

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

In re:	)	Chapter 11
	)	
FLEMING COMPANIES, INC., <u>et al.</u> , <sup>1</sup>	)	Case No. 03-10945 (MFW)
	)	(Jointly Administered)
Debtors.	)	
	)	<b>Objection Deadline: August 12, 2003</b>
	)	<b>Hearing Date: August 19, 2003 at</b>
	)	<b>11:30 a.m.</b>
	)	

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**OBJECTION OF GWALTNEY OF SMITHFIELD, LTD. TO DEBTORS’  
MOTION FOR ENTRY OF AN ORDER WITH RESPECT TO THE  
RECLAMATION CLAIMS FILED IN THE DEBTORS’ CASES**

Now comes Gwaltney of Smithfield, Ltd. (“Gwaltney”), by counsel, and for its objection (the “Objection”) to the Motion For Entry Of An Order With Respect To The Reclamation Claims Filed In The Debtors’ Cases (the “Reclamation Motion”), states as follows:

**BACKGROUND**

1. On April 1, 2003 (the “Petition Date”), Fleming Companies, Inc., and other related entities, as set forth in footnote 1 (the “Debtors”), filed for bankruptcy protection under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

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<sup>1</sup> 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.

2. Prior to the Petition Date, Gwaltney sold and delivered certain product to the Debtors.

3. By three letters, each dated April 1, 2003, which were sent via overnight mail and by facsimile (copies of the letters are attached hereto as **Exhibit A** and are collectively referred to as the “Reclamation Demand”), Gwaltney made a valid demand for reclamation of certain goods in the total amount of \$54,794.43 sold and delivered to the Debtors (the “Reclamation Goods”) in the ten day period before the Reclamation Demand (the “Reclamation Period”). Attached to the Reclamation Demand were copies the invoices for the Reclamation Goods.

4. Pursuant to a motion filed by the Debtors on the Petition Date, the Court entered the Order, Under 11 U.S.C. § 105(a), 503(b), and 546(c): (A) Establishing Procedure For Treatment Of Reclamation Claims And (B) Prohibiting Third Parties From Interfering With Delivery of Debtors’ Goods on April 21, 2002 (the “Reclamation Procedure Order”). Pursuant to the Reclamation Procedure Order, the Debtors were required to file a report within 90 days of the date of this order listing the valid reclamation claims and to provide each reclamation claimant with a comprehensive, detailed, and customized information packet that sets forth the basis for the amount of the valid reclamation claims listed in the report. The Reclamation Procedure Order also provided that the Debtors would file a motion stating the Debtors’ position as to the validity or invalidity as to the reclamation claims.

5. On July 21, 2003, the Debtors filed the Reclamation Motion which seeks to set a Maximum Potential Reclamation Claim (as defined in the Reclamation Motion) for each of the reclamation claimants. The Maximum Potential Reclamation Claim is

based on an alleged First-Level Analysis (as defined in the Reclamation Motion), which, according to the Reclamation Motion, determines whether a reclamation claimant has proved that (a) the goods that are subject to the reclamation demands were received within the applicable time period, (b) the goods were sold to the Debtors in the ordinary course of business, (c) that written demand for return of the goods was made within ten days after delivery or receipt, (d) that the goods were identifiable at the time of demand, and (e) that the goods were in possession of the Debtors at the time of demand. The Debtors have reserved their rights to further address the validity of the reclamation claims after a “Second-Level Analysis” (as defined in the Reclamation Motion), which allegedly will look at other arguments, defenses and possible offsets against the reclamation claims.

6. The Reclamation Motion seeks substantial reduction of most, if not all, of the reclamation claims that have been received by the Debtors. The reasons for the reduction of the reclamation claims, include: that the reclamation demand was untimely; that no purchase order was provided with the reclamation demand; that the Debtors have no record of the receipt for purchase orders provided by claimants; that the goods sought to be reclaimed were not received within the applicable reclamation period; and that the goods sought to be reclaimed had been consumed as of the date of the reclamation demand.

