

**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.	:	Objection Deadline: June 18, 2003 at 4:00 p.m.
	:	(subject to Court approval pursuant to the Motion
	:	to Shorten)
	:	Hearing Date: June 25, 2003 at 9:00 a.m.
	:	(subject to Court approval pursuant to the Motion
	:	to Shorten)

**MOTION OF ALBERTSON'S, INC.
FOR LEAVE TO FILE MOTION UNDER SEAL**

Albertson's, Inc. ("Albertson's") hereby moves the Court for the entry of an order (a) pursuant to section 107(b) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 5003-1(b) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), authorizing Albertson's to file under seal the Motion of Albertson's Inc. for an Order: (A) Lifting the Automatic Stay to Allow Albertson's, Inc. to Terminate the Facility Standby Agreements; or Alternatively (B) Compelling Fleming Companies, Inc. to Reject Such Agreement Immediately (the "Underlying Motion"). In support of this motion, Albertson's respectfully represents as follows:

Background

1. On April 1, 2003 (the "Petition Date"), the above-captioned debtors and debtors in possession (the "Debtors") commenced their respective cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors are continuing to operate their businesses and manage their

properties and assets as debtors in possession. No trustee, examiner or committee has been appointed in the Debtors' chapter 11 cases.

2. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested and Basis Therefor

3. Contemporaneously herewith, Albertson's filed the Underlying Motion seeking to (a) lift the automatic stay to terminate certain agreements pursuant to which the Debtors supply certain goods to Albertson's (the "Agreements") or, alternatively, (b) compelling Fleming to reject the Agreements immediately.

4. The Court possesses authority to enter an order authorizing Albertson's to file the Underlying Motion under seal. Section 107(b) of the Bankruptcy Code provides as follows:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may . . . (1) protect an entity with respect to a trade secret or confidential research, development or commercial information.

11 U.S.C. § 107(b).

5. The procedures by which a party in interest may seek relief under section 107(b) of the Bankruptcy Code are set forth in Rule 9018 of the Bankruptcy Rules. Rule 9018 provides as follows:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information

Fed. R. Bankr. P. 9018.

6. The existence of section 107(b) and Rule 9018 demonstrate Congress' anticipation that the administration of bankruptcy cases might require Court intervention to protect some kinds of information from dissemination to the world. In re 50-Off Stores, Inc., 213 B.R. 646, 654 (Bankr. W.D. Tex. 1997). Once a court determines that information sought to be protected falls within any of the categories specified by section 107(b) of the Bankruptcy Code, "the court is required to protect a requesting interested party and has no discretion to deny the application." Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.), 21 F.3d 24, 27 (2d Cir. 1994).

7. When the information for which protection is sought fits into any of the categories specified in section 107(b), "the court is required to protect a requesting interested party and has no discretion to deny the application." In re Orion Pictures Corp., 21 F.3d 24, 27 (2d Cir. 1994) (citation omitted) (emphasis in original). Good cause is not an element of section 107(b). "When Congress addressed the secrecy problem in § 107(b) of the Bankruptcy Code it imposed no requirement to show 'good cause' as a condition to sealing confidential commercial information." Id. at 28.

The Relief Requested is in the Best Interests of the Estate

8. It is imperative that the Underlying Motion be filed under seal to preserve and protect certain confidential commercial information contained in the Agreements and referenced in the Underlying Motion. The Agreements represent negotiated agreements in which the parties thereto agreed to keep the terms confidential. To that end, the Agreements contain explicit confidentiality provisions that require Albertson's to not disclose the terms of the Agreements, except as may be required by law, and impose sanctions for any such disclosure, including injunctive and equitable relief and money damages. Disclosure of the information

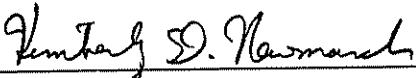
contained in the Underlying Motion or the Agreements could adversely affect the Debtors' businesses. Finally, the Underlying Motion contains highly sensitive information relating to Albertson's business, which could be used by its competitors. Thus, given both the commercial nature of the information in the Agreements and the agreement of the parties to keep such information confidential, Albertson's respectfully requests authorization to file the Underlying Motion under seal, pursuant to section 107(b) of the Bankruptcy Code.

Notice

9. Notice of this Motion has been given to (a) the Debtors, (b) the Official Committee of Unsecured Creditors, (c) the Office of the United States Trustee and (d) those persons requesting notice under Rule 2002 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

WHEREFORE, Albertson's respectfully requests that the Court enter an order substantially in the form attached hereto as Exhibit A: (a) authorizing the filing of the Underlying Motion under seal; and (b) granting such other relief as may be just and proper.

Dated: June 12, 2003
Wilmington, Delaware



Daniel J. DeFranceschi (No. 2732)
Kimberly D. Newmarch (No. 4340)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
(302) 651-7700

- and -

Richard A. Chesley (IL 6240877)
Paul E. Harner (IL 6276961)
Ray C. Schrock (IL 6257005)
JONES DAY
77 West Wacker Drive
Chicago, Illinois 60601
(312) 782-3939

ATTORNEYS FOR ALBERTSON'S, INC.

EXHIBIT A

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

In re:	:	Chapter 11
	:	
FLEMING COMPANIES, INC., et al.,	:	Case No. 03-10945 (MFW)
	:	
Debtors.	:	Re: Docket No. _____

**ORDER AUTHORIZING ALBERTSON'S, INC.
TO FILE MOTION UNDER SEAL**

This matter coming before the Court on the Motion of Albertson's, Inc. for Leave to File Motion Under Seal (the "Seal Motion"); the Court having reviewed the Seal Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and (c) notice of the Seal Motion was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Seal Motion establish just cause for the relief granted herein:

IT IS HEREBY ORDERED THAT:¹

1. The Seal Motion is GRANTED in its entirety;
2. Albertson's is authorized pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018 and Local Rule 5003-1(b) to file the Underlying Motion under seal.

Dated: _____, 2003

UNITED STATES BANKRUPTCY JUDGE

¹ Capitalized terms not otherwise defined herein have the meanings given to them in the Seal Motion.