

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

FLEMING COMPANIES, INC., *et al.*,

Debtors.

THE UNOFFICIAL COMMITTEE OF
UNSECURED TRADE CREDITORS OF
DUNIGAN FUELS, INC.,

Plaintiff,

v.

DEUTSCHE BANK TRUST COMPANY
AMERICAS, as Administrative Agent,
JPMORGAN CHASE BANK, as Collateral
Agent and Syndication Agent, CITICORP
NORTH AMERICA, INC., as Syndication
Agent, LEHMAN COMMERCIAL PAPER
INC., as Documentation Agent, WACHOVIA
BANK, NATIONAL ASSOCIATION, as
Documentation Agent, DEUTSCHE BANK
SECURITIES INC., as Joint Book Manager and
Joint Lead Arranger, J.P. MORGAN
SECURITIES INC., as Joint Book Manager and
Joint Lead Arranger, SALOMON SMITH
BARNEY INC., as Joint Lead Arranger,
FORTIS CAPITAL CORP., as Senior Managing
Agent, MANUFACTURERS AND TRADERS
TRUST COMPANY, as Senior Managing
Agent, BNP PARIBAS, as Senior Managing
Agent, COMERICA BANK, as Senior
Managing Agent, TRANSAMERICA
BUSINESS CAPITAL CORPORATION, as
Senior Managing Agent, DB TRUST
AMERICAS, ABBEY NAT TREASURY

(Chapter 11)

Case No. 03-10945 (MFW)

(Jointly Administered)

Adv. Pro. No. 03-_____ (MFW)
(Case No. 03-10973)

**COMPLAINT AND OBJECTION TO
CLAIM**

SERV (US BR), AIG SUNAMERICA INC., ALLFST BK, AMEX – CERTIFICATE CO, AMEX – IDS LIFE INS, AMEX – KZH CYPRESSTREE-1, AMEX – KZH ING-2 LLC, AMEX – KZH STERLING LLC, ANTARES – MARINER CDO 2002, BARCLAYS – VENTURE CDO 2002, BARCLAYS – VENTURE II CDO 2002, BK AMER, BLACK DIAMOND, BLACK DIAMOND OPP FUND, BLUE SQUARE FUNDING, CARLYLE HY PARTNERS, CARLYLE HY PARTNERS IV, CFSC WAYLAND-SAPPHIRE SOF, CFSC WAYLAND-WAYLAND RECOVERY, CITI BUS CR, CITI – LONG LANE MASTER II, COMERICA BK, CONSECO – WINGED FOOT, CONSECO-JUPITER LN FUNDING, CONTINENTAL CASUALTY, CSAM – ATRIUM CDO, CSAM FUNDING I, CSAM FUNDING II, DEERFIELD – BRYN MAWR CLO, DEERFIELD – ROSEMONT, DEERFIELD-MUIRFIELD TRAD, DEERFIELD-OLYMPIC FDG 1999-1, DEERFIELD-SEQUILS CUMBERLAND, DENALI – DENALI CAP CLO I, DENALI CAPITAL CLO II, LTD., EATON VANCE – BIG SKY, EATON VANCE CDO III, EATON VANCE CDO IV, LTD, EATON VANCE GRAYSON & CO, EATON VANCE INST'L SENIOR, EATON VANCE OXFORD, EATON VANCE SNR INC TRT, EATON VANCE SR DEBT PORT, EATON VANCE VT FLOATING, FIRST DOMINION FDG 1, FIRST DOMINION FDG II, FLEET BK, FORTIS CAPITAL (MEESPIERSON), FRANKLIN CLO II LTD, FRANKLIN CLO, LTD, FRANKLIN FLOAT RATE TRUST, GE CAPITAL, GENRE – KZH WATERSIDE, GUARANTY FEDERAL BK, HIGHLAND – CALPERS, HIGHLAND – ELF, HIGHLAND – EMERALD ORCHID LTD, HIGHLAND – GLENEAGLES, HIGHLAND – KZH HIGHLAND-2, HIGHLAND – LOAN FUND V, HIGHLAND – PAMCO CAYMAN LTD, HIGHLAND – RESTORATION, HIGHLAND LEGACY, INDOSUEZ – RIVIERA, ING INV-PILGRIM CLO 1999-1, ING INV-PILGRIM

