

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
Fleming Companies, Inc., et al.,¹) Case No. 03-10945 (MFW)
) (Jointly Administered)
Debtors.)

**MOTION FOR ORDER UNDER 11 U.S.C. §§ 105, 363, 1107 AND 1108
AUTHORIZING (i) MAINTENANCE OF EXISTING BANK ACCOUNTS,
(ii) CONTINUED USE OF EXISTING BUSINESS FORMS, (iii)
CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM AND
(iv) CONTINUED USE OF EXISTING INVESTMENT PRACTICES**

The above-captioned debtors and debtors in possession (the “Debtors”) file this motion (the “Motion”) seeking (i) maintenance of existing bank accounts; (ii) continued use of existing business forms, (iii) continued use of existing cash management system and (iv) continued use of existing investment practices. In further support of this Motion, the Debtors respectfully request as follows:

Jurisdiction

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors are the following entities: Core-Mark International, Inc.; Fleming Companies, Inc.; ABCO Food Group, Inc.; ABCO Markets, Inc.; ABCO Realty Corp.; ASI Office Automation, Inc.; C/M Products, Inc.; Core-Mark Interrelated Companies, Inc.; Core-Mark Mid-Continent, Inc.; Dunigan Fuels, Inc.; Favarr Concepts, Ltd.; Fleming Foods Management Co., L.L.C., Fleming Foods of Texas, L.P.; Fleming International, Ltd.; Fleming Supermarkets of Florida, Inc.; Fleming Transportation Service, Inc.; Food 4 Less Beverage Company, Inc.; Fuelserv, Inc.; General Acceptance Corporation; Head Distributing Company; Marquise Ventures Company, Inc.; Minter-Weisman Co.; Piggly Wiggly Company; Progressive Realty, Inc.; Rainbow Food Group, Inc.; Retail Investments, Inc.; Retail Supermarkets, Inc.; RFS Marketing Services, Inc.; and Richmar Foods, Inc.

2. The statutory bases for the relief requested herein are sections 105(a) and 363(b) of title 11 of the United States Code (the "Bankruptcy Code").

Background

3. On April 1, 2003 (the "Petition Date"), the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases").

4. The facts and circumstances supporting this Motion are further set forth in the Affidavit of Peter W. Willmott, Interim Chief Executive Officer and President of Fleming Companies, Inc., in Support of Certain First Day Motions, filed contemporaneously herewith.

5. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or committee has yet been appointed in these cases.

6. The Debtors' bankruptcy cases are driven largely by a liquidity crisis. As of the Petition Date, the Debtors had approximately \$239.4 million in term obligations and roughly \$219 million in outstanding drawings under a prepetition revolving credit facility with their prepetition bank group (the "Prepetition Lenders"), secured in both cases by liens on Fleming Companies, Inc.'s ("Fleming") inventory and receivables, Fleming's pledge of the stock of its subsidiaries, and the guarantee of those obligations by Fleming's subsidiaries. The Debtors also are highly dependent on trade credit extended by their creditors, with as much as \$650 million being outstanding on a regular basis.

7. In the current economic environment, the Debtors have found themselves faced with significant competitive pressures which have squeezed margins and made it more

difficult for the Debtors to sell their retail operations in order to reduce debt. The Debtors' distribution segment operates in a highly competitive market. The dominant features of the consumable-goods industry are high-volume sales and low profit margins, and high sensitivity to national and regional economic conditions, meaning that even small changes in pricing can have a significant impact on companies like the Debtors.

8. In addition, in February 2003, Kmart Corporation, the largest customer of the distribution segment, moved in its bankruptcy case in Chicago to reject its supply agreement with Fleming. The subsequent termination of the agreement and disputes over the amount of Fleming's claim for damages have exacerbated pressures on the Debtors by adversely affecting revenues and causing a tightening of the credit terms being offered to the Debtors by suppliers because of marketplace perceptions.

