

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
FLEMING COMPANIES, et al., )  
Debtors. ) (Jointly Administered)  
) **Objection Deadline: June 2, 2003 at 4:00 p.m.**  
) **Hearing Date: June 4, 2003 at 4:30 p.m.**  
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**LIMITED OBJECTION OF COMDISCO, INC. TO THE DEBTORS' NOTICE  
OF STORE CLOSING SALES AND PROCEDURES RELATED THERETO  
PURSUANT TO THE ORDER AUTHORIZING THE DEBTORS TO  
CONDUCT STORE CLOSING SALES PURSUANT TO SECTION 363  
OF THE BANKRUPTCY CODE AND ABANDON INCONSEQUENTIAL  
ASSETS RELATED TO THE CLOSING LOCATIONS**

Comdisco, Inc. ("Comdisco"), by its counsel Moritt Hock Hamroff & Horowitz LLP and Ballard Spahr Andrews & Ingersoll, LLP, as and for its objection to the Fleming Companies, *et al.*, Debtors and Debtors-in-Possession (collectively, the "Debtors") Notice of Store Closing Sales and Procedures Related Thereto (the "Notice of Closing") pursuant to the Order Authorizing the Debtors to Conduct Store Closing Sales Pursuant to Section 363 of the Bankruptcy Code and Abandon Inconsequential Assets Related to the Closing Locations (the "Order"), respectfully represents as follows:

**BACKGROUND**

1. On April 1, 2003 (the "Filing Date"), the Debtors commenced these Chapter 11 cases by the filing of voluntary petitions for relief under Chapter 11 of 11 U.S.C. §101 *et seq.* (the "Bankruptcy Code").

2. Prior to the Filing Date, the Debtors entered into a Master Lease Agreement and several Schedules thereto with Comdisco (collectively the "Master Lease"), which provided for the rental of certain equipment more specifically defined therein (the "Equipment"). (A copy of the Master Lease is available upon written request.)

3. On May 19, 2003, at a hearing on the Debtors' Motion for an Order Pursuant to Sections 363(b), 363(f), 554(a) and 1146(c) of the Bankruptcy Code Authorizing and Approving Procedures for the Sale or Abandonment of the Debtors' De Minimis Assets, and in settlement of Comdisco's limited objection thereto, it was agreed on the record between the Debtors and Comdisco that, inter alia, the Debtors would provide Comdisco's New York counsel with information as to whether any of Comdisco's Equipment had been moved from the original location identified under the Master Lease (the "Agreement"). Pursuant to the terms of the Agreement, the Debtors have until June 2, 2003 to provide such information.

4. Comdisco's objection to the Motion is solely with respect to its interests in the Master Lease and the Equipment covered thereunder.

#### **LIMITED OBJECTION**

5. Through the Order and the relief sought in the Notice of Closing, the Debtors intend to conduct store closing sales at the locations of the stores listed on Exhibit "A" to the Notice of Closing (the "Sale Locations"), and either sell or move the assets located at the Sale Locations.

6. Comdisco objects to the relief sought in the Notice of Closing insofar as it

has been unable to verify that its Equipment is not located at any of the Sale Locations. As stated above, pursuant to the Agreement read into the record, Comdisco is currently awaiting confirmation from the Debtors of the location of Comdisco's Equipment. Thus, it is possible that some of the Equipment has been moved and is presently at the Sale Locations that are the subject of the Notice of Closing. By this Limited Objection Comdisco merely seeks to insure that its Equipment is not: (i) located at Sale Locations that are being sold; (ii) moved without advising Comdisco's counsel of the new location of the Equipment; or alternatively (iii) abandoned by the Debtors at the Sale Locations.

7. Accordingly, it is respectfully submitted that the Debtors should be required to clarify with specificity that Comdisco's Equipment is not at the Sale Locations and is not being included as part of the Sale Locations being sold.

8. Additionally, it is respectfully submitted that the Debtors could agree that the terms of the prior Agreement apply to both the Order and the Notice of Closing, and that if any of Comdisco's Equipment is inadvertently transferred, Comdisco will be entitled to, inter alia, immediate payment of the agreed upon value of such Equipment.

9. In any event, in accordance with the Agreement the Debtors should also be directed to provide Comdisco, through its New York counsel, with: (i) notice of the new location for any Equipment moved from the Sale Locations within two (2) weeks of the date that the Equipment is moved, or alternatively, (ii) the name, address and telephone number of one of the Debtors' representatives whom Comdisco can contact to make arrangements to pick up its Equipment in the event that the Equipment is abandoned.

WHEREFORE, Comdisco respectfully requests that this Court direct the Debtors' to confirm to Comdisco's New York counsel: (i) that Comdisco's Equipment is not located at the Sale Locations; (ii) the new location of any of Comdisco's Equipment; or alternatively (iii) the name, address and telephone number of one of the Debtors' representatives whom Comdisco can contact to make arrangements to pick up its Equipment, and grant such other and further relief as the Court deems just and proper.

Dated: June 2, 2003  
Wilmington, Delaware

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