HIGH INCOME, ING-PILGRIM ML CLO XII, ING INV-PILGRIM ML CLO XV, ING INV-PILGRIM ML CLO XX, ING INV-PILGRIM SEQUILS, ING INV-PRIME RATE TRUST, ING INV-SNR INCOME FUND, JP MORGAN CHASE, LEHMAN CP, LONG LANE, MANUF & TRADERS, MASS MUTUAL – SUFFIELD CLO LTD, MASS MUTUAL LIFE, MIZUHO CORP BK LTD JAPAN, MORGAN STANLEY PRIME INCOME TR, MOUNTAIN CAP CLO 1, NATEXIS BQES POP, NATIONWIDE LIFE INSURANCE, NATIONWIDE MUTUAL INSURANCE CO, NATIONWIDE-SEP A/C B-RETIRE, NATL CITY BK CLEVELAND, NOMURA-CLYDESDALE CLO 2001-I, PACIFICA PARTNERS I, L.P., PAM CAPITAL (PROTECTIVE), PROMETHEUS INV NO. 1, RZB, SAI – GALAXY, SAI – KZH SOLEIL, SAI – KZH SOLEIL-2, SANKATY – CASTLE HILL II, SANKATY – G.P. CLO 1999-1 LTD, SANKATY – RACE POINT, SANKATY CREDIT OPP, SANKATY HIGH YIELD PRT III, SANKATY-HARBOUR TOWN FDG LLC, SIEMENS FINANCIAL, SUNAMERICA LIFE, TRANSAMERICA BUSINESS CAPITAL, TRAVELERS CITIGROUP, TRAVELERS COLUMBUS LOAN FUND, TRAVELERS INS, VKM CLO II, VKM SENIOR LOAN FUND, VKM SNR INC TRT, WACHOVIA BANK, NATIONAL ASSOC, XYZ CORPORATIONS 1-100, AND JOHN DOES 1-100, as Unknown Agents and Lenders,¹ FLEMING COMPANIES, INC., as Principal Obligor, and CORE-MARK INTERNATIONAL, 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., FAVAR CONCEPTS, LTD., FLEMING FOODS MANAGEMENT

¹ The names of the lenders were provided to plaintiffs' counsel by White & Case, counsel for the Lenders in the above-referenced chapter 11 case. Plaintiff reserves the right to amend the complaint to amend, modify, or supplement the list of lenders that were made defendants in this adversary proceeding.

CO, L.L.C., FLEMING FOODS OF TEXAS, L.P., FLEMING INTERNATIONAL, LTD., FLEMING SUPERMARKETS OF FLORIDA, INC., FLEMING TRANSPORTATION SERVICES, 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., RICHMAR FOODS, INC., EA MORRIS DISTRIBUTORS, LTD., AG, L.L.C., AMERICAN LOGISTICS GROUP, I, BAKER'S FOOD GROUP, INC., CARDINAL WHOLESALE, INC., FLEMING WHOLESALE, INC., LAS, INC., and SCRIVNER TRANSPORTATION, INC., as Co-Guarantors,

Defendants.

The Unofficial Committee of Unsecured Trade Creditors of Dunigan Fuels, Inc. (the “Dunigan Committee”),² through the undersigned counsel, as and for its complaint against, and objection to the claims of, the above referenced defendants, alleges as follows:

PRELIMINARY STATEMENT

This complaint arises from a financing transaction between the defendants identified in paragraphs 6 through 131 of this Complaint or their predecessors in interest (collectively, the “Transferees”) and Fleming Companies, Inc. (“Fleming”), the ultimate parent company to

² As of the filing of this Complaint, the Dunigan Committee is comprised of the following creditors of Dunigan Fuels, Inc.: ExxonMobil Corporation, Marathon Ashland Petroleum LLC, TransMontaigne Product Services Inc., Santmyer Oil Company, Inc., and Papco, Inc. The Dunigan Committee reserves the right to request that it be appointed as an official creditors committee under 11 U.S.C. § 1102(a). In addition, the Dunigan Committee reserves the right to solicit additional Dunigan creditors to join the Dunigan Committee or to reconstitute itself as it deems appropriate.

Dunigan Fuels, Inc. (“Dunigan”). Upon information and belief, Fleming is a holding company that operates three separate businesses through its numerous operating subsidiaries: a retail store business, a wholesale distribution business, and a fuel distribution business. The fuel distribution business was a stand alone business that was operated by Dunigan. Although profitable, Dunigan was a relatively insignificant part of Fleming’s overall business and very little, if anything, about Dunigan was ever disclosed in Fleming’s public filings.