9. On March 27, 2003, the Prepetition Lenders advised the Debtors of their position that no further advances could be made under the terms of the prepetition revolving credit facility. Subsequent to that date, the Debtors and the Prepetition Lenders negotiated terms for consensual usage of the Debtors' cash collateral on an interim basis. In response, the Debtors have filed these cases to preserve their assets and to allow them to propose a plan of reorganization that will maximize the value of their estates for the benefit of all creditors, including the Debtors' trade community, the Debtors' employees, and the holders of approximately \$1.4 billion in unsecured senior and senior subordinated notes.

Relief Requested

10. By this Motion, the Debtors seek authority to (i) maintain existing bank accounts; (ii) continue the use of existing business forms; (iii) continue the use of their existing cash management system; and (iv) continue the use of their existing investment practices.

B. Description of Debtors' Cash Management System

(i) *Existing Cash Management Systems for Operations*

11. The Debtors seek to minimize unnecessary costs and the disruption of their businesses by continuing to utilize their existing cash management systems for operations conducted between and among themselves, their affiliates and third parties. In the ordinary course of business, Fleming operates under three distinct areas of cash management aligned under the company's operational units: (i) retail stores, (ii) convenience store distribution and (iii) traditional distribution. The retail and traditional distribution segments consolidate into a main cash management system at the corporate level where all wires and disbursements related to those segments are handled. The convenience store distribution segment operates as its own cash management system handling all wires and disbursements related to that segment.

12. In addition to these three distinct cash management systems for operations, Fleming also employs a central accounts payable system based out of Oklahoma City, Oklahoma, which handles the vast majority of disbursements for the traditional distribution and retail operations. The convenience store distribution operation also has its own accounts payable system which handles disbursements for those operations. These systems act as a central processing system of invoices and accounts payable on behalf of Fleming's subsidiaries.

The company is in the midst of a SAP consolidation which will consolidate the separate accounts payable systems into one consolidated system. It is estimated that the process will be completed over the next twelve (12) months.

13. Fleming processes invoices in an aggregate dollar amount of approximately \$270 million per week on account of its operations as well as those of its subsidiaries. Fleming also processes payroll and health benefits obligations for the company and its subsidiaries, including payroll.

(a) Retail Stores

14. *The Concentration Account.* The central bank account for the Debtors' retail activity is at JP Morgan Chase (bank account no. 08805174594) (the "Concentration Account"), which provides funds for all disbursements from the three retail divisions. Funds from the Concentration Account are directly disbursed from the Oklahoma City office for purposes of funding payroll and other payables.

15. *Rainbow Foods.* Each of the forty-four (44) Rainbow Foods locations maintain daily deposit accounts at Wells Fargo, which accounts are swept daily into a master account at Wells Fargo. This master account is wire transferred each morning to the Concentration Account.

16. *FRG Food4Less.* The approximately forty (40) FRG locations maintain daily deposit accounts at BankOne, Marshall & Ilsley and Bank of America, which accounts are swept daily into master accounts at the stores' respective banks. As with the Rainbow Foods

locations, each of the three master accounts are wire transferred each morning to the Concentration Account.

17. *Yes!Less*. The 17 Yes!Less locations also maintain daily deposit accounts at Bank of America, BankOne and two other small banks. As with the two other divisions, the Yes!Less master accounts are wire transferred each morning to the Concentration Account.

18. *Customer Accounts*. Occasionally, the Debtors take control of customers' stores due to various defaults. Mostly for convenience purposes, accounts for these stores remain open with the original lender (typically small local banks) following default.

(b) *Convenience Store Distribution*

19. *Consolidated Accounting Platforms*. Eighteen (18) of the Debtors' twenty-four (24) convenience divisions have been consolidated into one accounting platform.² Receipts are collected in local bank accounts and in lockboxes, all of which are swept daily into the Concentration Account. Customer accounts are debited on a daily basis, and that money is credited to the Wells Fargo account and swept daily into the Concentration Account. Check and automated clearing house ("ACH") disbursements, along with payroll, are managed, processed, and issued centrally in San Francisco, California.

