
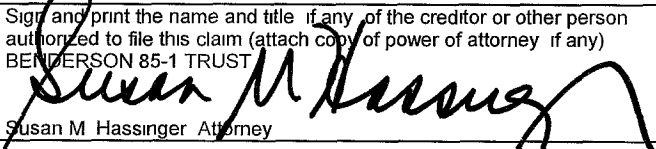


United States Bankruptcy Court District of <u>Delaware</u>		PROOF OF CLAIM
In re (Name of Debtor) Fleming Companies Inc		Case Number 03 10945(MFW)
Note This form should not be used to make a claim for an administrative expense arising after the commencement of the case A request for payment of an administrative expense may be filed pursuant to 11 U S C § 503		
Name of Creditor <i>(The person or other entity to whom the debtor owes money or property)</i> Benderson 85 1 Trust		<input type="checkbox"/> 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 <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court
Name and Address Where Notices Should be Sent Susan Hassinger Esq Benderson Development Company, Inc 570 Delaware Avenue Buffalo New York 14202 Telephone No (716) 878-9364		
ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR Property #1635 Unit #002 File #25141		<input type="checkbox"/> replaces a previously filed claim dated _____ <input type="checkbox"/> amends
1 BASIS FOR CLAIM <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other (describe briefly) Lease obligation to insure/defend against personal injury action commercial lease for 34 Chestnut Road Lockport NY		<input type="checkbox"/> Retiree benefits as defined in 11 U S C § 114(a) <input type="checkbox"/> 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 03/26/98	3 IF COURT JUDGMENT DATE OBTAINED	
4 CLASSIFICATION OF CLAIM Under the Bankruptcy Code all claims are classified as one or more of the following (1) Unsecured nonpriority (2) Unsecured Priority (3) Secured It is possible for part of a claim to be in one category and part in another CHECK THE APPROPRIATE BOX OR BOXES that best describe your claim and STATE THE AMOUNT OF THE CLAIM AT TIME CASE FILED		
<input type="checkbox"/> SECURED CLAIM \$ _____ Attach evidence of perfection of security interest Brief description of Collateral <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other (Describe briefly) Amount of arrearage and other charges at time case filed included in secured claim above if any \$ _____ <input checked="" type="checkbox"/> UNSECURED NONPRIORITY CLAIM \$ <u>Unliquidated</u> A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim <input type="checkbox"/> UNSECURED PRIORITY CLAIM \$ _____ Specify the priority of the claim		<input type="checkbox"/> Wages salaries or commissions (up to \$4650) * earned not more that 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) <input type="checkbox"/> Contributions to an employee benefit plan 11 U S C § 507(a)(4) <input type="checkbox"/> 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) <input type="checkbox"/> Alimony maintenance or support owed to a spouse former spouse or child - 11 U S C § 507(a)(7) <input type="checkbox"/> Taxes or penalties of governmental units 11 U S C § 507(a)(8) <input type="checkbox"/> Other - Specify applicable paragraph of 11 U S C § 507(a) _____ *Amounts are subject to adjustment on 4/01/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment
5 TOTAL AMOUNT OF CLAIM AT THE TIME CASE FILED \$ <u>Unliquidated</u> (Unsecured) \$ _____ (Secured) \$ _____ (Priority)		\$ <u>Unliquidated</u> (Total)
<input checked="" type="checkbox"/> Check this box if claim includes charges in addition to the principal amount of the claim Attach itemized statement of all additional charges		
6 CREDITS AND SETOFFS The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim In filing this claim claimant has deducted all amounts that claimant owes to debtor		THIS SPACE IS FOR COURT USE ONLY FILED NOV 13 2003 BMC Fleming Companies Claim 
7 SUPPORTING DOCUMENTS <i>Attach copies of supporting documents</i> such as promissory notes purchase orders invoices itemized statements of running accounts contracts court judgments or evidence of security interests If the documents are not available explain If the documents are voluminous attach a summary		
8 TIME STAMPED COPY To receive an acknowledgment of the filing of your claim enclose a stamped self-addressed enveloped and copy of this proof of claim		
Date 11/05/030	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) BENDERSON 85-1 TRUST  Susan M Hassinger Attorney	

