

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

REDACTED

In re:) **Chapter 11**
)
)
FLEMING COMPANIES, INC., et al.¹,) **Case No. 03-10945 (MFW)**
) **(Jointly Administered)**
)
)
Debtors.)

**AFFIDAVIT OF J. MICHAEL WALSH IN SUPPORT OF OBJECTION OF
DEBTORS' TO E-Z MART'S MOTION TO LIFT AUTOMATIC STAY**

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO)

I, J. Michael Walsh, declare as follows:

1. I am the President and Chief Executive Officer of Core-Mark International, Inc. ("Core-Mark International") and the President of Core-Mark Midcontinent Inc. ("Core-Mark"), Core-Mark International's wholly-owned subsidiary. Core-Mark International is, in turn, a subsidiary of Fleming Companies, Inc. I have nearly 20 years experience in the whole-sale food distribution industry. I have been employed by Core-Mark International for 12 years. Prior to my current position, I served as the Vice President of Operations, the Senior Vice President of U.S. Distribution, and the Executive Vice President of Sales. Before running Core-Mark International, I was employed by Food

¹ The Debtors are the following entities: Core-Mark International, Inc.; Fleming Companies, Inc.; ABCO Food Group, Inc.; ABCO Markets, Inc.; ABCO Realty Corp.; ASI Office Automation, Inc.; C/M Products, Inc.; Core-Mark Interrelated Companies, Inc.; Core-Mark Mid-Continent, Inc.; Dunigan Fuels, Inc.; Favar Concepts, Ltd.; Fleming Foods Management Co., L.L.C.; Fleming Foods of Texas, L.P.; Fleming International, Ltd.; Fleming Supermarkets of Florida, Inc.; Fleming Transportation Service, Inc.; Food 4 Less Beverage Company, Inc.; Fuelserv, Inc.; General Acceptance Corporation; Head Distributing Company; Marquise Ventures Company, Inc.; Minter-Weisman Co.; Piggly Wiggly Company; Progressive Realty, Inc.; Rainbow Food Group, Inc.; Retail Investments, Inc.; Retail Supermarkets, Inc.; RFS Marketing Services, Inc.; and Richmar Foods, Inc.

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Services of America for seven years as the Vice President of Operations. I am a graduate of Texas Tech University where I obtained a B.S. degree in Industrial Engineering in 1970. I obtained an MBA in Operations Research from Texas A&M at West Texas in 1973. I am a registered Professional Engineer in the State of Texas and a Senior Member of the Institute of Industrial Engineers.

2. I make the following affidavit of my own personal knowledge, or on information and belief where indicated. I can and would testify competently to these facts in a court of law.

3. In 2000, I began negotiations with Sonja Hubbard, one of the owners of E-Z Mart Stores, Inc. and its Chief Executive Officer, regarding the long-term supply agreement. I was the primary person in charge of the contract negotiation from the Core-Mark side, and Ms. Hubbard did almost all of the negotiating from the E-Z Mart side.

4. We completed our negotiations and executed the contract effective October 2, 2000, a true and correct copy of which is attached to E-Z Mart's motion as Exhibit A. The contract has a five year term and will expire unless terminated sooner or extended on October 1, 2005. At the time we signed the contract, we anticipated annual revenues generated from the relationship would be approximately [REDACTED]. For 2003, Core-Mark forecasts \$ [REDACTED] in revenues. It is one of Core-Mark International's top five customers.

5. The contract states that Core-Mark's historical experience with fill rates has been [REDACTED] overall. Cigarette fill rates are usually somewhat higher than this and non-cigarette grocery items are somewhat lower. The [REDACTED] overall fill rate was not intended to be an absolute minimum, below which Core-Mark would be in breach. Rather, the intent was to use the [REDACTED] number as a target against which Core-Mark's performance could be judged. I did not intend for E-Z Mart to be able to terminate the contract in the

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event that Core-Mark dropped below [REDACTED] on a short-term basis, and the contract does not so provide. [REDACTED] is above the industry standard fill rates.

