

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
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FLEMING COMPANIES,	:	Case No. 03-10945 (MFW)
INC., <u>et al.</u> ,	:	Jointly Administered
	:	Objection Deadline: May 21, 2003 at 4:00 p.m.
Debtors.	:	Hearing Date: June 4, 2003 at 4:00 p.m.
-----X	:	(If objections are filed.)

**APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF FLEMING COMPANIES, INC., et al., UNDER 11 U.S.C. §§ 327(a), 330
AND 1103(a) AND FED. R. BANKR. P. 2014, 2016 AND 5002 FOR ORDER
AUTHORIZING THE RETENTION AND EMPLOYMENT OF
PEPPER HAMILTON LLP [NUNC PRO TUNC TO APRIL 10, 2003]
AS CO-COUNSEL TO THE COMMITTEE**

The Official Committee of Unsecured Creditors (the “Committee”) of Fleming Companies, Inc. and its affiliated debtors and debtors in possession in this chapter 11 case (collectively, “Fleming” or the “Debtors”) herein submits this Application For Order Pursuant to 11 U.S.C. §§ 327(a), 330 and 1103(a) (the “Bankruptcy Code”) and Federal Rules of Bankruptcy Procedure 2014, 2016 and 5002 (the “Bankruptcy Rules”) Authorizing the Retention and Employment of Pepper Hamilton LLP (“Pepper”), nunc pro tunc as of April 10, 2003, as Co-Counsel to the Committee (the “Application”) in the above-captioned cases. In support of this Application, the Committee respectfully represents as follows:

BACKGROUND

1. On April 1, 2003 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On April 10, 2003, the United States Trustee appointed the Committee, which currently consists of the following eight members: (i) Bank One Trust Company, N.A. (“Bank One”); (ii) Kraft Foods, Inc. (“Kraft”); (iii) Apollo Management V, L.P.; (iv) AIG Global Investment Corp.; (v) Northeast Investors’ Trust; (vi) Nestlé USA, Inc.; (vii) ConAgra Foods, Inc.; and (viii) Pension Benefit Guaranty Corporation.

3. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. The statutory predicates for the relief sought herein are §§ 327(a), 330 and 1103(a) of the Bankruptcy Code, as supplemented by Rules 2014, 2016 and 5002 of the Bankruptcy Rules.

4. By this Application, the Committee seeks authority to retain and employ Pepper to act as its co-counsel during this Chapter 11 case, pursuant to sections 327(a), 330 and 1103(a) of the Bankruptcy Code, effective, nunc pro tunc to April 10, 2003.

QUALIFICATIONS

5. Pepper is a national law firm with its principal offices located at 3000 Logan Square, Eighteenth and Arch Streets, Philadelphia, Pennsylvania 19103. Pepper also has offices in New York, NY; Washington D.C.; Wilmington, DE; Detroit, MI; Pittsburgh, PA; New Jersey, other offices in Pennsylvania; and Virginia.

6. The Committee has selected Pepper as counsel because of the firm’s extensive experience in and knowledge of business reorganizations under Chapter 11 of the Bankruptcy Code. The Committee believes that Pepper is both well qualified and uniquely suited to serve as legal counsel in this Chapter 11 case due to its representation of several creditors’ committees in other national cases.

SERVICES TO BE RENDERED

7. The Committee respectfully submits that it will be necessary to employ and retain Pepper to render professional services for the Committee including, but not limited to, the following, under the direction of the Committee:

- a. advise the Committee with respect to its rights, powers, and duties in these cases;
- b. assist and advise the Committee in its consultations with Fleming relative to the administration of these cases;
- c. assist the Committee in analyzing the claims of Fleming's creditors and in negotiating with such creditors;
- d. assist the Committee with its investigation of the acts, conduct, assets, liabilities, and financial condition of Fleming and of the operation of Fleming's businesses in order to maximize the value of the Debtors' assets for the benefit of all creditors;
- e. assist the Committee in its analysis of, and negotiations with, Fleming or any third party concerning matters related to, among other things, the terms of a plan or plans of reorganization for Fleming;
- f. assist and advise the Committee with respect to its communications with the general creditor body regarding significant matters in these cases;
- g. commence and prosecute necessary and appropriate actions and/or proceedings on behalf of the Committee that may be relevant to these cases;
- h. review, analyze or prepare, on behalf of the Committee, all necessary applications, motions, answers, orders, reports, schedules and other legal papers;
- i. represent the Committee at all hearings and other proceedings;
- j. confer with professional advisors retained by the Committee so as to more properly advise the Committee
- k. to perform all other necessary legal services in this case.

