Hearing Date: April 21, 2003 at 12:30 p.m.
Objection Deadline:

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re
FLEMING COMPANIES, INC.,

Debtors.

Chapter 11
03-10945

AFCO CREDIT CORPORATION,

Movant,

v.

FLEMING COMPANIES, INC.,

Respondent.

MOTION OF AFCO CREDIT CORPORATION FOR ORDER SCHEDULING EXPEDITED HEARING ON MOTION TO VACATE THE AUTOMATIC STAY

AFCO Credit Corporation ("Afco"), by and through its undersigned counsel, hereby moves this Honorable Court pursuant to Federal Rules of Bankruptcy Procedure Rules 2002 and 9006(c) and 11 U.S.C. §§ 102, 105 and 362(f) for and Order in the form attached hereto scheduling an expedited hearing on Afco's Motion to Vacate the Automatic Stay (the "Motion"), which Motion was filed with this Court on even date herewith, so that a hearing on the Motion can be held before the Honorable Mary F. Walrath of the United States Bankruptcy Court for the District of Delaware by no later than April 21, 2003 (the "Motion to Expedite"). By this Motion to Expedite, Afco also respectfully requests that the Court enter an order modifying General Order No. 6 of the Local Rules for the United States Bankruptcy Court for the District of Delaware ("General Order No. 6"), and the Order Shortening Time To Answer And Providing For Other Matters Necessary To Effectuate The Provisions Of Section 362, provided by General Order No. 6, to require that any response or

objection to the Motion be filed and served so as to be received by the undersigned counsel by no later than 12:00 p.m., two (2) business days prior to the hearing on the Motion. In support of this Motion to Expedite, Afco respectfully represents as follows:

1. On or about April 10, 2003, Afco filed in this Court the Motion by Afco Credit Corporation to Vacate the Automatic Stay (the "Motion"), by which Afco seeks relief from the automatic stay of section 362(a) of the Bankruptcy Code to terminate certain insurance policies held by the Debtor in accordance with the terms of those certain premium insurance agreements dated February 21, 2003 and August 23, 2002, by and between Afco and Fleming, *et al.* (the "Debtors"). A true and correct copy of the Motion is incorporated herein by reference.[1]

2. As referenced in the Motion, Afco is a secured creditor of the Debtor and maintains a security interest in the unearned or return premiums in connection with the insurance policies held by the Debtor.

3. The Debtor is in default of its obligations to Afco under one of the two the premium insurance agreements. Indeed, Afco's payment records reflect that the sums of $680,316.88 and $1,534,161.52, inclusive of finance charges earned and to be earned over the life of the loans are the open balance on Afco's books. Afco's security interest in the earned premiums diminishes daily. With <u>each</u> passing day, the amount of return premiums diminishes by <u>$16,849.34</u>.

4. Section 362(f) of the Bankruptcy Code provides that upon request of a party in interest, "the

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[1] Due to their voluminous nature, copies of the Motion, Memorandum of Law of Afco Credit Corporation in Support of its Motion to Vacate the Automatic Stay, and the Affidavit in Support of Motion by Afco Credit Corporation to Vacate the Automatic Stay are not attached hereto. However, counsel for Afco shall make such documents available upon request.

court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section." 11 U.S.C. § 362(f).

5. The collateral for the finance agreements declines at a rate of $16,849.34 per day. As such, the equity cushion enjoyed by Afco with respect to the premium insurance agreements as of the date of the Motion will continue to deteriorate and irreparably injure Afco. Afco, while presently oversecured , absent expedited treatment, will become undersecured if Afco is not immediately provided with adequate protection or the automatic stay is vacated to enable the immediate cancellation of the underlying insurance policies.

6. Afco respectfully submits that the Debtor should not be permitted to consume the value of Afco's collateral while simultaneously failing to make the required payments under the premium insurance agreement. Because the value of Afco's collateral continues to drastically decline each day, it is imperative that an expedited hearing on the Motion be held to protect the value of Afco's collateral.

7. Accordingly, Afco submits that sufficient cause exists to schedule a hearing on the Motion for no later than April 21, 2003, and to modify General Order No. 6 to require responses or objections to the Motion to be filed and served so as to be received by the undersigned counsel for Afco by no later than 12:00 p.m., two (2) business days prior to the hearing on the Motion.

WHEREFORE, Afco respectfully requests that this Honorable Court enter an Order in the form attached: (i) scheduling a hearing on the Motion on or before April 21, 2003 at 12:30 p.m.; (ii) modifying General Order No. 6 by requiring that responses or objections to the Motion be filed and served so as to be actually received by the undersigned counsel to Afco by no later than 12:00 p.m., two (2) business days prior to the hearing on the Motion; and (iii) for such other and further relief as the Court deems just and proper.

Dated: April 10, 2003

TYBOUT, REDFEARN & PELL

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