In June 2002, Fleming entered into a \$975 million credit facility with the Transferees, which was primarily used to fund Fleming’s acquisition of its wholesale distribution business, which is comprised of Core-Mark International, Inc. and its subsidiaries (collectively the “Wholesale Distribution Business”), and to repay certain obligations of Fleming. Fleming caused substantially all of its United States subsidiaries, including Dunigan, to guaranty Fleming’s entire obligation to the Transferees, and to pledge substantially all of their assets to the Transferees to secure Fleming’s obligation to the Transferees, under the credit facility. Upon information and belief, Dunigan, a profitable company, received nothing of value in exchange for the guaranty of Fleming’s obligations to the Transferees or the pledge of substantially all of its assets and was rendered insolvent by the grant of such liens.

Because Dunigan did not receive reasonably equivalent value in exchange for the claims and liens asserted by the Transferees against Dunigan, such claims and liens are avoidable under sections 548 and 544 of title 11 of the United States Code (the “Bankruptcy Code”). The Dunigan Committee also seeks the disallowance of any claims the Transferees may have against Dunigan’s estate under section 503(c) of the Bankruptcy Code, or, alternatively, the subordination of the Transferees’ claims to the claims of Dunigan’s unsecured trade creditors under section 510 of the Bankruptcy Code. Finally, to the extent that Dunigan remains liable to

the Transferees, Dunigan seeks a declaration as to its rights of subrogation and/or contribution against the co-guarantors of Fleming's obligations under the credit facility.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§157, 1334, 2201, and 2202.
2. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper in this district pursuant to 28 U.S.C. §§1408 and 1409.
3. This matter is an Adversary Proceeding pursuant to Bankruptcy Rules 7001 and 3007.
4. The Dunigan Committee is authorized to bring this action pursuant to the *Final Order Authorizing (I) Post-Petition Financing Pursuant to 11 U.S.C. § 364 and Bankruptcy Rule 4001(c); (II) Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and Bankruptcy Rules 4001(b) and (d); (III) Grant of Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363; and (IV) Approving Secured Inventory Trade Credit Program and Granting of Subordinate Liens, Pursuant to 11 U.S.C. §§ 105 and 364(c)(3) and Rule 4001(c)* filed on May 6, 2003 (the "Final DIP Order"). This Action was brought timely and prior to the deadline established in the DIP Financing Order as amended by subsequent order and the written consent of the Transferees.

THE PARTIES

5. The plaintiff is an unofficial committee of unsecured trade creditors of Dunigan.

6. Defendant Deutsche Bank Trust Company Americas is the administrative agent of the lenders under that certain Credit Agreement dated as of June 18, 2002 between the Transferees and Fleming (as amended, modified, or supplemented, the “Credit Agreement”).

7. Defendant JPMorgan Chase Bank is the collateral agent and one of the syndication agents of the lenders under the Credit Agreement.

8. Defendant Citicorp North America, Inc. is one of the syndication agents of the lenders under the Credit Agreement.

9. Defendant Lehman Commercial Paper Inc. is one of the documentation agents of the lenders under the Credit Agreement.

10. Defendant Wachovia Bank, National Association is one of the documentation agents of the lenders under the Credit Agreement.

11. Defendant Deutsche Bank Securities Inc. is one of the joint book managers and one of the joint lead arrangers of the lenders under the Credit Agreement.

12. Defendant J.P. Morgan Securities Inc. is one of the joint book managers and one of the joint lead arrangers of the lenders under the Credit Agreement.

13. Defendant Salomon Smith Barney Inc. is one of the joint lead arrangers of the lenders under the Credit Agreement.

14. Defendant Fortis Capital Corp. is one of the senior managing agents of the lenders under the Credit Agreement.

15. Defendant Manufacturers And Traders Trust Company is one of the senior managing agents of the lenders under the Credit Agreement.

16. Defendant BRP Paribas is one of the senior managing agents of the lenders under the Credit Agreement.

17. Defendant Comerica Bank is one of the senior managing agents of the lenders under the Credit Agreement.

18. Defendant Transamerica Business Capital Corporation is one of the senior managing agents of the lenders under the Credit Agreement.

19. Defendants XYZ Corporations 1-20 and John Does 1-20 (and collectively with the parties identified in paragraphs 5 through 18, the “Agents”), which names are fictitious, are intended to designate such corporations, companies, partnerships, trusts, entities, or persons that are agents, managers, arrangers, or other representatives of the lenders under the Credit Agreement, which have not yet been identified and named by the Dunigan Committee.