6. The termination clause of the contract states that E-Z Mart may terminate upon 60 days advance notice if Core-Mark “has significantly breached the terms and conditions of the Agreement involving pricing, rebates, other financial components, or substantively fails to consistently deliver at least industry standard service levels of service...” I understood and intended “substantively” as used in this clause to mean “substantially.”

7. At the time the parties entered into the agreement, Core-Mark provided E-Z Mart certain promotional allowances and advances, anticipating a five year term and supply of 481 stores. *See id.* at 2, 5. These allowances must be repaid on a pro-rata basis in the event of early termination. If E-Z Mart is allowed to prematurely terminate the agreement, it will have to repay approximately [REDACTED] million with 60 days (as of April 2, 2003), based on the records available to me at Core-Mark.

8. One method of calculating fill rates is on the basis of the percentage of orders for wholesale units that are filled by the supplier. For example, if E-Z Mart places an order for 10 wholesale units (each of which may have multiple individual retail units inside, such as a package of 48 snack-size bags of potato chips) and Core-Mark can fill 9 units, the fill rate would be 90%, regardless of the value of the missing product relative to the total order. It is also common in the industry to calculate fill rates on the basis of sales dollar volumes. On information and belief, the largest industry participant, McLane Company, Inc. reports its fill rate on a sales dollar volume basis. When calculated, using sales dollars, the percentage fill rate reflects the ratio of the total price of the E-Z Mart order actually filled to the total price of the order placed by E-Z Mart, i.e. a [REDACTED] fill rate indicates that for every \$100 worth of orders placed, Core-Mart filled \$98 worth.

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9. It is also normal industry practice to not count against the supplier's fill rate items that are unavailable because the item's manufacturer is either out of stock or has discontinued the item. The MOS ("manufacturer out of stock")/discontinued items are ignored in calculating fill rate. Using the example above, if the missing unit in the 10 unit order was unavailable from the manufacturer because it had been discontinued, the fill rate would be 100% (9 out of the 9 units available). In my experience, MOS/discontinued items usually account for .5-1.0% of the order, other than cigarettes, so Core-Mark's non-cigarette fill rates would increase by up to 1% if MOS/discontinued were not included in the calculation. Core-Mark, unlike common industry practice, typically reports fill rates including MOS/discontinued items; these items are reported elsewhere.

10. I am familiar with the DCMS database used to track orders and fill rates and rely upon them regularly to conduct our business. The data shown in Tables 1 and 2 on pages 6 and 7 of Core-Mark's objection were generated at my request by our Information Technology Director Rick Janssen, using the databases we uses on a regular basis.

11. I have analyzed Core-Mark's sales to E-Z Mart. The analysis relies in part on financial data supplied by E-Z Mart to me in the ordinary course of business, a true and correct copy of which is attached hereto as Ex. A. The E-Z Mart financial report shows sales and cost data for the quarter ending March 2002, going back six months to October 1, 2001. This is the most recent E-Z Mart financial report in my possession and, as a privately held company, its statements are not available from public sources.

12. Core-Mark's sales to E-Z Mart consists of two categories, cigarettes (72%) and non-cigarette grocery (28%). Core-Mark's sales to E-Z Mark constitute only [REDACTED] of E-Z Mart's total cost of sales; the remaining [REDACTED] is made up of other items Core-Mark does not provide, such as gasoline, beer, and milk. Since the bankruptcy filing, we have

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maintained E-Z Mart's cigarette fill rates to essentially normal levels. Our non-cigarette fill rates did temporarily drop, but the overall impact on E-Z Mart's business as a result of this drop has been extremely small.

