

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

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In re:	:	Chapter 11
	:	
FLEMING COMPANIES,	:	Case No. 03-10945 (MFW)
INC., <u>et al.</u> ,	:	
Debtors.	:	Jointly Administered
-----X	:	

**FIRST SUPPLEMENTAL DECLARATION OF
I. WILLIAM COHEN IN SUPPORT OF APPLICATION OF
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF FLEMING
COMPANIES, INC., et al., UNDER 11 U.S.C. § 1103 AND FED. R. BANKR. P. 2014
AND 5002, FOR ORDER AUTHORIZING RETENTION AND EMPLOYMENT
NUNC PRO TUNC OF PEPPER HAMILTON LLP AS COUNSEL**

I. William Cohen, pursuant to 28 U.S.C. § 1746, hereby declares:

1. I am a partner in the firm of Pepper Hamilton LLP (“Pepper”), proposed co-counsel to the Official Committee of Unsecured Creditors appointed in these cases (the “Committee”), and I am duly authorized to make this declaration on behalf of Pepper. I submit this first supplemental declaration (the “Supplemental Declaration”) pursuant to 11 U.S.C. § 1103(b) and Federal Rules of Bankruptcy Procedure 2014 and 5002, in response to the request of the Office of the United States Trustee for the District of Delaware and in further support of the Committee’s Application to retain Pepper, filed on May 1, 2003 (the “Application”).

2. This Supplemental Declaration supplements, but does not supercede, the Affidavit of I. William Cohen sworn to on April 30, 2003 (the “Original Affidavit”) and filed with the Application. Unless otherwise defined, capitalized terms and phrases shall have the meanings ascribed to such terms in the Original Affidavit.

3. Unless otherwise stated in the Supplemental Declaration, I have personal knowledge of the facts set forth herein and, if called as a witness, I would competently testify thereto.¹

4. Since the date of the Original Affidavit the Office of the United States Trustee has requested that Pepper address, in a supplemental affidavit, whether there are limitations on Pepper's ability to take action adverse to (including investigating the validity of liens of and prosecuting actions against) any of the prepetition secured lenders. Pepper is currently investigating the validity and enforceability of liens of the secured lenders. In the Original Affidavit, we disclosed Pepper's connections to certain of the prepetition secured lenders in matters unrelated to these bankruptcy cases. With respect to those institutions with whom Pepper has an attorney-client relationship, Pepper will not commence or prosecute any adversary proceeding against these entities, and the Committee will retain special counsel to handle any such litigation.

5. Since the submission of the Original Affidavit I have determined that the following secured lenders of Fleming (or affiliates of those lenders) that Pepper represented in the past are not current Pepper clients and, therefore, waivers by them are not necessary and will not be sought: GE Capital; the various Eaton Vance entities; Antares-Mariner CDOI, Ltd; Bankers Trust Company; Barclays Bank PLC (Barclays-Venture CDO 2002 and Barclays-Venture II CDO 2002); and Transamerica Business Capital Corporation. Pepper has requested waivers from and is in the process of obtaining waivers from Deutsche Bank Securities Inc.;

¹ Certain of the disclosures set forth herein relate to matters within the knowledge of other attorneys at Pepper and are based on information provided by them.

Deutsche Bank Trust Company of America; Citicorp of North America; J. P. Morgan Securities, Inc.; J. P. Morgan Chase Bank; Wachovia Bank National Association; First Union Securities Inc.; Fleet Bank; Morgan Stanley & Co. Incorporated and Morgan Stanley Prime Income Trusts. Pepper believes that the waivers it will obtain from those entities will permit it to be adverse to those entities in any investigation or contested matter short of the actual filing of a complaint. Waivers have been provided to Pepper by Salomon Smith Barney Inc. and those Highland funds represented by Pepper. Pepper provides this supplemental information to disclose more specific information as requested by the United States Trustee.

6. If any litigation arises between the Committee and those institutions in connection with the bankruptcy cases, or if Pepper is unable to prosecute a particular matter, the Committee will be represented by special counsel in such matters.

7. In addition, the Office of the United States Trustee requested that Pepper address, in a supplemental affidavit, whether we are aware of any restrictions on our ability to take action adverse to Deloitte & Touche LLP ("Deloitte").² In the Original Affidavit we disclosed Pepper's relationship with Deloitte and Touche Inc. Pepper also represents Deloitte & Touche USA LLP in matters unrelated to these cases. I am informed that Deloitte & Touche Inc. and Deloitte & Touche USA LLP are probably affiliates of or might be related to Deloitte & Touche LLP. Accordingly, Pepper cannot commence or prosecute an adversary proceeding against Deloitte. The Committee will be represented by other counsel in connection with any such matter.

² Deloitte has been retained as independent auditors, accountants, and property tax service providers to the Debtors.

8. Pepper does not currently represent and has not represented in the past any of the current officers, directors, or control persons identified by the Debtors or any of the officers or directors that terminated employment with the Debtors within the two years prior to the Petition Date, as such persons have been identified to Pepper by the Debtors.

9. Pepper represents Georgia Pacific Corporation and certain of its affiliates in matters unrelated to these cases. Georgia Pacific recently filed a motion for relief from the automatic stay in these cases. Matters relating to that motion will be handled by co-counsel to the Committee.

10. The foregoing statements are made to the best of my knowledge as of the date hereof. Pepper has instituted and is carrying on further inquiries of its partners and associates and certain other employees with respect to the matters contained herein. Pepper will file supplemental affidavits regarding this retention if any additional relevant information comes to its attention.

11. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



I. WILLIAM COHEN

Dated: May 28, 2003