20. Defendant DB Trust Americas is a lender under the Credit Agreement.

21. Defendant Abbey Nat Treasury Serv (Us Br) is a lender under the Credit Agreement.

22. Defendant AIG Sunamerica Inc. is a lender under the Credit Agreement.

23. Defendant Allfst Bk is a lender under the Credit Agreement.

24. Defendant Amex – Certificate Co is a lender under the Credit Agreement.

25. Defendant Amex – IDS Life Ins is a lender under the Credit Agreement.

26. Defendant Amex – KZH Cypressstree-1 is a lender under the Credit Agreement.

27. Defendant Amex – KZH ING-2 LLC is a lender under the Credit Agreement.
28. Defendant Amex – KZH Sterling LLC is a lender under the Credit Agreement.
29. Defendant Antares – Mariner CDO 2002 is a lender under the Credit Agreement.
30. Defendant Barclays – Venture CDO 2002 is a lender under the Credit Agreement.
31. Defendant Barclays – Venture II CDO 2002 is a lender under the Credit Agreement.
32. Defendant Bk Amer is a lender under the Credit Agreement.
33. Defendant Black Diamond is a lender under the Credit Agreement.
34. Defendant Black Diamond Opp Fund is a lender under the Credit Agreement.
35. Defendant Blue Square Funding is a lender under the Credit Agreement.
36. Defendant Carlyle HY Partners is a lender under the Credit Agreement.
37. Defendant Carlyle HY Partners IV is a lender under the Credit Agreement.
38. Defendant CFSC Wayland-Sapphire SOF is a lender under the Credit Agreement.
39. Defendant CFSC Wayland-Wayland Recovery is a lender under the Credit Agreement.
40. Defendant CIT Bus Cr is a lender under the Credit Agreement.

41. Defendant Citi – Long Lane Master II is a lender under the Credit Agreement.
42. Defendant Comerica Bk is a lender under the Credit Agreement.
43. Defendant Conseco – Winged Foot is a lender under the Credit Agreement.
44. Defendant Conseco-Jupiter LN Funding is a lender under the Credit Agreement.
45. Defendant Continental Casualty is a lender under the Credit Agreement.
46. Defendant CSAM – Atrium CDO is a lender under the Credit Agreement.
47. Defendant CSAM Funding I is a lender under the Credit Agreement.
48. Defendant CSAM Funding II is a lender under the Credit Agreement.
49. Defendant Deerfield – Bryn Mawr CLO is a lender under the Credit Agreement.
50. Defendant Deerfield – Rosemont is a lender under the Credit Agreement.
51. Defendant Deerfield-Muirfield Trad is a lender under the Credit Agreement.
52. Defendant Deerfield-Olympic FDG 1999-1 is a lender under the Credit Agreement.
53. Defendant Deerfield-Sequils Cumberland is a lender under the Credit Agreement.
54. Defendant Denali – Denali Cap CLO I is a lender under the Credit Agreement.

55. Defendant Denali Capital CLO II, Ltd. is a lender under the Credit Agreement.
56. Defendant Eaton Vance – Big Sky is a lender under the Credit Agreement.
57. Defendant Eaton Vance CDO III is a lender under the Credit Agreement.
58. Defendant Eaton Vance CDO IV, Ltd is a lender under the Credit Agreement.
59. Defendant Eaton Vance Grayson & Co is a lender under the Credit Agreement.
60. Defendant Eaton Vance Inst'l Senior is a lender under the Credit Agreement.
61. Defendant Eaton Vance Oxford is a lender under the Credit Agreement.
62. Defendant Eaton Vance SNR Inc TRT is a lender under the Credit Agreement.
63. Defendant Eaton Vance SR Debt Port is a lender under the Credit Agreement.
64. Defendant Eaton Vance VT Floating is a lender under the Credit Agreement.
65. Defendant First Dominion FDG 1 is a lender under the Credit Agreement.
66. Defendant First Dominion FDG II is a lender under the Credit Agreement.
67. Defendant Fleet Bk is a lender under the Credit Agreement.
68. Defendant Fortis Capital (Meespierson) is a lender under the Credit Agreement.
69. Defendant Franklin CLO II Ltd is a lender under the Credit Agreement.