13. In order to ensure that Core-Mark's fill rates improve to our normal high levels, I have embarked on a series of initiatives to ensure our liquidity and to boost inventory well above normal levels. I set a goal of raising \$100 million in cash and Core-Mark currently is ahead of schedule and has raised more than \$60 million to date. Some of these funds have come from the impact of improved vendor and customer credit terms. We also received a multi-million dollar payout on an insurance policy and have raised money in other transactions. As a result of this increased liquidity, we have increased inventory by a five (5) days supply on the most popular items. We have also negotiated quicker turn-around times on our orders from major vendors, resulting in our getting more products in our inventory at a faster rate. Our success in this initiative is reflected in the rising fill rates for late May and June. We expect to be at normal fill rates by the end of June. In the week beginning June 15, our non-cigarette fill rate to E-Z Mart had increased to a level of [REDACTED] (unit basis), the highest since the bankruptcy filing.

14. Attached hereto as Ex. B is a true and correct copy of data reported in C-Store News. This is a well known convenience store industry trade magazine. The reported data come from a study commissioned by the National Association of Convenience Stores ("NACS"). The NACS is the organization that represents the retailers, such as E-Z Mart -- Core-Mark belongs to a separate trade group that represents the wholesalers/suppliers. The study shows that 71% of convenience store customers who are unable to find the item they came into the store to buy will buy another item in the store. Therefore, any reduction in our fill rates resulting in a shortage of a given product most likely resulted in the customer buying a different product that was in stock. Consequently, E-Z Mart

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would not lose a sale more than half of the time. The study also reports that convenience stores are typically out of stock of about 10% of their items at a given time.

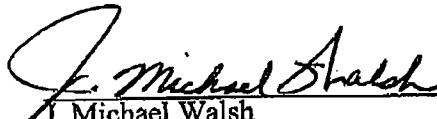
15. We supply E-Z Mart from our Ft. Worth, Texas distribution center. That center today employs 139 persons. Before the bankruptcy, E-Z Mart accounted for [REDACTED] of the business in Ft. Worth; today it is [REDACTED]. It would be impossible to replace such a huge amount of business in short order if E-Z Mart terminated its contract. In all likelihood, I would be forced to close down the distribution center and layoff nearly all of its employees in that event.

16. Today, Core-Mark is the second-largest company in the nation that supplies convenience stores. If Core-Mark had to close its Ft. Worth distribution center, it would leave a large gap in what is now Core-Mark's nationwide coverage. If Core-Mark could no longer represent itself as a nationwide supplier, I believe that would have a material negative impact on the price such a buyer would be willing to pay.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.


CORE-MARK MIDCONTINENT, INC.

DATED: 6/25, 2003


J. Michael Walsh
President

STATE OF CALIFORNIA)
) : ss:
COUNTY OF ~~SAN FRANCISCO~~)
) San Mateo

Subscribed, sworn to and acknowledged before me by J. Michael Walsh, the settlor, on June 25, 2003.



Notary Public

My commission expires: February 9, 2007



EXHIBIT A

E-Z Mart Stores, Inc. and Subsidiaries
Consolidated Balance Sheet
March 28, 2002

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EXHIBIT B

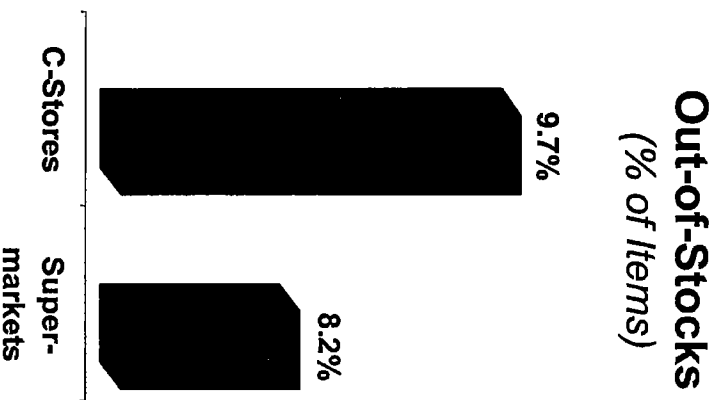
E-Z Mart Stores, Inc. and Subsidiaries
Consolidated Statement of Operations
Quarter ended March 28, 2002

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Today's Consumer

Consumers May Not Be Able to Find One Out of Ten Items Stocked in a C-Store



Question: How well are you managing the shelf?

