

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case Nos. 03-10945 (MFW)
. (Jointly Administered)
FLEMING COMPANIES, Inc., .
et al., .
Debtors. . 824 Market Street
. Wilmington, Delaware 19801
. .
. April 21, 2003
. 1:00 p.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtors: Kirkland & Ellis
By: RICHARD L. WYNNE, ESQ.
GEOFFREY RICHARDS, ESQ.
STEVEN KORTABA, ESQ.
777 South Figueroa Street
Los Angeles, CA 90017

Pachulski, Stang, Ziehl, Young,
Jones & Weintraub, P.C.
By: LAURA DAVIS JONES, ESQ.
SCOTTA McFARLAND, ESQ.
919 North Market Street, 16th Fl.
P.O. Box 8705
Wilmington, DE 19899-8705

Audio Operator: Matthew J. Yovino

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J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-Mail: ijcourt@optonline.net

(609) 586-2311 Fax No. (609) 587-3599

1 objection to the debtors' use of cash collateral and to the
2 financing order. The money collected by the debtors is Sara
3 Lee's money, and unfortunately, under the circumstances, we
4 don't know exactly how much money the debtors have been
5 collecting since April 1st. We know that two point six million
6 dollars is what had billed, but haven't gotten any information,
7 and we don't know how much they've collected.

8 Now, this issue has come up, Your Honor, at a couple
9 of prior hearings, once on April 3rd and again on April 10th.
10 What we've been asking for by way of relief is that the debtors
11 be required to segregate the money that's coming in on our
12 collections, and unfortunately, to date that hasn't take place.
13 We have filed a separate adversary proceeding and --

14 THE COURT: Well, I hate to interrupt you, but didn't
15 we deal with this last time, and didn't the first order that I
16 signed say that the debtor would segregate?

17 MR. WYNNE: Interestingly enough, Your Honor -- and
18 this is something that I found out after the hearing -- the
19 order that Your Honor signed was the order that I thought Your
20 Honor had signed which said that we would segregate all post
21 petition collections where we acted as the collection agent.
22 The order that someone handed up to the Court during the
23 hearing -- and that was in a handwritten paragraph, Your Honor
24 -- had handwritten in it both pre and post-petition
25 collections, which was why I looked at it, didn't recognize it,

1 thought that all we had had was that we would segregate
2 anything that was received post-petition, and that's the order
3 that Your Honor had, in fact, signed, so we did --

4 THE COURT: As I recall, it was your handwriting
5 though.

6 MR. WYNNE: It wasn't my handwriting, Your Honor, not
7 on that.

8 THE COURT: Well, that's the order I signed. Well,
9 let's --

10 MR. WYNNE: Well, the order that you --

11 THE COURT: Stop. Is there any question about the
12 post-petition?

13 MR. WYNNE: No, and post-petition what we've been
14 doing is paying in advance, so I mean -- but there's no
15 question about the post-petition from that order, and, Your
16 Honor, I'll get a copy of --

17 THE COURT: Well, have you filed a motion to rescind
18 that order?

19 MR. WYNNE: No.

20 THE COURT: The order I entered said pre and post.

21 MR. WYNNE: No, the order that you entered said post.
22 The order that someone handed you during the hearing pre and
23 post, but that was not the order that you signed, which was why
24 I was confused when someone showed us that order.

25 THE COURT: And Your Honor I'll get -- here's a copy
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1 of the order.

2 MR. MILLER: Stephen Miller on behalf of Amerigold
3 and several other parties. Since I was the party that handed
4 the order, I just want to make sure that we're all clear. I
5 handed up the signed order, and we can hand it up. That's the
6 one that's signed.

