, except that the fifty percent (50%) purchase concentration requirement shall not apply to the extent that any of such products (a) are not reasonably available from Gateway in sufficient quality and quantity to meet Buyer's demand, or (b) cannot be provided by Gateway at reasonably competitive prices.

1.2 Gateway agrees to make timely deliveries of quality product within acceptable fresh code dating, undamaged and in clean and healthy condition.

1.3 Gateway agrees to make Buyer aware of any problems involving its ability to supply Buyer with adequate product, so that Buyer, supported by Gateway, can develop supplementary supply sources necessary to avoid business interruption. In the event a problem arises which results in the interruption of Buyer's supply of product, Buyer shall have the right to utilize such alternative sources of supply until such problems are resolved by Gateway.

1.4 Gateway further agrees to provide a service level at least equal to the level generally accepted in the grocery industry.

1.5 In order to ensure an efficient supply system, Buyer and Gateway agree to provide, at their respective expense, qualified representatives for the purpose of coordination, communication and interaction between themselves.

1.6 Buyer agrees to comply with Gateway's order and delivery schedules. Gateway agrees to use its best efforts to offer delivery schedules based on Store hours of operation and other factors necessary to Buyer's retail operation. Gateway shall be responsible for dock delivery. Buyer agrees at all times to cooperate with Gateway to minimize the time required to make a delivery.

1.7 Buyer shall pay for food product and merchandise delivered each week as follows: Payment in full must be received by Gateway no later than the Wednesday following Gateway's weekly statement.

1.8 Buyer shall not have the right to return outdated merchandise which was shipped in sufficient time prior to the expiration date to allow a reasonable time for sale. Perishable product (including meat) must be checked for freshness at the time of delivery and notice of unsalable merchandise must be made within twelve (12) hours of such delivery.

2. ADDITIONAL TERMS.

2.1 The term of this agreement shall commence on the date hereof and continue until the later of: (i) seven (7) years from the date hereof; (ii) until such time as the Store is no longer operated as a Jubilee Foods; or (iii) until such time as Buyer, or its affiliates, are no longer obligated (as that term is defined in that certain Security Agreement dated as of this date) to Gateway or a related or affiliate company of Gateway.

This agreement may be further terminated as hereafter set forth with respect to a particular category of service or product group if Gateway's performance hereunder does not conform to the agreed upon service level. In the event of such a deficiency, Buyer shall give written notice of such deficiency to Gateway. Gateway shall have sixty (60) days in which to cure such deficiency; otherwise, this agreement shall be terminated with respect to the category of service or product group specified in such notice seventy (70) days after receipt of such notice by Gateway.

2.2 Buyer agrees to purchase food products and merchandise from Gateway at the prices posted from time to time in its pricing schedule.

2.3 Buyer agrees to subscribe to the retail accounting service of Gateway and furnish to Gateway a copy of its monthly balance, profit and loss statement and annual financial statements for the grocery business operated from the store premises.

2.4 Buyer agrees to take a physical inventory of the Store three times per year.

2.5 GATEWAY RESERVES THE RIGHT TO CHOOSE AND SELECT ITS RETAILERS AND TO ENTER INTO GATEWAY SERVICE AGREEMENTS WITH OTHER PARTIES AT GATEWAY'S SOLE DISCRETION.

3. FORCE MAJEURE.

Each party shall be excused from its respective obligations hereunder in the event and to the extent that its performance is delayed or prevented by fire, explosion, breakdown of machinery or equipment, strikes, or other labor disputes, riots or other civil disturbances, compliance with any law, order, regulation, or any applicable federal, state or municipal governmental authority or person purporting to act thereunder, or by any other circumstances reasonably beyond its control.

4. SUCCESSORS AND ASSIGNS.

This agreement shall inure to the benefit of the parties thereto and shall be binding upon the parties hereto and their respective legal representatives, successors and assigns.

5. GOVERNING LAW.

This agreement shall be construed as to both validity and performance and enforced in accordance with and governed by the laws of the State of Minnesota.

6. NOTICES.

All notices, requests, demands and other communications which are required to or may be given under this agreement shall be in writing and shall be deemed to have been duly given if delivered or mailed by registered or

certified first class mail, postage prepaid, return receipt requested, to the party to whom the same is given or made:

To Gateway: Gateway Foods of Twin Ports, Inc.
One Gateway Court
P.O. Box 1149
Superior, WI 54880
Attn: President

Copy to: Gateway Foods, Inc.
201 Main Street, Suite 1000
La Crosse, WI 54601
Attn: Legal Department

To Buyer: Kenwood Foods, Inc.
15 South 13th Avenue East
Duluth, MN 55805
Attn: President

or such other address as either party shall have specified by notice to the other party. Such notice shall be deemed to be given as of the date it is mailed.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

BUYER - KENWOOD FOODS, INC.

By: 

Attest: 

GATEWAY FOODS OF TWIN PORTS, INC.

By: 

Gerald W. McDonald, Div. President

Attest: 

Terrance V. Helz, Secretary