

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re:)
)
FLEMING COMPANIES, INC., et al.,) Case No. 03-10945 (MFW)
) (Jointly Administered)
)
) Chapter 11
Debtors.)
) Related to: Docket No. 13
)
) Hearing Date: April 21, 2003 at 12:30 p.m.
)
) Objection Deadline: April 14, 2003, at 4:00
) p.m. Eastern Time
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**DEC INVESTMENTS LLC’S AND SHIELD INVESTMENT COMPANY’S
LIMITED OBJECTION TO DEBTORS’ MOTION FOR ORDER PURSUANT TO
SECTION 365(A) OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO
REJECT CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY
AND AVIATION EQUIPMENT**

DEC Investments LLC (“DEC”) and Shield Investment Company (“Shield”), by and through their undersigned counsel, object to the Motion for Order Pursuant to Section 365(a) of the Bankruptcy Code Authorizing the Debtors to Reject Certain Unexpired Leases of Nonresidential Real Property and Aviation Property (the “Motion”) (Docket No. 13). In support of the objection, counsel states as follows:

1. On April 1, 2003, the Debtors filed for relief under Chapter 11 of the Bankruptcy Code.
2. On April 2, 2003, the Debtors filed the Motion.
3. In the Motion, the Debtors seek an order from the Court to reject certain unexpired leases of nonresidential real property with both DEC and Shield covering properties

identified as 5100, 5150, and 5200 Kansas Avenue, Kansas City, Kansas (the “Leases”) as of April 1, 2003.

4. DEC and Shield’s counsel has communicated with the Debtors’ counsel about its concern over the Motion vis-à-vis the Leases.

5. Specifically, DEC, Shield and the Debtors have discussed numerous issues that need to be addressed before the surrender of the properties subject the Leases can be effectuated pursuant to 11 U.S.C. § 365(d)(4), including, without limitation, the following: (1) The properties subject to the Leases comprise Fleming Foods’ Midwest Distribution Center and include a refrigerated warehouse currently with a temperature of negative 22 degrees Fahrenheit; (2) The Debtors intend to occupy and use the properties until, at least, June 1, 2003, to, among other things, distribute or otherwise remove 150-200 truckloads of inventory, which the Debtors have no intent to abandon; (3) The Debtors plan to restore the temperature at the building to ambient temperature, which will start around May 15, 2003, and not conclude until, at least, July 31, 2003; (4) The Debtors plan to conduct an auction at the properties on a to-be-determined date and at a to-be-determined time; (5) The Debtors intend to develop a plan to remove hazardous substances from the properties or otherwise handle the same in a manner satisfactory to DEC and Shield; and (6) Certain restorations costs may be required for a surrender of the properties.

6. Based on that communication, Debtors’ counsel has agreed to either withdraw the Motion without prejudice or amend the Motion to provide for an orderly surrender of the properties on a to-be-agreed date and on to-be-agreed terms.

7. To the extent the Debtors’ have not yet amended or withdrawn the Motion, as noted above, and in the abundance of caution, both DEC and Shield object to the Motion on the

grounds that the rejection of the Leases is not in the best interests of the bankruptcy estates on the above-noted facts.

8. DEC and Shield both reserve their respective rights to supplement and amend this Objection.

Wilmington, Delaware
Dated: April 14, 2003

BUCHANAN INGERSOLL
PROFESSIONAL CORPORATION

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