WBC

Source: Convenience Store News, 2000. The Retail Problem of Out-of-Stock Merchandise, 1996.

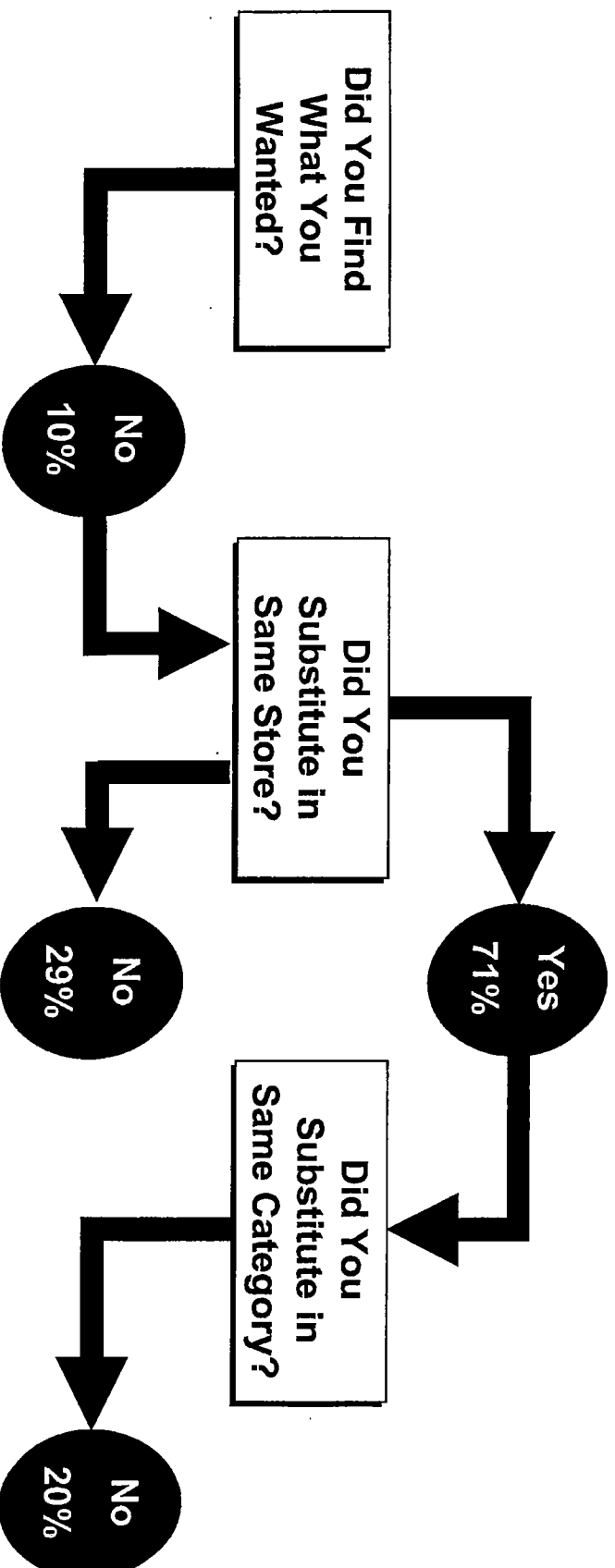
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NYACS

Today's Consumer

Consumers Vote with Their Feet

Consumer Substitution Pattern



Out-of-Stocks Translate to 3% in Lost Sales!

WBC

Source: Convenience Store News Out-of-Stock Study, 1998

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NYACS