

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

In re:

FLEMING COMPANIES, INC., et al.,

Debtors.

Chapter 11
Case No. 03-10945 (MFW)
(Jointly Administered)

**OBJECTION OF MANUGISTICS, INC. TO DEBTORS' CURE AMOUNT AND
POTENTIAL ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH SALE MOTION**

Manugistics, Inc. ("Manugistics"), by and through its undersigned counsel, hereby objects (the "Objection") pursuant to 11 U.S.C. § 365 (b) and (n) to the Debtors' Cure Amount set forth in Debtors' Notice Re Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Sale Motion (the "Notice") and in support thereof states as follows:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.
2. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2).

BACKGROUND

3. On or about July 7, 1999, Manugistics and the Debtors entered into that certain Software License Agreement (the "SLA") attached hereto as Exhibit A. In connection with the SLA, Manugistics and the Debtors entered into a Service Agreement under which Manugistics would provide assistance to the Debtors in connection with software licensed under the SLA.

4. On or about July 11, 2003, the Debtors filed a Notice concerning the potential assumption and assignment of certain executory contracts and unexpired leases with a Cure Amount Schedule (the "Schedule") attached thereto. The Schedule listed Contract Assignment

#: 945 (Manugistics) as a contract to which the Debtors wished assumption with a cure amount of \$0.00 (the “Cure Amount”).

5. As of April 1, 2003 (the “Petition Date”), the Debtors owed Manugistics approximately \$361,111.22 (the “Revised Cure Amount”) pursuant to the SLA and the Service Agreement. Since the Petition Date, Manugistics has continued to render services to the Debtors pursuant to the Service Agreement and is owed approximately \$143,000 through and including July 28, 2003.

OBJECTION TO RELIEF REQUESTED

6. The SLA cannot be assumed or assigned pursuant to 11 U.S.C. § 365. *See In re Catapult Entertainment, Inc.*, 165 F.3d 747 (9th Cir. 1999); *In re CFLC, Inc. (Everex Systems, Inc. v. Cadtrak Corp.)*, 89 F.3d 673 (9th Cir. 1996); *In re Access Beyond Techs., Inc.*, 237 B.R. 32 (Bankr. D. Del. 1999).

7. Furthermore, Paragraph 14 of the SLA states:

D. Assignment. Any assignment of this AGREEMENT by either party (except to an entity controlling, controlled by or under common control with said party) without the written consent of the other shall be void.

Manugistics has not given its written consent to the assignment as required by Paragraph 14 of the SLA.

8. Manugistics, therefore, objects to the Notice to the extent it seeks to assume and assign the SLA without the written consent of Manugistics.

9. Additionally, Manugistics objects to the Notice to the extent it seeks to assume and assign the SLA without payment in full of the Cure Amount. Pursuant to 11 U.S.C. § 365(b), the Debtors cannot assume the SLA without curing all defaults by paying, in full, the Revised Cure Amount and post-petition amounts owing as of the date of assumption.

WHEREFORE, Manugistics respectfully requests that the Court enter an Order sustaining Manugistics' Objection to the Cure Amount, prohibiting the assumption and assignment of the SLA, and granting such other and further relief as may be just and equitable.

Dated: July 29, 2003

ARENT FOX KINTNER PLOTKIN & KAHN, PLLC

/s/ Mary Joanne Dowd

Mary Joanne Dowd

David J. Witten

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036-5339

Telephone: (202) 857-6000

Facsimile: (202) 857-6395

Attorneys for Manugistics, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2003, I caused a true and correct copy of the foregoing Objection of Manugistics, Inc. to Debtors' Cure Amount and Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Sale Motion to be served in the following manner, upon the following:

Via Federal Express Overnight Next Day Delivery:

Fleming Companies, Inc.
Attn: Contracts Department
1945 Lakepoint Drive
Lewisville, TX 75057

Via E-Mail and Federal Express Overnight Next Day Delivery:

Shirley S. Cho
Kirkland & Ellis LLP
777 South Figueroa Street
Los Angeles, CA 90017
E-mail: scho@kirkland.com

Geoffrey Richards
Kirkland & Ellis LLP
200 East Randolph Drive
Chicago, IL 60601
E-mail: grichards@kirkland.com

Laura Davis Jones
Pachulski, Stang, Ziehl, Young, Jones &
Weintraub P.C.
919 North Market Street
16th Floor
Wilmington, DE 19801
E-mail: ljones@pszyj.com

Andrew DeNatale
White & Case
1155 Avenue of the Americas
New York, New York 10036
E-mail: adenatale@whitecase.com

Dennis Dunne
Milbank, Tweed, Hadley & McCloy LLP
One Chase Manhattan Plaza
New York, NY 10005
E-mail: ddunne@milbank.com

Robert S. Hertzberg
Pepper Hamilton LLP
36th Floor
100 Renaissance Center
Detroit, MI 48243-1157
E-mail: hertzbergr@pepperlaw.com

/s/ David J. Witten
David J. Witten