20. *Canadian Locations*. The four Canadian locations, all divisions of the U.S. subsidiary, Core-Mark International, Inc., maintain their daily receivables at Bank of Montreal. These funds are swept nearly daily into the Concentration Account via foreign currency swaps.

² Both U.S. convenience divisions that have not been consolidated will be integrated into the consolidated accounting platform by the end of the second quarter of 2003.

(c) *Traditional Distribution*

21. *Process of Consolidation of Bank Accounts.* Currently, each of the existing twenty-eight (28) divisions³ within this line is established with its own disbursement account, depository account and wire receipt account. The divisions primarily deposit receivables at Bank of America, Wells Fargo, First Union and a handful of local banks. However, the Debtors are in the process of consolidating these accounts by year end 2003. As of the date hereof, approximately half of the divisions' disbursement and deposit accounts have been successfully consolidated.

22. Payroll is managed out of the Oklahoma City office and checks are issued out of the Concentration Account. Similarly, ninety-five percent (95%) of the aggregate dollar value of all disbursement checks and vendor electronic fund transfers are issued out of the Oklahoma City office from the Concentration Account. The remaining five percent (5%) are issued out of accounts with Bank of America.

(ii) *Depository Bank Accounts*

23. The Concentration Account at JP Morgan Chase serves as the primary account to receive funds from the three operating segments. The retail segment has its depository accounts at Wells Fargo, Bank One, Bank of America and a few other regional banks depending on location. Each retail store makes a daily deposit into its local bank and funds are swept daily via wire into the Concentration Account.

³ Four U.S. divisions are expected to close by the second quarter of 2003.

depending on location. Each retail store makes a daily deposit into its local bank and funds are swept daily via wire into the Concentration Account.

24. The traditional distribution segment has depository accounts at Bank of America, Wells Fargo, First Union and a few other regional banks depending on location. Traditional distribution segment customers who submit payment by check are deposited at the various banks (amounting to less than twenty-five percent (25%) of collections). ACH payments account for approximately fifty percent (50%) of customer receipts. The remaining twenty-five percent (25%) of customer receipts are received electronically. All of these accounts send their funds on a daily basis by wire to the Concentration Account.

25. The convenience store distribution segment has depository accounts at JP Morgan Chase, Wells Fargo and a few other regional banks depending on location. For those facilities west of the Mississippi, checks are deposited into a lockbox. Deposits are made at local banks for facilities east of the Mississippi. All funds are swept to the Concentration Account on a daily basis.

(iii) Disbursement Bank Accounts

26. Disbursements for the retail operating segment are processed centrally in Oklahoma City. Payroll and all other disbursements for the retail segment is managed out of Oklahoma City and is issued from the Concentration Account.

27. For the traditional distribution segment, ninety-five percent (95%) of the aggregate dollar value of all disbursement checks and vendor electronic fund transfers are issued out of Oklahoma City from the Concentration Account. Checks are issued at four (4) sites

around the United States to optimize cash management. Ninety-five percent (95%) of the aggregate dollar value of all traditional distribution disbursement accounts and check volume also flow through the Concentration Account and the remaining five percent (5%) flow through accounts with Bank of America. Payroll for the traditional distribution segment is managed out of Oklahoma City through the Concentration Account.

28. For the convenience store distribution segment, checks and ACH payments are processed centrally in San Francisco. Approximately seventy percent (70%) of the accounts payable are tobacco related. There are no terms extended on tobacco products and these vendors are paid electronically. Payroll for the convenience store distribution segment is managed centrally in San Francisco and is handled through a single Wells Fargo account.

(iv) *Investment Accounts*

29. The Debtors maintain a single short term investment account with Bank of Montreal (the "Bank of Montreal Account"). The Bank of Montreal Account principally serves as an overnight sweep account for funds received from the Canadian Debtor entities. Typically, no more than approximately \$2-3 million Canadian dollars are held in this account at any time. To the extent applicable, the Debtors seek to continue to use this account after the Petition Date.