7. In the Reclamation Motion, the Debtors seek the reduction and disallowance of Gwaltney’s Reclamation Demand in the amount of \$43,805, asserting that Gwaltney is entitled to a Maximum Potential Reclamation Claim of \$10,990.

8. Gwaltney has also received certain correspondence dated July 21, 2003 from the Debtors (the “July 21 Correspondence”), which provides some detail and breakdown as to the \$43,805 that the Debtors seek to reduce and disallow from Gwaltney’ total Reclamation Demand.

9. According to the Reclamation Motion and the July 21 Correspondence, the Debtors seek to reduce Gwaltney’s Reclamation Claim to \$10,990, disallowing \$43,805, for the following asserted reasons:

- a. A reduction and disallowance of \$39,884 because the Debtors lack records of receipts of certain goods identified by Gwaltney in the Reclamation Demand.
- b. A reduction of \$3,920 because certain of the Reclamation Goods in that amount had been consumed by the Debtors as of the date of the Reclamation Demand.

#### **OBJECTION TO RECLAMATION MOTION**

10. Generally, Gwaltney objects to any reduction or disallowance of its Reclamation Demand for any of the reasons set forth in the Reclamation Motion and/or the July 21 Correspondence. Gwaltney possesses a valid reclamation claim in the total amount \$54,794.43, based on its valid Reclamation Demand dated April 1, 2003, as to those Reclamation Goods identified in the invoices attached to the Reclamation Demand. Neither the Reclamation Motion, nor the July 21 Correspondence, provide sufficient information or background to support the \$43,805 reduction and disallowance of Gwaltney’s valid reclamation claim sought by the Debtors.

11. Gwaltney further objects to the reduction and disallowance sought by the Debtors for those specific grounds set forth in the Reclamation Motion and the July 21 Correspondence for the following reasons:

a. As to the disallowance sought of \$39,884 because the Debtors allegedly do not have record of receipt of goods matching certain of the invoices identified in the Reclamation Demand, Gwaltney objects to such reduction because the Debtors received the goods corresponding to the invoices attached to the Reclamation Demand, as evidenced by the delivery receipts corresponding to the invoices challenged by the Debtors, which are attached hereto as **Exhibit B**.

b. As to the disallowance sought of \$3,920 because goods with such value had allegedly been consumed as of the date of the Reclamation Demand, Gwaltney objects because the Debtors have provided no explanation or basis on how such goods were consumed as of the date of Gwaltney's Reclamation Demand. The information regarding the consumption of such goods is in the exclusive possession and control of the Debtors and Gwaltney has no way of knowing whether goods in the amount of \$3,920 were actually consumed as of the date of the Reclamation Demand.

12. Gwaltney reserves its right to respond to any further challenge to its Reclamation Demand made by the Debtors and to object to the proposed treatment of Gwaltney' Reclamation Demand by the Debtors as may be set forth in any future pleadings.

WHEREFORE, Gwaltney requests that the Court enter an order granting the following relief:

1. Denying the Reclamation Motion as it relates to Gwaltney's Reclamation Demand.
2. Finding that Gwaltney has a valid reclamation claim in the amount of \$54,794.43.
3. Granting Gwaltney the appropriate protection and treatment of its Reclamation Demand pursuant to Section 546(c)(2) of the Bankruptcy Code.
4. Granting such and further relief as is just and proper.

Date: August 12, 2003

GWALTNEY OF SMITHFIELD, LTD.

/s/ Derek C. Abbott 

Derek C. Abbott (DSB No. 3376)

MORRIS, NICHOLS, ARSHT & TUNNELL

1201 N. Market St.

P.O. Box 1347

Wilmington, DE 19899-1347

Tel. (302) 658-9200

and

Robert A. Cox, Jr. (NCB No. 21998)

McGUIREWOODS LLP

Bank of America Corporate Center

100 N. Tryon Street, Suite 2900

Charlotte, North Carolina 28202

Tel. (704) 373-4637

ATTORNEYS FOR GWALTNEY OF  
SMITHFIELD, LTD.