70. Defendant Franklin CLO, Ltd is a lender under the Credit Agreement.
71. Defendant Franklin Float Rate Trust is a lender under the Credit Agreement.
72. Defendant GE Capital is a lender under the Credit Agreement.
73. Defendant Genre – KZH Waterside is a lender under the Credit Agreement.
74. Defendant Guaranty Federal Bk is a lender under the Credit Agreement.
75. Defendant Highland – Calpers is a lender under the Credit Agreement.
76. Defendant Highland – ELF is a lender under the Credit Agreement.
77. Defendant Highland – Emerald Orchid Ltd is a lender under the Credit Agreement.
78. Defendant Highland – Gleneagles is a lender under the Credit Agreement.
79. Defendant Highland KZH Highland-2 is a lender under the Credit Agreement.
80. Defendant Highland – Loan Fund V is a lender under the Credit Agreement.
81. Defendant Highland – Pamco Cayman Ltd is a lender under the Credit Agreement.
82. Defendant Highland – Restoration is a lender under the Credit Agreement.
83. Defendant Highland Legacy is a lender under the Credit Agreement.
84. Defendant Indosuez – Riviera is a lender under the Credit Agreement.
85. Defendant ING Inv-Pilgrim CLO 1999-1 is a lender under the Credit Agreement.

86. Defendant ING Inv-Pilgrim High Income is a lender under the Credit Agreement.
87. Defendant ING-Pilgrim ML CLO XII is a lender under the Credit Agreement.
88. Defendant ING Inv-Pilgrim ML CLO XV is a lender under the Credit Agreement.
89. Defendant ING Inv-Pilgrim ML CLO XX is a lender under the Credit Agreement.
90. Defendant ING Inv-Pilgrim Sequils is a lender under the Credit Agreement.
91. Defendant ING Inv-Prime Rate Trust is a lender under the Credit Agreement.
92. Defendant ING Inv-SNR Income Fund is a lender under the Credit Agreement.
93. Defendant JP Morgan Chase is a lender under the Credit Agreement.
94. Defendant Lehman CP is a lender under the Credit Agreement.
95. Defendant Long Lane is a lender under the Credit Agreement.
96. Defendant Manuf & Traders is a lender under the Credit Agreement.
97. Defendant Mass Mutual – Suffield CLO Ltd is a lender under the Credit Agreement.
98. Defendant Mass Mutual Life is a lender under the Credit Agreement.
99. Defendant Mizuho Corp Bk Ltd Japan is a lender under the Credit Agreement.

100. Defendant Morgan Stanley Prime Income TR is a lender under the Credit Agreement.
101. Defendant Mountain Cap CLO 1 is a lender under the Credit Agreement.
102. Defendant Natexis BQES POP is a lender under the Credit Agreement.
103. Defendant Nationwide Life Insurance is a lender under the Credit Agreement.
104. Defendant Nationwide Mutual Insurance Co is a lender under the Credit Agreement.
105. Defendant Nationwide-SEP A/C B-Retire is a lender under the Credit Agreement.
106. Defendant Natl City Bk Cleveland is a lender under the Credit Agreement.
107. Defendant Nomura-Clydesdale CLO 2001-I is a lender under the Credit Agreement.
108. Defendant Pacifica Partners I, L.P. is a lender under the Credit Agreement.
109. Defendant Pam Capital (Protective) is a lender under the Credit Agreement.
110. Defendant Prometheus Inv No. 1 is a lender under the Credit Agreement.
111. Defendant RZB is a lender under the Credit Agreement.
112. Defendant Sai – Galaxy is a lender under the Credit Agreement.
113. Defendant Sai – KZH Soleil is a lender under the Credit Agreement.
114. Defendant Sai – KZH Soleil-2 is a lender under the Credit Agreement.
115. Defendant Sankaty – Castle Hill II is a lender under the Credit Agreement.

116. Defendant Sankaty – G.P. CLO 1999-1 Ltd is a lender under the Credit Agreement.
117. Defendant Sankaty – Race Point is a lender under the Credit Agreement.
118. Defendant Sankaty Credit Opp is a lender under the Credit Agreement.
119. Defendant Sankaty High Yield PRT III is a lender under the Credit Agreement.
120. Defendant Sankaty-Harbour Town FDG LLC is a lender under the Credit Agreement.
121. Defendant Siemens Financial is a lender under the Credit Agreement.
122. Defendant Sunamerica Life is a lender under the Credit Agreement.
123. Defendant Transamerica Business Capital is a lender under the Credit Agreement.
124. Defendant Travelers Citigroup is a lender under the Credit Agreement.
125. Defendant Travelers Columbus Loan Fund is a lender under the Credit Agreement.
126. Defendant Travelers Ins is a lender under the Credit Agreement.
127. Defendant VKM CLO II is a lender under the Credit Agreement.
128. Defendant VKM Senior Loan Fund is a lender under the Credit Agreement.
129. Defendant VKM SNR Inc TRT is a lender under the Credit Agreement.
130. Defendant Wachovia Bank National Assoc is a lender under the Credit Agreement.