7 MR. WYNNE: Yes, this says post-petition funds.

8 MR. MILLER: Correct.

9 MR. WYNNE: This is correct. It says, "has obtained
10 post-petition funds."

11 THE COURT: Is there any --

12 MS. JONES: That actually is not the one that was
13 handed up at the last hearing, Your Honor, and the reason I
14 know is it was handed up with orange highlighter from Mr.
15 Miller --

16 MR. MILLER: Right, but this --

17 MS. JONES: -- and it said pre and post with the
18 draft. That's the order that was handed --

19 MR. WYNNE: Your Honor, here's the order that was the
20 one that this Court signed. May I approach, Your Honor?

21 THE COURT: It says post.

22 MR. WYNNE: It says post.

23 THE COURT: Is there any question that you're
24 segregating post?

25 MR. WYNNE: I don't believe so, Your Honor. I think
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1 post-petition -- anything that we collect post-petition we have
2 to segregate and pay over.

3 THE COURT: Right, so the only issue is what they
4 were holding as of the petition date.

5 MR. WYNNE: Correct, Your Honor, and they have filed
6 an adversary proceeding --

7 THE COURT: Okay.

8 MR. WYNNE: -- on that.

9 MR. KOBBE: I apologize then for burdening the Court
10 with that issue, Your Honor, because nobody has ever made it
11 clear to us -- to Sara Lee or its counsel that they've been
12 segregating the post-petition, and certainly, we would ask for
13 some kind of statement of what they've collected, because if as
14 of April 1st there was two point six million dollars in the
15 pipeline, I can only assume that there had been some
16 collections made on that, and I realize that there is
17 administrative burden that the debtor has to wrestle with, but
18 one would think that if they're segregating, it should be easy
19 enough to punch up some kind of a statement of what's in Sara
20 Lee's segregated account.

21 THE COURT: You say they're paying you in advance for
22 post-petition.

23 MR. KOBBE: We're not getting paid. We're not still
24 delivering to those customers, and so they're -- what I'm
25 talking about when I talk about post-petition is I'm talking

1 about post-petition amounts collected by the debtors on account
2 of --

3 THE COURT: The pre-petition amounts.

4 MR. KOBBE: -- deliveries made pre-petition. I think
5 what they're talking about, Your Honor, are deliveries made
6 post-petition that they're paying on a current basis post-
7 petition, so there may be a little bit of disconnect when we
8 talk about post-petition here. Our concern, just so that
9 there's no misunderstanding here, is that we want every nickel
10 they collect post-petition on that two point six million
11 dollars that existed as of the filing dates to be segregated.

12 THE COURT: Well, you filed an adversary.

13 MR. KOBBE: We have, Your Honor, and we've also moved
14 for a temporary restraining order, and I think that one of the
15 things raised in the Committee's reply is that we haven't
16 satisfied the requirements for a constructive trust.
17 Obviously, we believe otherwise, but we --

18 THE COURT: Well, if you have the debt, it's not
19 property of the estate, and no lien is being granted, if you
20 haven't, won't I deal with that in the adversary?

21 MR. KOBBE: I think you will, Your Honor, and there's
22 a little bit of a cart and a horse problem there with respect
23 to that, and all we ask for is that the Court give us the
24 earliest possible hearing date.

25 THE COURT: Well, have you contacted my clerk about
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1 getting a hearing date?

2 MR. KOBBE: We will do just that, Your Honor.

3 THE COURT: All right. All right. Does that deal
4 with it, if you don't -- if he's correct and he wins his
5 adversary?

6 MR. WYNNE: But it's not property of the estate. I
7 mean that --

8 THE COURT: And there is no lien.

9 MR. WYNNE: Part of our response, Your Honor, was
10 that it should properly be dealt with in the adversary. We
11 disagree that its their property or that there was a
12 constructive trust.

13 THE COURT: All right.

14 MR. KOBBE: Your Honor, I'm still unclear though as
15 to whether they are, in fact, segregating the post-petition
16 collections on the pre-petition amounts billed by Sara Lee.

17 MR. WYNNE: That I think is what the adversary deals
18 with, whether or not we have to. We're not segregating pre-
19 petition amounts. We are segregating anything that's post-
20 petition. In fact, we're doing better than that, because we're
21 paying in advance, and that's I think part of their -- part of
22 our defense, frankly, Your Honor, is that everything was
23 commingled both pre-petition, and we're not going to change our
24 practice unless they would win on their temporary restraining
25 order.

