

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

In re:	)	Chapter 11
	)	
Fleming Companies, Inc., <u>et al.</u> ,	)	Case No. 03-10945 (MFW)
	)	
Debtors.	)	(Jointly Administered)
	)	Ref. Docket No. 1086

**DDB LIMITED PARTNERSHIP’S SUPPLEMENTAL OBJECTION TO DEBTORS’ MOTION FOR ORDER AUTHORIZING: (A) SALE OF 31 RAINBOW FOOD RETAIL GROCERY STORES’ ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES; AND (B) ASSUMPTION AND ASSIGNMENT OF ACQUIRED CONTRACTS AND LEASES**

DDB Limited Partnership (“DDB”), by counsel, hereby supplements its Objection to Debtors’ Motion for Order Authorizing: (A) Sale of 31 Rainbow Food Retail Grocery Stores’ Assets Free and Clear of All Liens, Claims, Interests and Encumbrances; and (B) Assumption and Assignment of Acquired Contracts and Leases (Docket No. 1086) (the “Objection”) and in support of its supplement to the Objection states as follows:

1. One of the stores Debtors propose to transfer is located at 2806 Highway 29 East, Schofield, Wisconsin 54476 (the “Store”). The Store is owned by DDB and is leased to a Fleming debtor.

2. The Debtors propose to assume the lease and then assign it as a part of the sale transaction. See Debtors’ Motion for Order Authorizing : (A) Sale of 31 Rainbow Food Retail Grocery Stores’ Assets Free and Clear of All Liens, Claims, Interests and Encumbrances; and (B) Assumption and Assignment of Acquired Contracts and Leases (Docket No. 816) (the “Motion”), Exhibit C captioned “Acquired Contracts and Leases” at Lease No. 30.

3. Pursuant to the terms of the Motion, Debtors were to have sent a Cure Notice to DDB. No such Cure Notice has been sent, however, based upon the Debtors' Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (Docket No. 815), Debtors are claiming that the Cure Amount is zero.

4. DDB's original Objection to the Motion asserted that the correct Cure Amount was in excess of \$550,000.


5. Subsequent to the filing of the Objection, Debtors' counsel has advised counsel for DDB that some portion of the soil at the Store has been contaminated by petroleum/hydrocarbon products and, though partially remediated, it has not been fully remediated. Counsel for DDB is attempting to determine the extent/lack of remediation and, thus, the extent of additional remediation necessary. DDB's counsel's preliminary information is that additional remediation will certainly be necessary and, as a consequence, DDB now believes that the Cure Amount will be \$750,000.

6. Until such time as Debtors acknowledge the correct Cure Amount and provide adequate assurance of payment of the same, DDB objects to the proposed sale.

WHEREFORE, DDB Limited Partnership requests that the Court deny Debtors' Motion for Order Authorizing: (A) Sale of 31 Rainbow Food Retail Grocery Stores' Assets Free and Clear of All Liens, Claims, Interests and Encumbrances; and (B) Assumption and Assignment of Acquired Contracts and Leases or, in the alternative, order Debtors to establish a separate escrow fund in the amount of \$750,000 for the

cure of Debtors' breaches of the Store lease and grant such other relief as is just and proper.

PHILLIPS, GOLDMAN & SPENCE, P.A.

  
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DATE: May 30, 2003

**CERTIFICATE OF SERVICE**

I, John C. Phillips, Jr., Esquire, hereby certify that on May 30, 2003, a copy of the attached Supplement to Objection was served upon the following counsel via facsimile:

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