

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

| | | |
|--|---|-------------------------|
| In re: |) | |
| |) | Chapter 11 |
| Fleming Companies, Inc., et al. ¹ |) | |
| |) | |
| |) | Case No. 03-10945 (MFW) |
| Debtors. |) | (Jointly Administered) |
| <hr/> | | |

**STIPULATION BY AND BETWEEN SHERWOOD FOOD DISTRIBUTORS AND
THE DEBTORS MODIFYING THE AUTOMATIC STAY TO
EFFECT SETOFF PURSUANT TO 11 U.S.C. § 553**

THIS STIPULATION is entered into by and between Fleming Companies, Inc. and its affiliated debtors (collectively, the “Debtors”)¹ and Sherwood Food Distributors, (“Sherwood”), a Michigan co-partnership, by and through their respective attorneys, as follows:

Factual Background

1. On April 1, 2003 (the “Filing Date”), the Debtors filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in this Court.
2. The Debtors have continued to operate and manage their businesses as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.
3. Sherwood is a Michigan co-partnership engaged in, among other things, the supply, warehousing and distribution of meat and meat products to certain of the Debtors and the Debtors’ customers in Ohio and other states.

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 Com., LLC; Fleming Foods of Texas, LP; 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.; Minster-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.

4. The Debtors and Sherwood have a variety of business relationships which include:

a) Debtors' Massillon Division Meat Sales Department solicits orders from Debtors' customers and forwards them to Sherwood for processing, invoicing and delivery. Sherwood forwards the respective invoices to Debtors' Massillon Division for payment to Sherwood.

b) Sherwood directly sells meat and meat products to Debtors.

c) Debtors' Massillon Division directly sells meat and meat products to Sherwood from Debtors' own inventory.

5. As of April 1, 2003 and prior to Debtors filing their Chapter 11 petition herein, Sherwood and Debtors acknowledge that Sherwood owed \$2,098,775.46 to Debtors on account of purchases as reflected in Debtors' invoices to Sherwood.

6. As of April 1, 2003 and prior to Debtors filing their Chapter 11 petition herein, Sherwood and Debtors acknowledge that Debtors owed \$1,676,266.64 to Sherwood on account of purchases as reflected in Sherwood's invoices to Debtors.

7. The above-mentioned amounts owing to Debtors and Sherwood were not created to establish setoff rights.

8. Sherwood has asserted a setoff right for the amounts owed to the Debtors pre-petition (\$2,098,775.46) as against those amounts that Debtors owe to Sherwood (\$1,676,266.64) pre-petition. The total pre-petition amount that Sherwood owes to the Debtors exceeds the total pre-petition amount owed by Debtors to Sherwood by \$422,508.82, as to which amount the parties are in agreement.

Stipulation

9. Based upon the parties' desire to reconcile and setoff sums owing pre-petition as authorized under the Bankruptcy Code, the parties stipulate that:

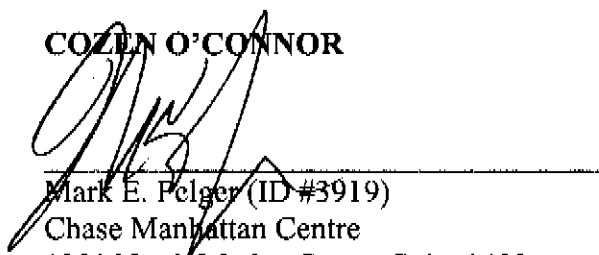
- a) the parties shall offset pre-petition amounts against each other;
- b) after the approved setoff, Sherwood shall pay to the Debtors all pre-petition amounts owing to the Debtors, (i.e. \$422,508.82) within seventy two (72) hours of entry of a final and non-appealable Court Order approving this Stipulation.

10. The right to setoff pursuant to §553 of the Bankruptcy Code is a right of equitable origin designed to facilitate the adjustment of mutual obligations. King, Lawrence P., *Collier on Bankruptcy*, ¶553.01, at 553-6 (15th rev. ed. 2001). In general, the section preserves the right of setoff where the creditor and debtor hold mutual pre-petition claims that are valid and enforceable. *Id.* 'Mutual' is defined as claims between the same parties with the parties acting in the same capacity. *Id.* The Debtors and Sherwood hold pre-petition mutual claims that are valid and enforceable so that Sherwood has a valid setoff claim.

11. Unless and until this Stipulation shall be approved by this Court, the respective parties shall retain and preserve their legal rights, claims and causes of action.

DATED: August 19, 2003
Wilmington, Delaware

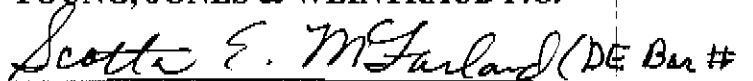
COZEN O'CONNOR



Mark E. Felger (ID #3919)
Chase Manhattan Centre
1201 North Market Street, Suite 1400
Wilmington, DE 19899
Telephone: (302) 295-2000
Facsimile : (302) 295-2013

Attorneys for Sherwood Food Distributors

PACHULSKI, STANG, ZIEHL,
YOUNG, JONES & WEINTRAUB P.C.



Laura Davis Jones (ID #2436)
Christopher J. Lhulier (ID #3850)
919 N. Market Street, 16th Floor
Wilmington, DE 19899
Telephone: (302) 652-4100
Facsimile: (302) 652-4400

(DE Bar # 4184)

-and-

James H.M. Sprayregen, Esq.
Shirley Cho, Esq.
Kirkland & Ellis
777 South Figueroa Street
Los Angeles, CA 90017
Attorneys for Debtors