131. Defendants XYZ Corporations 21-100 and John Does 21-100 (together with the defendants identified in paragraphs 20 through 130, the “Lenders”), which names are fictitious, are intended to designate such lenders under the Credit Agreement, which have not yet been identified and named by the Dunigan Committee.

132. Defendant Fleming, an Oklahoma corporation with its principal place of business in Texas, is one of the debtors in these jointly administered chapter 11 cases. Fleming is a publicly held company trading on the Pink Sheets under the trading symbol FLMIQ.PK. Fleming is the principal obligor under the Credit Agreement.

133. Defendant Core-Mark International, Inc. is a Delaware corporation and a direct subsidiary of Fleming. In addition, defendant Core-Mark International, Inc. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

134. Defendant ABCO Food Group, Inc. is a Nevada corporation and an indirect subsidiary of Fleming. In addition, Defendant ABCO Food Group, Inc. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

135. Defendant ABCO Markets, Inc., is an Arizona corporation and a direct subsidiary of Fleming. In addition, defendant ABCO Markets, Inc. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

136. Defendant ABCO Realty Corp., is an Arizona corporation and a direct subsidiary of Fleming. In addition, defendant ABCO Realty Corp. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

137. Defendant ASI Office Automation, Inc. is a California corporation and an indirect subsidiary of Fleming. In addition, defendant ASI Office Automation, Inc. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

138. Defendant C/M Products, Inc. is a California corporation and an indirect subsidiary of Fleming. In addition, defendant C/M Products, Inc. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

139. Defendant Core-Mark Interrelated Companies, Inc. is a California corporation and an indirect subsidiary of Fleming. In addition, defendant Core-Mark Interrelated Companies, Inc. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

140. Defendant Core-Mark Mid-Continent, Inc. is an Arkansas corporation and an indirect subsidiary of Fleming. In addition, defendant Core-Mark Mid-Continent, Inc. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

141. Defendant Favar Concepts, Ltd. is a Delaware corporation and a direct subsidiary of Fleming. In addition, defendant Favar Concepts, Ltd. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

142. Defendant Fleming Foods Management Co., L.L.C. is an Oklahoma limited liability company and a direct subsidiary of Fleming. In addition, defendant Fleming Foods Management Co. L.L.C. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

143. Defendant Fleming Foods of Texas, L.P. is an Oklahoma limited partnership and an indirect subsidiary of Fleming. In addition, defendant Fleming Foods of Texas, L.P. is one of the is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

144. Defendant Fleming International, Ltd. is an Oklahoma company and a direct subsidiary of Fleming. In addition, defendant Fleming International, Ltd. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

145. Defendant Fleming Supermarkets of Florida, Inc. is a Florida corporation and a direct subsidiary of Fleming. In addition, defendant Fleming Supermarkets of Florida, Inc. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

146. Defendant Fleming Transportation Services, Inc. is an Oklahoma corporation and a direct subsidiary of Fleming. In addition, defendant Fleming Transportation Services, Inc. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

147. Defendant Food 4 Less Beverage Company, Inc. is a Texas corporation and an indirect subsidiary of Fleming. In addition, defendant Food 4 Less Beverage Company, Inc. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

148. Defendant Fuelserv, Inc. (“Fuelserv”), a Delaware corporation with its principal place of business in Texas, is a wholly-owned subsidiary of Fleming and the sole

shareholder of Dunigan. Fuelserv is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

149. Defendant General Acceptance Corporation is a California corporation and an indirect subsidiary of Fleming. In addition, defendant General Acceptance Corporation is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

150. Defendant Head Distributing Company is a Georgia company and an indirect subsidiary of Fleming. In addition, defendant Head Distributing Company is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

151. Defendant Marquise Ventures Company, Inc. is a California corporation and an indirect subsidiary of Fleming. In addition, defendant Marquise Ventures Company, Inc. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

152. Defendant Minter-Weisman Co. is a Minnesota company and an indirect subsidiary of Fleming. In addition, defendant Minter-Weisman Co. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

153. Defendant Piggly Wiggly Company is an Oklahoma company and a direct subsidiary of Fleming. In addition, defendant Piggly Wiggly Company is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

