

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

In re:	§	Chapter 11
	§	Case No. 03-10945 (MFW)
FLEMING COMPANIES, INC., <u>et al.</u>	§	(Jointly Administered)
	§	Related Docket Item #: 1984
Debtors.	§	Hearing: 8/4/03 @ 11:30 a.m.
		Objections Due: 7/28/03 @ 4:00 p.m.

**OBJECTION OF ZETTLER-SULLIVAN ENTERPRISES, INC.
TO THE “CURE AMOUNTS”**

COMES NOW Zettler-Sullivan Enterprises, Inc., a Texas Corporation (“Zettler”) acting through its undersigned counsel and hereby objects to the “Cure Amount” listed in the Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (“Notice”) filed herein, and more specifically identified as Contract Assignment No. 7275, and Contract Assignment No. 5231; and respectfully states the following in support of its objection:

BACKGROUND

1. Zettler owns and operates three (“Harvest IGA”) grocery stores in Hurst, Saginaw, and Euless, Texas. Zettler is a party to several agreements with Fleming Companies, Inc. (“Fleming”) including a Facility Standby Agreement (Contract No. 5231)(Ex. A) associated with each of its stores, a Real Estate Sublease (Contract No. 7275) with respect to the Hurst, Texas location, and a Promissory Note dated December 17, 2000.

2. Fleming has defaulted in the performance of its obligations with Zettler. Specifically, the Facility Standby Agreement requires Fleming to obtain and maintain an average service level of at least ninety two percent (92%) of the products shipped to Zettler. Presently, Fleming is servicing approximately forty to fifty percent (40%-50%) of the products needed by Zettler.

3. Fleming’s failure to adequately supply products has resulted in decreased products on Zettler’s shelves, increased prices, and declining customer satisfaction. Zettler has

been forced to obtain supplies from alternative vendors, the results of which have dictated an increased cost for goods.

4. It is difficult to identify a precise amount of damages suffered by Zettler as a result of Fleming's continued failure to meet Zettler's supply requirements. Preliminary figures show lost sales of approximately \$500,000.00 resulting in a gross profit loss of \$150,000.00. Additional losses include loss of ad funds, \$25,000.00; loss of slotting funds, \$5,000.00; additional labor costs estimated to be approximately \$10,000.00. There are also losses associated with diverting products which are in the approximate amount at this time of \$142,867.96 based on figures from the year 2002 to present. Total damages are estimated to be \$332,867.00¹

5. Zettler objects to the cure amount schedules which identify zero dollars in Contract Assignment 7275 and Contract Assignment 5231.

Dated: July 23, 2003

SMITH KATZENSTEIN & FURLOW, LLP

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Attorneys for Zettler-Sullivan Enterprises

¹ Zettler would be willing to offset these damages if Debtor was permitted to release Zettler from any obligation owed under the Promissory Note between the parties.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **23rd** day of **July, 2003**, a copy of the foregoing *Objection of Zettler-Sullivan Enterprises, Inc. to the "Cure Amounts"* was served on the following parties by first class mail:

Fleming Companies, Inc.,
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/s/ Kathleen M. Miller

Kathleen M. Miller