

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)
) (Jointly Administered)
Debtors.)

**AMENDMENT TO RESPONSE OF CERTAIN PERISHABLE AGRICULTURAL
COMMODITIES ACT CREDITORS TO DEBTORS' FIRST SUPPLEMENTAL
REPORT OF CLAIMS**

George Perry & Sons, Inc., The Produce Exchange, Inc., and General Produce Co., Ltd. (hereafter "PACA Trust Creditors"), hereby amend their Response of Certain Perishable Agricultural Commodities Act Creditors to First Supplemental Report of Claims (Doc. 2178) responding to the Debtors' First Supplemental Report of Claims under the Perishable Agricultural Commodities Act, 7 U.S.C. § 499a et seq., the Packers and Stockyards Act, 7 U.S.C. § 181 et seq. and Similar State Statutes filed June 16, 2003 (the "Supplemental PACA Report", Doc. 1992).

I. BACKGROUND

Subsequent to the filing of the Supplemental PACA Report, debtor provided The Produce Exchange, Inc. ("TPE") and General Produce Co., Ltd. ("GPC") each with a Claim Status Detail Report, a cover letter stating that in the event of a dispute as to listing of invoices an objection must be filed, and later, additional reports concerning TPE and GPC's claims. TPE, GPC and George Perry & Sons, Inc. have already filed their objection to the Supplemental PACA report, and this amendment is to incorporate responses to the Claim Status Detail Report and the

additional reports.

II. THE PRODUCE EXCHANGE, INC.

On June 16, 2003, the debtor filed its Debtors' Report of Claims under the Perishable Agricultural Commodities Act, 7 U.S.C. § 499a et seq., the Packers and Stockyards Act, 7 U.S.C. § 181 et seq. and Similar State Statutes (the "PACA Report"; Doc. 1505.)

A. The Original PACA Report

The PACA Report listed the claim of The Produce Exchange, Inc. as asserted in the amount of \$1,784,106.56, and as the subject of an early payment proposal in the amount of \$1,335,964.27. The PACA Report did not identify any amount of The Produce Exchange, Inc. claim as being valid or invalid. The \$1,335,964.27 has been paid.

The early payment proposal from the debtor indicated that for \$388,481.85 of the claim, additional information was required to reconcile that amount. The debtor requested invoices and proofs of delivery, which were immediately submitted to the debtor. The amount of The Produce Exchange, Inc. PACA claim then and now remaining unpaid stands at \$352,672.68.

B. The Supplemental PACA Report

On July 16, 2003, the debtor filed the Supplemental PACA Report, listing the claim of TPE as follows:

Assertion	PACA Eligible	PACA Ineligible	Unreconciled
\$1,784,106.56	\$1,258,572.20	\$71,771.60	\$453,762.76

No explanation was provided as to the "PACA Ineligible" amount, or why the unreconciled amount increased from \$388,481.85 to \$453,762.76. Contrary to the express provisions of the PACA Order, the debtor did not state "in detail the legal or factual basis" for

the ineligible listing. As for the “Unreconciled” amounts, TPE provided all documentation necessary to reconcile its claim.

C. The Claim Status Detail Report

Upon request for specific information, the debtor first provided a Claim Status Detail Report. The document is a 22 page report listing \$1,411,182.40 as the “Eligible Amount” (the Supplemental PACA Report showed \$1,258,572.20 as eligible), only \$11,437.60 as ineligible and \$61,510.40 as post-petition ineligible, and \$299,976.16 as unreconciled.

Other than perhaps the ineligible designation of \$61,510.40 categorized as “Post-Petition,” no detail whatsoever was provided as to the factual or legal basis for any of the listings. Thus, nothing was provided explaining why the \$11,437.60 amount was ineligible, or why the debtor failed to reconcile the \$299,976.16 amount.

Despite the debtor’s failure to provide the legal and factual basis for the debtor’s determinations, TPE has sought to resolve its claim. In response to the Claim Status Detail Report, of course TPE does not dispute the validity of the \$1,411,182.40 of invoices therein determined to be valid. However, it should be noted that there is a duplicate entry of invoice number 642450 for \$4,585.60. With respect to the determination as ineligible of post-petition invoices in the amount of \$61,510.40, this was for goods that were shipped from TPE pre-petition. Payment for those invoices has been made, and TPE’s claim may be reduced accordingly.

As for the unreconciled amount of \$299,976.16, TPE had already provided all invoices and proofs of delivery. One item, ID number 2660 for \$1,090.00, is a duplicate which should be deleted. As to the balance, the debtor has not stated any factual or legal basis for failing to reconcile these invoices, almost all of which should therefore be deemed valid. All of these

invoices, except as noted below, have already been provided to the debtor, and as an accommodation, TPE is again providing these documents to the debtor. The exception to this concerns the following ID and invoice numbers:

ID#	Invoice #	Amount
2467	734991	\$205.51
2640	943017	607.50
2645	950289	285.85
2650	950911	148.50
2648	954441	646.88
2649	956612	662.79
2646	957900	46.50
2642	997163	493.68

These amounts represent unapproved credits taken by Fleming by short pay of an invoice or improper late delivery charges assessed by Fleming and taken against valid invoices. TPE would relinquish its claim on these invoices in order to expedite the resolution of TPE’s claim.