154. Defendant Progressive Realty, Inc. is an Oklahoma corporation and a direct subsidiary of Fleming. In addition, defendant Progressive Realty, Inc. is one of the

debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

155. Defendant Rainbow Food Group, Inc. is a Nevada corporation and an indirect subsidiary of Fleming. In addition, defendant Rainbow Food Group, Inc. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

156. Defendant Retail Investments, Inc. is a Nevada corporation and a direct subsidiary of Fleming. In addition, defendant Retail Investments, Inc. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

157. Defendant Retail Supermarkets, Inc. is a Texas corporation and an indirect subsidiary of Fleming. In addition, defendant Retail Supermarkets, Inc. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

158. Defendant RFS Marketing Services, Inc. is an Oklahoma corporation and a direct subsidiary of Fleming. In addition, defendant RFS Marketing Services, Inc. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

159. Defendant Richmar Foods, Inc. is a California corporation and a direct subsidiary of Fleming. In addition, defendant Richmar Foods, Inc. is one of the debtors in these jointly administered chapter 11 cases and a co-guarantor under the Credit Agreement.

160. Defendant EA Morris Distributors, Ltd., a Canadian company, is an indirect subsidiary of Fleming and a co-guarantor under the Credit Agreement.

161. Defendant AG, L.L.C. is a co-guarantor under the Credit Agreement.

162. Defendant American Logistics Group, I is a co-guarantor under the Credit Agreement.

163. Defendant Baker's Food Group, Inc. is a co-guarantor under the Credit Agreement.

164. Defendant Cardinal Wholesale, Inc. is a co-guarantor under the Credit Agreement.

165. Defendant Fleming Wholesale, Inc. is a co-guarantor under the Credit Agreement.

166. Defendant LAS, Inc. is a co-guarantor under the Credit Agreement.

167. Defendant Scrivner Transportation, Inc. is a co-guarantor under the Credit Agreement (together with the defendants identified in paragraphs 133 through 166, the "Co-Guarantors").

BACKGROUND

A. The Bankruptcy Filing

168. On April 1, 2003 (the "Petition Date"), Fleming and substantially all of its direct and indirect United States subsidiaries (collectively the "Debtors"), including Dunigan, filed voluntary petitions for reorganization under chapter 11 of the Bankruptcy Code (the "Petitions").

169. Upon information and belief, Fleming's default under the Credit Agreement resulted in the filing of the Petitions, including the Petition filed by Dunigan.

B. The Financing Transaction With The Transferees

170. On or about June 18, 2002, Fleming entered into the Credit Agreement with the Transferees, which provided Fleming with a credit facility of \$975 million (the “Credit Facility”).

171. In connection with the Credit Agreement, Fleming caused each of the Debtors, including Dunigan, to purportedly execute a Guarantee Agreement dated as of June 18, 2002 (as amended, modified, or supplemented, the “Guarantee Agreement”), a Pledge Agreement dated as of June 18, 2002 (as amended, modified, or supplemented, the “Pledge Agreement”), and a Security Agreement dated as of June 18, 2002 (as amended, modified, or supplemented, the “Security Agreement,” and together with the Credit Agreement, the Guarantee Agreement, and the Pledge Agreement, the “Loan Documents”).

172. Pursuant to the Loan Documents, Dunigan and each of the Co-Guarantors purported to guarantee Fleming’s obligations under the Credit Agreement (the “Fleming Obligations”), and together with Fleming, purported to secure the Fleming Obligations with first priority security interests and liens on all or substantially all of the then existing and after acquired accounts receivable, inventory, instruments and chattel paper evidencing accounts receivable, securities, limited liability company interests, partnership interests, security entitlements, financial assets, investment property, and all proceeds and products of the foregoing (the “Pledged Collateral”), including all such assets belonging to Dunigan (the “Dunigan Assets”).

173. Upon information and belief, the Transferees purportedly perfected their liens upon the Dunigan Assets in accordance with applicable law.

174. As of the Petition Date, the Transferees had purportedly made loans and advances to Fleming, issued letters of credit on Fleming's behalf, and incurred obligations in connection with certain treasury services, all purportedly pursuant to the Credit Agreement. As of the Petition Date, the Fleming Obligations purportedly totaled approximately \$604 million (the "Pre-Petition Indebtedness").

175. Upon information and belief, the funds loaned to Fleming under the Credit Facility were primarily used by Fleming to acquire the Wholesale Distribution Business and to repay the outstanding obligations of Fleming under an existing credit facility.

176. Upon information and belief, the Wholesale Distribution Business is completely unrelated to Dunigan's business and Dunigan received no benefit as a result of Fleming's acquisition of the Wholesale Distribution Business.