1 THE COURT: I'm not going to decide that issue today.

2 MR. WYNNE: Okay. Thank you, Your Honor.

3 MR. KOBBE: Thank you, Your Honor. I have my answer.

4 MS. KAUFMAN: Your Honor, Susan Kaufman on behalf of
5 Superior Dairy and Alfred Nickles Bakery. We're exactly the
6 same position as Sara Lee. Our amounts are a little smaller.
7 We terminated our billing program with the debtor, one on March
8 23rd and one on March 31st. After that time there's been
9 approximately \$488,000 that's in the pipeline. We don't know
10 whether the debtor has collected it or not. They won't tell
11 us, and they won't communicate with us. If it's the Court's
12 ruling that we need to file an adversary, we'd do that, but
13 we'd like to be heard on an expedited basis, also.

14 THE COURT: Well, file your action. Nothing in this
15 order is granting any lien on any property that is not property
16 of the estate.

17 MS. KAUFMAN: Okay, Your Honor. Thank you.

18 MR. SULLIVAN: Your Honor, James Sullivan on behalf
19 of Exxon Mobile. We join in the objection that Hershey raised,
20 and in addition, with respect to Dunnigan Fuel, we feel that
21 the debtors have failed to meet their burden that Dunnigan Fuel
22 is in need of any post-petition financing. It appears that the
23 -- at least on a pre-petition basis Dunnigan Fuels was cash
24 flow positive, and it was not in need of any financing, and it
25 also appears that the liens that are currently allegedly

1 attached to Dunnigan's assets, that Dunnigan never benefitted
2 from the guarantee and the pledge of assets, and that they may
3 be avoidable.

4 Accordingly, there may be assets which may be
5 available for the benefit of unsecured creditors of Dunnigan's
6 and would not be in the best interest of those creditors if
7 Dunnigan's were to pledge all of its meager approximately ten
8 million dollars worth of assets for \$250 million worth of post-
9 petition financing, some of which are intended to cover
10 approximately \$100 million worth of critical vendors, and none
11 of which appear to be vendors of Dunnigan, in favor of them.

12 It appears that the current operations of Dunnigan
13 are severely below what they were pre-petition. In fact, it
14 had been communicated to our client by the President of
15 Dunnigan that they had shut operations completely over a week
16 ago. It appears that --

17 THE COURT: Well, I won't consider that. I'll
18 consider the testimony that was presented.

19 MR. SULLIVAN: Okay. In any case, the testimony is
20 that it is at a much reduced level. It's unclear exactly what
21 level it is, because the witnesses didn't have any information
22 about that, but our position is that the debtors have failed to
23 prove that -- or at least failed to show that Dunnigan's is in
24 any need whatsoever of any post-petition financing, and, in
25 fact, we think that it would be prejudicial to the interest of

1 Dunnigan's creditors. Thank you, Your Honor.

2 THE COURT: Anybody else?

3 MR. MILLER: Good afternoon, Your Honor. Stephen
4 Miller on behalf of certain parties that provide dairy.
5 Amerigold being one of them. I just wanted a point of
6 clarification and make sure that we're operating under the same
7 guidelines. I'm looking at paragraph 11 of this cash
8 management order that Your Honor signed on April 3rd, and it
9 says, "Debtor is paying agent or collection agent for certain
10 third parties to the extent the debtors obtained or have
11 obtained," and then there's a question whether -- it says,
12 "post-petition or pre-petition." I assume it says, "post-
13 petition funds of those parties for the purpose of paying
14 obligations of those parties. The debtors are authorized and
15 shall use such funds to pay the obligations for which they were
16 obtained."