DISCLOSURES

8. To the best of the Committee's knowledge, the partners, counsel and associates of Pepper do not have any connection with the Debtors, its creditors or other parties in interest, their respective attorneys, accountants or financial advisors, the United States trustee, or any person employed in the office of the United States Trustee, except as set forth in the Affidavit of I. William Cohen (the "Affidavit"), submitted contemporaneously with this Application.

9. To the best of the Committee's knowledge, except as set forth in the Affidavit, the partners, counsel and associates of Pepper do not represent or hold any interest adverse to the interest of the estate with respect to the matter for which it will be employed.

10. To the best of the Committee's knowledge, the partners, counsel and associates of Pepper are disinterested persons, as defined in 11 U.S.C. § 101(14).

11. To the best of the Committee's knowledge, except as set forth in the Affidavit, the partners, counsel and associates of Pepper do not represent any other entity having an interest adverse interest to the interests represented by the Committee in connection with the case.

COMPENSATION

12. The Committee is satisfied that Pepper is qualified to represent it in this case in a cost-effective, efficient and timely manner and that its employment will be in the best interests of the Committee and the estate

13. § 327(a) of the Bankruptcy Code authorizes the employment of a professional person on any reasonable terms and conditions of employment, including on an hourly basis. The Committee will require Pepper to render professional services, the cost of which can not be estimated. Accordingly, it is necessary for the Committee to employ Pepper under a general retainer to render the foregoing services.

14. Subject to this Court's approval and in compliance with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, the local rules and orders of this Court, the Committee understands that Pepper will charge for its legal services on an hourly basis in accordance with its ordinary and customary hourly rates in cases of this type in effect on the date such services are rendered and for its actual, reasonable and necessary out-of-pocket disbursements incurred in connection therewith, as set forth in the Affidavit. Attorneys and paraprofessionals in Pepper's offices bill their time in one-tenth increments and the current range of hourly rates is

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|----|-----------|---------------|
| a. | Partner | \$280 - \$550 |
| b. | Associate | \$150 - \$295 |
| c. | Paralegal | \$65 - \$175. |

The Committee is informed and understands that Pepper's standard hourly rates are periodically adjusted by the firm.

15. Pepper intends to apply to the Court for allowance of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the applicable Bankruptcy Rules, and the local rules and orders of this Court. Pepper will seek compensation in compliance with the above rules, on an hourly basis, plus reimbursement of actual and necessary expenses incurred by Pepper.

16. In connection with the reimbursement of actual and necessary expenses, the Committee has been informed that it is Pepper's policy to charge all of its clients in all areas of practice for expenses incurred in connection with clients' cases. The expenses charged to Pepper's clients include, among other things, telephone and telecopier toll and other charges, mail and express mail charges, special and or hand delivery charges, document word processing charges, photocopying charges, travel expenses, expenses for "working meals," computerized

research, transcription costs, as well as non-ordinary overhead expenses. The Committee has been informed that Pepper believes it is fairer to charge these expenses to the clients incurring them than to increase the hourly rates and spread the expenses among all clients. The Committee has been assured that Pepper will charge the Committee for these expenses in a manner and at rates consistent with charges made to Pepper's other clients.

17. Except as set forth herein and in the Affidavit, Pepper has not received any payment in respect of professional services and ancillary charges relating to this case. No promises have been received by Pepper or any partner or associate thereof as to compensation in connection with this case other than in accordance with the provisions of the Bankruptcy Code, the Bankruptcy Rules and the local rules and orders of this Court. Pepper has no agreement with any other entity to share with such entity any compensation received by the firm in connection with this Chapter 11 case.

18. The Committee has also asked the Court to approve the retention of Milbank, Tweed, Hadley & McCloy LLP ("Milbank") as Committee co-counsel in connection with the Chapter 11 cases. Pepper and Milbank will work together to minimize any duplication of effort or unnecessary expenditure of time due to the retention of two firms.

NOTICE

19. Notice of this Application has been provided to the office of the United States Trustee for the District of Delaware, counsel for the Debtors, counsel for the Debtors' post-petition lenders, and all parties who have filed a notice of appearance in the case. The Committee submits that no further notice is necessary or required.

20. The Affidavit, made pursuant to 2014(a) of the Bankruptcy Rules, has been filed contemporaneously herewith.

WHEREFORE, the Committee respectfully requests that the Court enter an order approving and authorizing its selection of Pepper, as co-counsel to the Committee in this case, said appointment to be effective nunc pro tunc to April 10, 2003.

Respectfully submitted,

KRAFT FOODS INC.



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Dated: April 3rd, 2003