BENDERSON 85-1 TRUST

570 Delaware Avenue
Buffalo, New York 14202
Phone (716) 878-9603
Fax (716) 878-9461

April 12, 2001

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Fleming Companies, Inc
5701 North Shartel Avenue
Oklahoma City, OK 73118
ATTN General Counsel

**RE. David Milstead v. Benderson 85-1 Trust, Niagara County Industrial
Development Agency & Fleming Companies, Inc
Index No. 108065
Our File No 25141
Our Property No · 1635**

Dear General Counsel

Enclosed is a copy of the Summons and Complaint that was personally served upon the Benderson 85-1 Trust ("Trust") on April 9, 2001. As you know, the Trust is Landlord for the Jubilee Store located at 34 Chestnut Street, Lockport, New York. Service of the Summons and Complaint was our first notice of plaintiff's alleged claim.

According to plaintiff's Complaint, plaintiff was allegedly injured "when he was struck by a piece of a display case that fell upon him" while walking down one of the aisles of the store. By agreement of counsel, the Trust has until May 31, 2001 to move against or answer plaintiff's Complaint.

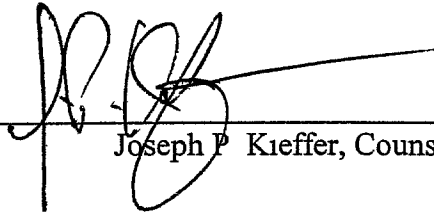
A review of the applicable Lease (copy enclosed) indicates that Article 7.3 requires that "Lessee, at its sole expense, will keep the Leased Space in good and clean order and condition." Article 12.2 requires the "Lessee agree to defend, indemnify and hold Lessor harmless against all claims, judgments and demands of any person or persons whomever on account of any injuries or accidents occurring in its Leased Space as a result of willful or negligent acts or omissions of Lessee, its employees, agents or representatives." Article 12.2 also requires the Lessee to carry public liability insurance on its Leased Space in the names of both Lessee and Lessor. A copy of the Certificate of Insurance that was provided to us for the period in question is enclosed.

Based upon the above, the Benderson 85-1 Trust hereby demands that the Fleming Companies, Inc agree to defend, indemnify and hold it harmless in the captioned matter. Please confirm in writing to the undersigned that you will accept this tender and provide me with the name and address of the attorney hired to defend our interests.

Very truly yours,

BENDERSON 85-1 TRUST

BY _____



Joseph P. Kieffer, Counsel

cc Marsh, Inc (CERTIFIED MAIL RETURN RECEIPT
210 Park Avenue REQUESTED w/ encl.)
Suite 1110
Oklahoma City, Ok 73102

Joseph J. Welter, Esq (VIA REGULAR MAIL, w/encl)
Kavinoky & Cook, LLP
120 Delaware Avenue
Buffalo, New York 14202

STATE OF NEW YORK
SUPREME COURT

COUNTY OF NIAGARA

DAVID MILSTEAD

Plaintiff

-vs-

FLEMING COMPANIES INC ,

NIAGARA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY, and

✓ RONALD BENDERSON, RANDALL BENDERSON
AND DAVID H BALDAUF, as TRUSTEES
under a Trust Agreement dated October 14, 1985,
known as the BENDERSON 85-1 TRUST

Defendants

SUMMONS

108065

INDEX NO

ORIGINAL FILED

MAR 15 2001

NIAGARA COUNTY CLERK
LOCKPORT NEW YORK 14094

TO THE ABOVE NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer or, if the Complaint is not served with this Summons, to serve a Notice of Appearance on the attorneys for the Plaintiff within twenty (20) days after service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York, or within sixty (60) days if it is the United States of America. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated March 15, 2001
Lockport, New York


Gerald Stephen Sacca

SACCA & SACCA
Attorneys for the Plaintiff
Office & P O Address
102 East Avenue
Lockport, New York 14094
716-434-5518

**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF NIAGARA

DAVID MILSTEAD

Plaintiff

-vs-

COMPLAINT

FLEMING COMPANIES INC ,

INDEX NO

**NIAGARA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY, and**

108065

**RONALD BENDERSON, RANDALL BENDERSON
AND DAVID H BALDAUF, as TRUSTEES
under a Trust Agreement dated October 14, 1985,
known as the BENDERSON 85-1 TRUST**