Basis For Relief

A. The Debtors Should Be Granted Authority to Maintain Their Existing Bank Accounts

30. The United States Trustee has established certain operating guidelines for debtors that operate their businesses. One such provision requires a chapter 11 debtor in possession to open new bank accounts and close all existing accounts. This requirement,

designed to provide a clear line of demarcation between prepetition and postpetition claims and payments, helps to protect against the inadvertent payment of prepetition claims by preventing the banks from honoring checks drawn before the petition date.

31. Before the Petition Date, the Debtors, in the ordinary course of business, maintained approximately two hundred thirty-five (235) bank accounts listed on Exhibit A attached hereto (the "Bank Accounts").

32. Except as required pursuant to the terms of the Debtors' debtor in possession financing, the Debtors seek a waiver of the United States Trustee's requirement that the Bank Accounts be closed and new postpetition bank accounts be opened. If enforced in this case, this requirement would cause enormous disruption in the Debtors' businesses and would impair their efforts to reorganize.

33. Maintenance of the Bank Accounts would greatly facilitate the Debtors' "seamless transition" to postpetition operations. To avoid delays in payment of debts incurred postpetition and to ensure as smooth a transition into chapter 11 as possible, the Debtors should be permitted to continue to maintain the existing Bank Accounts and, if necessary, to open new accounts. Otherwise, the transfer of the Bank Accounts will be tremendously disruptive and time consuming.

34. In other cases, this Court and other courts have waived the strict enforcement of bank account closing requirements and replaced them with alternative procedures that provide the same protection. See *In re Trans World Airlines, Inc., et al.*, No. 01-0056 (PJW) (Order dated January 10, 2001); *In re AmeriServe Food Distribution, Inc., et al.*, No. 00-358

(PJW) (Order dated February, 2000); *In re Zenith Electronics Corp.*, No. 99-2711 (MFW) (Order dated August 23, 1999); and *In re Harnischfeger Industries, Inc., et al.*, No. 99-2171 (PJW) (Order dated June 7, 1999). To guard against improper transfers resulting from postpetition honoring of prepetition checks, courts have ordered banks, with limited court-approved exceptions, not to honor any checks drawn on debtor bank accounts before the petition date.

35. A similar waiver of the account closing requirement is necessary here. Subject to a prohibition against honoring prepetition checks without specific authorization from this Court, the Debtors request that the Bank Accounts be deemed debtor in possession accounts and that the Debtors be authorized to maintain and continue the use of these accounts in the same manner and with the same account numbers, styles, and document forms as those employed during the prepetition period.

36. If the relief requested herein is granted, the Debtors will not pay, and each of their banks where the Bank Accounts are maintained will be informed not to pay, any debts incurred before the Petition Date other than as specifically authorized by this Court.

B. The Debtors Should Be Granted Authority to Use Existing Business Forms and Checks

37. To minimize expense to their estates, the Debtors also request authority to continue to use all correspondence and business forms (including, but not limited to, letterhead, purchase orders, invoices, etc.), as well as checks existing immediately before the Petition Date, without reference to their status as debtors in possession.

38. Parties doing business with the Debtors undoubtedly will be aware, as a result of the size of this case, of the Debtors' status as chapter 11 debtors in possession.

Changing correspondence and business forms would be unnecessary and burdensome to the estate, as well as expensive and disruptive to the Debtors' business operations. For this reason, the Debtors requests that they be authorized to use their checks and business forms⁴ without placing the label "Debtor In Possession" on each such check or form. This Court has allowed debtors to use their prepetition forms without the "Debtor In Possession" label. *See In re Trans World Airlines, Inc., et al.*, No. 01-0056 (PJW) (Order dated January 10, 2001); *In re AmeriServe Food Distribution, Inc., et al.*, No. 00-358 (PJW) (Order dated February, 2000); *In re Zenith Electronics Corp.*, No. 99-2711 (MFW) (Order dated August 23, 1999); and *In re Harnischfeger Industries, Inc., et al.*, No. 99-2171 (PJW) (Order dated June 7, 1999).