D. The PACA Reconciliation Reports

After reviewing the Claim Status Detail Report, TPE requested invoice specific detail supporting the determinations in the Claim Status Detail Report. The debtor then provided two documents. The first is entitled “PACA Reconciliation Insufficient Documentation,” in the amount of \$10,624.86, and the second is entitled “PACA Reconciliation Paid Items,” in the amount of \$61,510.40.

As for the PACA Reconciliation Insufficient Documentation report, the same items identified and discussed above as exceptions in the unreconciled category are on this list. Again, TPE would forego those items to finally resolve its claim. This leaves additional invoices totaling \$7,527.65 listed on the Insufficient Documentation report, which TPE is also willing to

forego in order to resolve its claims.

As for the other report, "PACA Reconciliation Paid Items," TPE agrees that \$61,510.40 of invoices has been paid. This amount is for the same post-petition invoices discussed above.

In conclusion, TPE agrees that \$61,510.40 has been paid and would reduce its claim by \$10,624.86 (the "Insufficient Documentation") amount, to resolve its claim and obtain payment.

III. GENERAL PRODUCE CO., LTD.

A. The Original PACA Report

The original PACA Report also listed the claim of GPC as asserted in the amount of \$135,085.97, and "Unreconciled" in the amount of \$135,085.97. Simply put, as of the original PACA Report the debtor had done nothing to reconcile any part of GPC's claim.

Due to a post-petition payment, GPC presently has an unpaid PACA Trust claim of \$82,184.12, for pre-petition produce sold to the debtor. The General Produce Co., Ltd.'s Declaration in Support of Claims Under the Perishable Agricultural Commodities Act, 7 U.S.C. § 499a, et seq. substantiating the claim was filed June 26, 2003, document number 1667.

B. The Supplemental PACA Report

The Supplemental PACA Report listed the claim of GPC as follows:

Assertion	PACA Eligible	PACA Ineligible	Unreconciled
\$135,085.97	\$31,765.47	\$67,116.83	\$36,203.67

No explanation was provided as to the "PACA Ineligible" amount, and contrary to the express provisions of the PACA Order, the debtor did not state "in detail the legal or factual basis" for any part of the ineligible listing. As for the "Unreconciled" amounts, the balance of GPC's claim, GPC already provided all documentation necessary to reconcile GPC's claims.

C. The Claim Status Detail Report

On July 26, 2003, a Claim Status Detail Report was sent to GPC stating the following:

Asserted Amount	Eligible Amount	Ineligible Amount	Unreconciled
\$135,171.24	\$50,445.61	\$7,222.25	\$77,503.38

Again, no factual or legal basis was provided for determining any invoice to be invalid.

Of the \$7,222.25 in invoices designated as ineligible, GPC has determined that \$5,698.23 is for non-PACA items. Accordingly, GPC would reduce its PACA claim by that amount. As for the other \$1,145.79, this represents a 2% discount taken by Fleming. Fleming would have been entitled to the discount for timely payment, but timely payment was not made. This amount is disputed.

D. The PACA Reconciliation Reports

Upon GPC's review of the Claim Status Detail Report and request for specific details, the debtor provided two reports. One report is entitled "PACA Reconciliation PACA Ineligible Invoices," showing \$378.23 worth of invoices as "PACA Ineligible." GPC does not dispute this. The other report is entitled "PACA Reconciliation Insufficient Documentation," showing invoices totaling \$18,195.70. That report included a \$5,278.37 amount for a Fleming check returned from its bank as unpaid. The PACA invoices paid by the check were supplied to Fleming and there is no duplication. The \$5,278.37 is due. As for the remaining invoices totaling \$5,342.97, those numbered 261711, 802790, 982244, 983074, 985607, 991390, 991633, 993614, 993615, 995068, 996536, and 998168 are for PACA product for which payment has not been made. A total of \$63.02 listed as ineligible for invoices 937861, 949585 and 949906, is for the improper deduction of 2% for early payment, when early payment was not made. Payment

has been made for the remaining invoices totaling \$7,502.34, numbers 918083, 942594, 944918, 968933, 983045, 990838 and 998143. Thus, the amount due on the PACA Reconciliation Insufficient documentation Report is \$10,693.36.

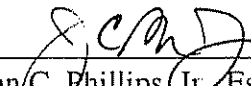
IV. CONCLUSION

The debtor has had sufficient time to reconcile the claims of TPE, GPC and George Perry & Sons. No explanation has been provided as to why their claims have not been fully reconciled. All of the documentation has been provided, and except as stated above, the claims should be allowed and paid.

Dated: August 5, 2003

Respectfully submitted,

PHILLIPS, GOLDMAN & SPENCE

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CERTIFICATE OF SERVICE

I, John C. Phillips, Jr., Esquire, hereby certify that on August 5, 2003, a copy of the attached AMENDMENT TO RESPONSE was served upon the following via first class mail.

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