17 And I guess the question I have for Your Honor is
18 with respect to the pre-petition amount of funds that were
19 received. I understand that parties are going to file
20 adversary proceedings to address that. I guess my question is
21 with respect to the pre-petition deliveries of product which
22 resulted in payments to Fleming post-petition -- which they
23 received post-petition, is the debtor bound to comply with this
24 provision and pay that over, or is Your Honor suggesting that
25 we have to file an adversary proceeding to deal with those

1 particular issues?

2 THE COURT: To the extent the -- there were pre-
3 petition deliveries of product?

4 MR. MILLER: Pre-petition delivery of product,
5 payment post-petition. The debtor received payments post-
6 petition.

7 THE COURT: All right. I think the debtor's taking
8 the position that that's not governed by my prior order.

9 MR. MILLER: Is that the position Your Honor is
10 taking?

11 THE COURT: Well, I don't know that my order covered
12 that.

13 MR. MILLER: Okay.

14 THE COURT: I'm not going to rule today on what my
15 order covered. There's nothing before me on that.

16 MR. MILLER: Than you, Your Honor.

17 MR. PHILLIPS: Your Honor, just one last comment on
18 the record out of an excess of caution. There will not be any
19 lien imposed upon the PACA trust that the Court has ordered to
20 be established by this Friday.

21 THE COURT: That's not -- I think that's correct.

22 MR. PHILLIPS: Okay.

23 UNIDENTIFIED SPEAKER: We'll stipulate.

24 MR. PHILLIPS: Thank you, and it will be established,
25 Your Honor, regardless of whether or not we actually have an

1 order in place by then. I mean, you know, we could --

2 THE COURT: It will be funded this Friday.

3 MR. PHILLIPS: Right. Thank you.

4 MR. McCAULEY: Good afternoon, Your Honor. Tom

5 McCauley on behalf of American Greetings Corp. and Gifts and
6 Greetings, Inc. We filed a limited objection. We're listed as
7 objection letter K on item number 14 of the agenda.

8 Notwithstanding the debtors' reply and the proffered
9 testimony of Mr. Rider today and the affidavit that was
10 submitted in connection with the reply, American Greetings
11 would -- is withdrawing its limited objection at this point
12 reserving its rights on the record to assert that similar to
13 Amerigold and Sara Lee that the monies received by retailers
14 are not property of the estate and should be held in
15 constructive trust.

16 Your Honor, the basis for that withdrawal was, of
17 course, the language set forth in paragraph 11 of the cash
18 management order as well as the reference to that in the
19 interim order that is -- and the record at the first day
20 hearing that set forth on recital I of the interim order that's
21 before the Court. So we would simply -- we're simply reserving
22 our rights at this point and to assert at a later point. I
23 mean simply that the issue's not going to be decided today with
24 respect to the trust issue.

25 THE COURT: That issue is not being decided today. I

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1 think the debtors has got to deal with it immediately.

2 MR. McCAULEY: Right, and then pursuant to the -- and
3 the order contains a mechanism to decide that issue so --

4 THE COURT: All right.

5 MR. McCAULEY: Thank you, Your Honor.

6 MR. GWYNNE: Kurt Gwynne on behalf of Delmonte
7 Corporation again, Your Honor. I join in the objections filed
8 by or asserted by the U.S. Trustee and counsel for Hershey and
9 just wanted to add one other objection.

10 In paragraph nine and paragraph ten on pages 18 and
11 19 of the black line, those paragraphs provide for the payment
12 of interest and the payment of attorney's fees to the DIP
13 lender. So long as the debtor is asserting that the lenders
14 are over secured, the payment of interest and the payment of
15 fees as adequate protection is permissible. In the reclamation
16 motion the debtors have asserted, as well as I think in the
17 first day affidavit, that they reserve the right to assert that
18 no reclamation claims are valid, because the lender is, in
19 fact, under secured, and therefore, the debtors argue the
20 reclamation claims are valueless.

21 If -- I think the order should provide, Your Honor,
22 that if the debtors take the position in the reclamation report
23 or at any time in the case that the lenders are under secured,
24 that the debtors are not authorized to pay interest and
25 attorney's fees to the DIP lenders, and that only so long as