

**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)
Debtors.)	(Jointly Administered)
_____)	

**STIPULATION BY AND BETWEEN FRANCHISEES AND
THE DEBTORS MODIFYING THE AUTOMATIC STAY TO
EFFECT SETOFF PURSUANT TO 11 U.S.C. § 553**

THIS STIPULATION is entered into by and between Fleming Companies, Inc. and its affiliated debtors (collectively, the “Debtors”) and the Franchisee² (collectively, the “Franchisees”), by and through their respective attorneys, as follows:

Factual Background

1. On April 1, 2003 (the “Filing Date”), the Debtors filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in this Court.
2. The Debtors have continued to operate and manage their businesses as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.
3. The Franchisees are comprised of forty-three (43) business entities that operate fifty-three (53) supermarkets under the brand name “Sentry” in southern and eastern Wisconsin.

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.; Favar Concepts, Ltd.; Fleming Foods Management Com., LLC; Fleming Foods of Texas, LP; 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.; Minster-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 individual Franchisees are listed on Exhibit A.

4. The Debtors and the Franchisees have a variety of business relationships which include:

- a) the Debtors sell products to the Franchisees which the Franchisees resell to the public;
- b) the Debtors are the franchisor of the Franchisees and license the Sentry name to the Franchisees;
- c) the Debtors lease real property and improvements from third parties, and sublease the real property and improvements to many of the Franchisees;
- d) the Debtors process accounts payable for products and services delivered to the Franchisees by direct store delivery vendors, other than the Debtor, and the Debtor also acts as the paying agent for the Franchisees' expenses, such as payroll, utilities and leases (collectively, the "Pass-Through Monies");
- e) the Debtors provide financial accounting, payroll payment and processing, unemployment compensation, and coupon processing services to many of the Franchisees.

5. To facilitate the numerous relationships maintained between the Debtors and the Franchisees, the Debtors had access to the Franchisees' bank accounts to withdraw payments for themselves and for the Pass-Through Monies which were obligated to third parties.

6. Funds taken from the Franchisees' bank accounts would be matched to specific purchases of goods and services provided to, or other expenses on behalf of, the Franchisees. Prior to the withdrawal of these funds, the Debtor would provide statements to the Franchisees outlining the purchases, or other expenses, which the Debtor intended to make payments toward.

7. Between March 23 and April 2, 2003, the Debtors withdrew the Pass-Through Monies earmarked for payment to third parties from the Franchisees' bank accounts. The Debtors removed a significant amount of Pass-Through Monies from the Franchisees' bank accounts on the eve of, or immediately after, their filing for bankruptcy protection.

8. If the third party suppliers are not paid in the immediate future, those suppliers may (some have already) cease to do business with the Franchisees, and they may sue the Franchisees for recovery of funds they believe are owed them. This could jeopardize the existence of the Franchisees as a profitable division of the Debtors. In addition, the failure to continue the Pass-Through Monies payment program will result in a disruption of the payment of wages to the Franchisees' employees.

9. The Franchisees have asserted a setoff right for the amounts owed to the Debtors pre-petition (approximately \$5 million), as against those amounts the Debtors owe to the Franchisees for the Pass-Through Monies (approximately \$4.7 million). The total amount the Franchisees owe the Debtors (on the Debtor's own account) exceeds by three hundred thousand dollars (\$300,000.00) the Pass-Through Monies the Debtors currently owe to the Franchisees.

10. Additionally, the Franchisees have asserted that: (a) all Pass-Through Monies paid to the Debtors are the subject of a constructive trust; and (b) the Pass-Through Monies are either cash collateral for the use of which the Franchisees cannot be adequately protected except by payment of the Pass-Through Monies to the intended recipients, or the Pass-Through Monies are not property of the estate. The Debtors reserve all of their rights with respect to these arguments, and do not, by stipulating to the relief requested herein, agree or concede to any allegations or assertions by the Franchisees.

Stipulation

11. Based on upon the pressing need to ensure the continuation of the vitality of the Franchisees as one of the Debtors' most profitable business partners, the parties stipulate that:

- a) the parties shall offset pre-petition amounts against each other;
- b) the Debtors shall pay to the intended recipients all Pass-Through Monies previously obtained by the Debtors within twenty-four (24) hours of entry of a Court order approving of this stipulation;
- c) the Franchisees shall pay to the Debtors all pre-petition amounts owing to the Debtors within twenty-four (24) hours of entry of a Court Order approving this Stipulation;
- d) the Franchisees will continue to pay, on a timely basis consistent with the pre-petition course of dealing as to timing, for goods and services that they receive from the Debtors and for such other goods and services as the Franchisees continue to have paid through the Debtors; and,
- e) the Franchisees shall waive any and all pre-petition claims against the Debtors arising out of the Debtors failure to pay the Pass-Through Monies.

12. The right to setoff pursuant to 553 of the Bankruptcy Code, is a right of equitable origin designed to facilitate the adjustment of mutual obligations. King, Lawrence P., *Collier on Bankruptcy*, ¶553.01, at 553-6 (15th rev. ed. 2001). In general the section preserves the right of setoff where the creditor and debtor hold mutual pre-petition claims that are valid and enforceable. *Id.* 'Mutual' is defined as claims between the same parties with the parties acting in the same capacity. *Id.* The Debtors and the Franchisees hold pre-petition mutual claims that are valid and enforceable and therefore the Franchisees have a valid setoff claim.

13. Because of the exigent nature of the circumstances surrounding payment of the Pass-Through Monies, both the Debtors and the Franchisees believe the stipulation should be approved by the Court on an emergency basis.

14. Unless and until this Stipulation shall be approved by this Court, the respective parties shall retain and preserve their legal rights, claims and causes of action.

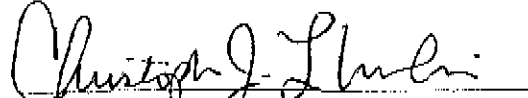
DATED: April 8, 2003
Wilmington, Delaware

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EXHIBIT A

F.A. Lobdell & Son, Inc.;

Schneider Foods, Inc.;

Richter Foods – Lake Geneva, Inc.;

Nemecek Markets, Inc.;

Daniels Sentry of Whitewater, L.L.C.;

RML Foods, Inc.;

Richter Foods, Inc.;

FRB Property Management, Inc.;

Majdecki Foods, Inc.;

Seftar & Son Foods, Inc.;

Muskego Marketplace Foods, L.L.C.;

T&C Foods, Inc.;

Majdecki Foods of Sussex, Inc.;

BKT Enterprises, Inc.;

Albrecht Foods, Inc.;

Conrads, Inc.;

Doll Foods, Inc.;

Prochnow Foods, Inc.;

Daniels Sentry of Janesville, L.L.C.;

Nemecek Foods, Inc.;

Metcalf Foods – Waunakee L.L.C.;

Richter Foods – Burlington, Inc.;

M&T Enterprises, Inc.;

Walders Sentry, Inc.;

Allison Foods, Inc.; R&M
Markets, Inc.;

C&J Foods, L.L.C.;

T&J Foods, Inc.;

Conrad's Sentry, Inc.;

Daniels of Janesville, L.L.C.;

Metcalf, Inc.;

W.C. Foods, Inc.;

Daniels Sentry of Walworth L.L.C.;

Grundl Foods, Inc.;

Town & Country Super Markets, Inc.;

Vos Foods, Inc.;

Daniels Sentry of Elkhorn, L.L.C.;

Reid Foods, Inc.;

Daniels of Brodhead, L.L.C.;

Metcalf Markets, Inc.;

Daniels Foods, Inc.; and
Jim & Judy's Foods, Inc.