ORIGINAL FILED

MAR 20 2001

WAYNE F JAGOW
NIAGARA COUNTY CLERK
LOCKPORT NEW YORK 14094

Defendants

Plaintiff, by his attorneys, **SACCA & SACCA**, as and for his Complaint against the Defendants does hereby allege

1 That, at all times hereinafter mentioned, the Plaintiff was and still is a resident of the County of Niagara and State of New York

2 That, upon information and belief, and at all times hereinafter mentioned, the Defendant, **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, (hereinafter "NCIDA"), was and still is a not-for-profit corporation duly authorized to conduct business in the State of New York

3 That, upon information and belief, and at all times hereinafter mentioned, the Defendants, **RONALD BENDERSON, RANDALL BENDERSON AND DAVID H BALDAUF**, as **TRUSTEES** under a Trust Agreement dated October 14, 1985, known as the **BENDERSON 85-1 TRUST**, (hereinafter "Benderson"), were and still are duly authorized to conduct business in the State of New York

4 That, upon information and belief, and all times hereinafter mentioned, the Defendant, **FLEMING COMPANIES INC** , (hereinafter "Fleming"), was and still is a foreign corporation duly authorized to conduct business in the State of New York

5 That, upon information and belief, and at all times hereinafter mentioned, the Defendant, NCIDA, owned the premises and building more commonly known as 34 Chestnut Street, in the City of Lockport, County of Niagara and State of New York, (hereinafter “the premises”)

6 That, upon information and belief, and at all times hereinafter mentioned, the Defendant, Benderson, leased the premises from the Defendant, NCIDA, and/or owned the premises

7 That, upon information and belief, and at all times hereinafter mentioned, the Defendant, Fleming, leased and/or subleased the premises from the Defendant, NCIDA, and/or the Defendant, Benderson

8 That, upon information and belief, and at all times hereinafter mentioned, the Defendant, Fleming, owned, operated and managed a retail store located on the premises and was conducting business under the assumed name of “Jubilee Market”

9 That, upon information and belief, the said store owned, operated and managed by the Defendant, Fleming, was open to the general public

10 That, on or about the 26th day of March, 1998, the Plaintiff was a customer of the Defendant, Fleming, at the premises

11 That, on or about the 26th day of March, 1998, the Plaintiff was lawfully on the premises

12 That, on or about the 26th day of March, 1998, the Plaintiff suffered injuries to his head, neck, spine and body by reason of the negligence on the part of the Defendants, their agents, servants and/or employees, and/or those under their supervision and/or control, when he was struck by a piece of a display case that fell upon him

13 That, as a result of said negligence, carelessness and recklessness of the Defendants herein, their agents, servants and/or employees, and/or those under their supervision and/or control,

the Plaintiff, **DAVID MILSTEAD**, has sustained serious, painful and permanent injuries to his head, neck, spine, and body, and was otherwise injured, all to his damage in the amount of \$1,000,000 00

WHEREFORE, Plaintiff demands judgment against the Defendants in the sum of \$1,000,000 00, together with the costs and disbursements of this action


Gerald Stephen Sacca

SACCA & SACCA
Attorneys for Plaintiff
Office and P O Address
102 East Avenue
Lockport, New York 14094
(716) 434-5518

SUSAN M HASSINGER
Attorney at Law

570 Delaware Avenue
Buffalo, New York 14202
(716)878-9364

November 12, 2003

OVER NIGHT UPS EXPRESS

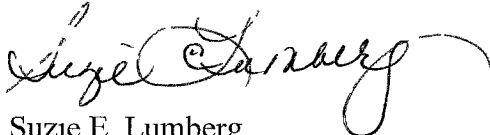
Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo, CA 90245

RE Fleming Companies, et al
Proof of Claim - Unliquidated
Case no 03-10945(MFW)
Property # 1635 – 34 Chestnut Road, Lockport, NY

Dear Court Clerk,

Enclosed you will find, an original plus two (2) copies of the Proof of Claim for filing in the above referenced bankruptcy case(s) Please file the originals and date stamp the copies, returning same to the undersigned in the self-addressed, stamped envelope provided Please note the claim numbers assigned on the copy to be returned

Very truly yours,



Suzie E Lumberg
Paralegal

Enclosure

CC Legal

/sel