C. The Debtors Should Be Granted Authority to Continue Cash Management System and Pay Certain Debts and Obligations

39. The Debtors hereby seek authority to continue utilizing the current centralized cash management system and to pay certain debts and obligations as authorized by this Court. Given the complexity of the Debtors' business, as well as the need to preserve and enhance their going concern value, a successful reorganization of the Debtors' business simply cannot be accomplished if there is substantial disruption in the Debtors' cash management procedures. It is essential, therefore, that the Debtors be permitted to continue to consolidate the management of cash and transfer monies from entity to entity as needed and in the amounts necessary to continue the operation of their businesses.

40. The basic structure of the cash management system described above has been utilized by the Debtors since approximately 1997 and constitutes the Debtors' ordinary,

⁴ When current supplies of checks are depleted, the Debtors will replace them with checks containing the Debtor in Possession designation.

usual, and essential business practices. The cash management system is similar to those commonly employed by corporate enterprises comparable to the Debtors in size and complexity. The widespread use of such systems is attributable to the numerous benefits they provide, including the ability to (i) tightly control corporate funds, (ii) ensure cash availability and (iii) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance and presentment information. These controls are particularly important here, given the significant amount of cash that flows through the Debtors' integrated cash management system on an annual basis.

41. In addition, given the corporate and financial structure of the Debtors, it would be difficult for the Debtors to establish an entirely new system of accounts and a new cash management system for each separate legal entity. For example, if the Debtors were required to open separate accounts as a debtors in possession and rearrange their cash management system, it would necessitate opening numerous bank accounts with attendant delays in the Debtors' ability to operate their businesses while pursuing these arrangements. Thus, under the circumstances, maintenance of the Debtors' cash management system is not only essential, it is also in the best interests of the Debtors' estates and creditors. The Debtors will continue to maintain strict records with respect to all transfers of cash, so that all transactions can readily be ascertained, traced and recorded properly on applicable intercompany accounts. Furthermore, preserving the "business as usual" atmosphere and avoiding the unnecessary distractions that would inevitably be associated with any substantial disruption in the Debtors' cash management system obviously will facilitate the Debtors' reorganization efforts.

42. If the Debtors are not permitted to continue to utilize their consolidated cash management system in its current form (modified to the extent necessary by the debtor in possession financing arrangements), their operations would be severely, and perhaps, irreparably, impaired. Accordingly, the Court should authorize the Debtors' continued use of their existing cash management system.

43. The Debtors concurrently are seeking authority to pay, honor, and/or satisfy certain of their debts and obligations (the "Obligations") pursuant to concurrently filed First Day motions. With respect to the Obligations that have been paid by check but remain outstanding as of the date of the Debtors' bankruptcy filing, the Debtors request, to the extent practicable and if the check is drawn on an account that the Debtors are authorized to retain pursuant to this Motion, that the banks these checks are drawn upon be authorized to honor such checks regardless of whether they were issued prepetition or postpetition. In addition, the Debtors seek authority to, in their discretion, issue new postpetition checks or fund transfer requests on account of the Obligations to replace any prepetition checks or fund transfer requests that may have been dishonored or denied.

44. Bankruptcy courts routinely grant chapter 11 debtors authority to continue utilizing existing cash management systems. *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). For example, in *In re Charter Co.*, 778 F.2d 617 (11th Cir. 1985), the bankruptcy court entered an order authorizing the debtor and forty three (43) of its subsidiaries "to continue to consolidate the management of their cash as has been usual and customary in the past, and to transfer monies from affiliated entity to entity, including operating entities that are

not debtors." *Id.* at 620. The Eleventh Circuit Court of Appeals then affirmed a subsequent district court decision denying a creditor's motion for leave to appeal the bankruptcy court's cash management order, holding that authorizing the debtors to utilize their prepetition "routine cash management system" was "entirely consistent" with applicable provisions of the Bankruptcy Code. *Id.* at 621.

