

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In re: : Case No. 03-10945 (MFW)
 : (Jointly Administered)
Fleming Companies, Inc., *et al.*, :
 : Chapter 11
Debtors. :
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LIMITED JOINT OBJECTION OF GE CONSUMER PRODUCTS AND GENERAL ELECTRIC CAPITAL CORPORATION – GE DISTRIBUTION FINANCE DIVISION TO DEBTORS’ EMERGENCY MOTION PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364, FED. R. BANKR. P. 4001(b) AND 9014, AND DEL. BANKR. LR 4001-2, (A) FOR INTERIM AND FINAL ORDER AUTHORIZING THE USE OF CASH COLLATERAL AND GRANT OF ADEQUATE PROTECTION NUNC PRO TUNC TO THE PETITION DATE, AND (B) APPROVING POST-PETITION FINANCING AND RELATED RELIEF

GE Consumer Products (“GECP”) and General Electric Capital Corporation – GE Distribution Finance Division (“GEDF” and, collectively with GECP, the “GE Entities”) file this Limited Joint Objection (the “Objection”) to the Emergency Motion Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364, Fed. R. Bankr. P. 4001(b) and 9014, and Del. Bankr. LR 4001-2, (A) for Interim and Final Order Authorizing the Use of Cash Collateral and Grant of Adequate Protection Nunc Pro Tunc to the Petition Date, and (B) Approving Post-Petition Financing and Related Relief (the “Motion”) filed by the jointly administered debtors and debtors in possession herein (the “Debtors”). In support of this Objection, the GE Entities respectfully state as follows:

1. On April 1, 2003 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of Title 11 (the “Bankruptcy Code”) of the United States Code, thereby commencing these jointly administered chapter 11 cases.

2. Prepetition, GECP sold light bulbs and other products (collectively, the “Consigned Inventory”) to certain of the Debtors on a true consignment basis pursuant to a Distributor Agreement and a Consignment Agreement.¹

3. Also prior to the Petition Date, The Fleming Companies, Inc. (“Fleming”), one of the Debtors herein, GECP, and approximately 950 various customers of Fleming entered into a comprehensive deferred receivable program (the “Deferred Program”), through which, *inter alia*, Fleming assigned to GECP certain accounts receivable owing Fleming by Fleming’s various customers (collectively, the “Deferred and Assigned Receivables”).² By subsequent agreement between GECP and GEDF, GECP assigned GEDF the Deferred and Assigned Receivables. As of the Petition Date, the Deferred and Assigned Receivables total approximately \$2 million.

4. On April 3, 2003, the GE Entities, through their counsel, sent a letter to counsel for the Debtors, Deutsche Bank Trust Company Americas, JP Morgan Chase Bank, and others demanding, among other things, the segregation and escrowing of the Consigned Inventory, the Deferred and Assigned Receivables, and any proceeds thereof.³ To date, the GE Entities have not received any responses to such demand.

¹ Counsel for the GE Entities will provide copies of the referenced Agreements to the Court at the continued hearing on the Motion, which is presently set for April 10, 2003.

² Counsel for the GE Entities will provide copies of documents evidencing the Deferred Program to the Court at the continued hearing on the Motion, which is presently set for April 10, 2003.

³ Counsel for the GE Entities will provide copies of the April 3, 2003 letter to the Court at the continued hearing on the Motion, which is presently set for April 10, 2003.

5. GECF objects to the Debtors' use of Cash Collateral (as such term is defined in the Motion) to the extent that such Cash Collateral includes any proceeds of the Consigned Inventory. The Consigned Inventory and any proceeds thereof are not property of the Debtors' estates under section 541 of the Bankruptcy Code, and GECF does not consent to the Debtors' use of the Consigned Inventory or proceeds thereof. Accordingly, GECF respectfully requests that the Court enter an Order requiring the Debtors (1) to account for the Consigned Inventory and any proceeds thereof; (2) to segregate the Consigned Inventory and any proceeds thereof from other of the Debtors' inventory and Cash Collateral; and (3) to deposit any funds identified as proceeds of the Consigned Inventory into an escrow account pending further orders of the Court respecting the disposition of such proceeds.

6. GEDF objects to the Debtors' use of Cash Collateral to the extent that such Cash Collateral includes any proceeds of the Deferred and Assigned Receivables. Because the Deferred and Assigned Receivables were assigned to GECF (and subsequently to GEDF) prepetition, the Deferred and Assigned Receivables are not property of Fleming's estate under section 541 of the Bankruptcy Code, and GECF does not consent to Fleming's (or any of the other Debtors') use of the Deferred and Assigned Receivables or proceeds thereof. Accordingly, GEDF respectfully requests that the Court enter an Order requiring Fleming (1) to account for the Deferred and Assigned Receivables and any proceeds thereof; (2) to segregate any proceeds of the Deferred and Assigned Receivables from other of Fleming's Cash Collateral; and (3) to deposit any funds identified as proceeds of the Deferred and Assigned Receivables into an escrow account pending further orders of the Court respecting the disposition of such proceeds.

7. In the alternative, to the extent required under the law, the GE Entities request adequate protection of their interests in the Consigned Inventory and Deferred and Assigned Receivables.

WHEREFORE, the GE Entities respectfully request that the Court deny the Motion pending entry of an Order (a) requiring the Debtors (i) to account for the Consigned Inventory and any proceeds thereof; (ii) to segregate the Consigned Inventory and any proceeds thereof from other of the Debtors' inventory and Cash Collateral; and (iii) to deposit any funds identified as proceeds of the Consigned Inventory into an escrow account pending further orders of the Court respecting the disposition of such proceeds; and (b) requiring Fleming (i) to account for the Deferred and Assigned Receivables and any proceeds thereof; (ii) to segregate any proceeds of the Deferred and Assigned Receivables from other of Fleming's Cash Collateral; and (iii) to deposit any funds identified as proceeds of the Deferred and Assigned Receivables into an escrow account pending further orders of the Court respecting the disposition of such proceeds.

Dated: April 9, 2003

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