

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

In re	:	Chapter 11
	:	
FLEMING COMPANIES, INC., et al.,	:	
	:	Case Nos. 03-10945 (MFW)
Debtors.	:	(Jointly Administered)
	:	
	:	Objection Date: June 18, 2003, at 4:00 p.m.
	:	Hearing Date: June 25, 2003 at 2:00 p.m.
	:	

**LIMITED OBJECTION OF COMDISCO, INC. TO THE DEBTORS' MOTION
FOR AN ORDER PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE
AUTHORIZING, BUT NOT DIRECTING, DEBTORS TO ASSUME AND ASSIGN OR,
ALTERNATIVELY, REJECT CERTAIN UNEXPIRED NON-RESIDENTIAL REAL-
PROPERTY LEASES REGARDING YES!LESS 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 motion of Fleming Companies, *et al.*, Debtors and Debtors-in-Possession (collectively, the "Debtors") seeking an Order pursuant to Section 365 of the Bankruptcy Code authorizing, but not directing, Debtors to assume and assign or, alternatively, reject certain unexpired non-residential real-property leases regarding Yes!less locations (the "Motion") 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 had 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. The Motion seeks approval to assume and assign certain unexpired non-residential real-property leases ("Real Property Leases"), and alternatively, to reject the Real Property Leases if the Debtors are unsuccessful in their attempt to sell the properties (the "Properties").

6. Comdisco objects to the Motion insofar as it has been unable to verify that its Equipment is not located at any of the Properties. 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 Properties that are the subject of the Motion. By this Limited

Objection Comdisco merely seeks to insure that its Equipment is not: (i) located at Properties that are being assumed and assigned; (ii) moved without advising Comdisco's counsel of the new location of the Equipment; or alternatively (iii) abandoned by the Debtors at the Properties.

7. Accordingly, it is respectfully submitted that the Debtors should be required to clarify with specificity in any Order granting the relief sought in the Motion, that the Equipment is not subject to the Motion and is not being included as part of the Properties that are being assumed and assigned.

8. Additionally, it is respectfully submitted that the Debtors could agree that the terms of the prior Agreement apply to this Motion as well, 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 notice of the new location for any Equipment moved from the Properties within two (2) weeks of the date that the Equipment is moved.

WHEREFORE, Comdisco respectfully requests that any Order granting the Debtors' Motion specifically: (i) exclude Comdisco's Equipment located at the Properties that are being assumed and assigned along with the Real Property leases; (ii) direct the Debtor to advise Comdisco's New York counsel of the new location of any of Comdisco's Equipment; or alternatively (iii) immediately provide Comdisco's New York Counsel with 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 18, 2003
Wilmington, Delaware

BALLARD SPAHR ANDREWS & INGERSOLL, LLP

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

In re:	:	CHAPTER 11
FLEMING COMPANIES, INC., <u>et al.</u> ,	:	
Debtors.	:	CASE NO. 03-10945 (MFW)

CERTIFICATE OF SERVICE

I, Jennifer A. L. Kelleher, Esquire, certify that on this 18th day of June, 2003, I caused a true and correct copy of the Limited Objection to Debtors' Motion for an Order Authorizing, But Not Directing, Debtors to Assume and Assign or, Alternatively, Reject Certain Unexpired Non-Residential Real-Property Leases Regarding Yes!Less Locations, to be served on the attached service list in the manner indicated.

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