45. Likewise, in another context, the bankruptcy court in the Columbia Gas chapter 11 case explained that a centralized cash management system "allows efficient utilization of cash resources and recognizes the impracticability of maintaining separate cash accounts for the many different purposes that require cash." *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del.), *aff'd in part and rev'd in part*, 997 F.2d 1039 (3d Cir. 1993). The Third Circuit agreed, emphasizing that a requirement to maintain all accounts separately "would be a huge administrative burden and economically inefficient." *Columbia Gas Sys.*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (cash management system allows debtor "to administer more efficiently and effectively its financial operations and assets"); *In re UNR Indus., Inc.*, 46 B.R. 25, 27 (Bankr. N.D. Ill. 1984).

46. The continued use of cash management systems employed in the ordinary course of a debtor's prepetition business has also been approved as a routine matter in a number of other cases in this District. *See, e.g., See In re Trans World Airlines, Inc., et al.*, No. 01-0056 (PJW) (Order dated January 10, 2001); *In re AmeriServe Food Distribution, Inc., et al.*, No. 00-358 (PJW) (Order dated February, 2000); *In re Zenith Electronics Corp.*, No. 99-2711 (MFW)

(Order dated August 23, 1999); and *In re Harnischfeger Industries, Inc., et al.*, No. 99-2171 (PJW) (Order dated June 7, 1999).

47. It is critical both to the continued operation of the Debtors' businesses and to the preservation of the value of those businesses that the Debtors continue to utilize their existing cash management system without disruption. Accordingly, it is appropriate and entirely consistent with applicable provisions of the Bankruptcy Code and case law for the Court to approve the Debtors' centralized cash management system in its current form (except to the extent it needs to be modified in accordance with the debtor in possession financing arrangements).

D. Waiving Certain Investment and Deposit Requirements Under 11 U.S.C. 345(b)

48. Following the Petition Date, the Debtors intend to maintain their investment account with Bank of Montreal. The Bank of Montreal Account principally serves as an overnight sweep account for funds received from the Canadian Debtor entities. Typically, no more than approximately \$2-3 million Canadian dollars are held in the account at any given time.

49. Section 345(a) of the Bankruptcy Code authorizes a debtor in possession to deposit or invest an estate's money (including cash) so as to "yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). While Section 345(b) of the Bankruptcy Code requires that, generally, with respect to investments other than those "insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States," the estate must require a bond in favor of the United States to be secured

by the undertaking of a court-approved corporate surety, the Court is allowed to dispense with this limitation “for cause.”

50. The Debtors’ submit that cause exists for the Court to allow the Debtors to continue investing their cash in accordance with their typical investment practices. Here, the Bank of Montreal is used as an overnight sweep account for funds received from the Canadian Debtor entities. The Bank of Montreal is a well known and fiscally strong institution and provides critical services to the Debtors’ management of their funds in their Canadian operations. The Debtors submit that these investment practices provide sufficient protection for their cash and that it would be in the creditors’ best interests for the Debtors to follow such investment practices for investing their cash.

Notice

51. Notice of this Motion has been given to (a) the United States Trustee; (b) counsel to the senior secured lenders; (c) counsel to the indenture trustees; (d) counsel to the ad hoc trade committee; and (e) counsel to certain PACA claimants. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

No Prior Request

52. No prior Motion for the relief requested herein has been made to this or any other Court.

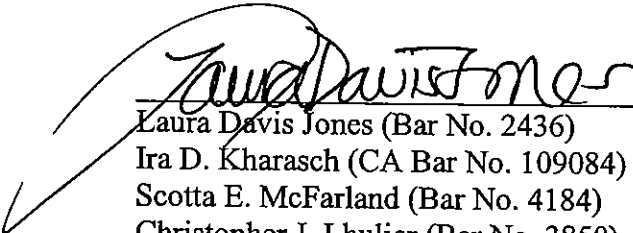
WHEREFORE, the Debtors respectfully request that the Motion be granted and that this Court grant any such further relief as is necessary.

Dated: April 2, 2003

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