177. Upon information and belief, Dunigan received no benefit from the Credit Facility.

178. Upon information and belief, Dunigan received no consideration in exchange for it being forced to execute the Loan Documents that it purportedly executed.

179. On April 21, 2003, at a hearing before the Court in connection with the above-referenced chapter 11 cases, Neil J. Rider, Vice President and Treasurer of Dunigan, testified that he believed Dunigan did not receive any value in exchange for executing the Loan Documents in favor of the Transferees, and that he was not aware of any funds from the Credit Facility being used by Dunigan. A true and correct copy of relevant portions of the transcript from such hearing is attached hereto as Exhibit A.

C. Other Unsecured Financing Transactions

180. Upon information and belief, at or prior to the execution of the Loan Documents, Fleming had purportedly entered into a series of unsecured indentures totaling approximately \$1.4 billion. These indentures (the “Indentures”) are as follows:

- (i) Fleming purportedly entered into that certain Indenture, dated as of March 15, 2001, in which Fleming issued 10-1/8% senior notes due in 2008, and Fleming purportedly received \$355 million from the sale of this Indenture. Fleming is purportedly obligated to pay interest on this Indenture on April 1 and October 1 of each year.
- (ii) Fleming purportedly entered into that certain Indenture, dated as of March 15, 2001, in which Fleming issued 5-1/4% convertible senior subordinated notes due in 2009, and Fleming purportedly received \$150 million from the sale of this Indenture. The holders of these notes purportedly may elect to convert these notes into the common stock of Fleming at an initial conversion price of \$30.27 per share, subject to adjustment under certain circumstances described in this Indenture. Fleming is purportedly obligated to pay interest on this Indenture on March 15 and September 15 of each year.
- (iii) Fleming purportedly entered into that certain Indenture, dated as of October 15, 2001, in which Fleming issued 10-5/8% senior subordinated notes due in 2007, and Fleming purportedly received \$400 million from the sale of this Indenture. Fleming is purportedly obligated to pay interest on this Indenture on January 31 and July 31 of each year.

(iv) Fleming purportedly entered into that certain Indenture, dated as of April 15, 2002, in which Fleming issued 9-7/8% senior subordinated notes due in 2012, and Fleming purportedly received \$260 million from the sale of this Indenture. Fleming is purportedly obligated to pay interest on this Indenture on May 1 and November 1 of each year.

(v) Fleming purportedly entered into that certain Indenture, dated as of June 18, 2002, in which Fleming issued 9-1/4% senior notes due in 2010, and Fleming purportedly received \$200 million from the sale of this Indenture. Fleming is purportedly obligated to pay interest on this Indenture on June 15 and December 15 of each year.

181. The Indentures are unsecured senior notes that are purportedly guaranteed by each of the Debtors.

C. Dunigan's Financial Condition When It Executed The Loan

Documents

182. Upon information and belief, as a result of Dunigan's obligations to its trade creditors and to the holders of the Indentures, Dunigan's liabilities exceeded its assets before it was forced to execute the Loan Documents that it purportedly executed. Accordingly, Dunigan was already insolvent at the time it purportedly signed certain of the Loan Documents.

183. Upon information and belief, if Dunigan was not insolvent prior to its execution of certain of the Loan Documents, Dunigan's purported execution of certain of the Loan Documents rendered Dunigan insolvent.

D. Dunigan's Financial Condition On the Petition Date

184. According to Dunigan's Schedules of Assets and Liabilities that were filed in its chapter 11 case, Dunigan's assets, as of the filing of the Petition Date, were valued at \$16,154,727, which included accounts receivable of \$16,052,844. According to documents produced by counsel for Dunigan, it appears that Dunigan has collected in excess of \$10,600,000 since the Petition Date on account of its accounts receivable.

185. According to documents produced by counsel for Dunigan, it appears that Dunigan's trade creditors were owed \$9,263,021.79 as of the Petition Date.

186. Upon information and belief, absent Dunigan's purported liability for the Fleming Obligations under the Loan Documents and the Indentures, Dunigan would not have been insolvent as of the Petition Date.

187. Upon information and belief, Dunigan had a positive cash flow at the time it purportedly executed certain of the Loan Documents and Dunigan's cash flow remained positive through the filing of its Petition.

188. Upon information and belief, Dunigan generated positive cash flow in excess of \$1,000,000 during the year prior to the Petition Date.

189. Upon information and belief, other than any obligations Dunigan purportedly owed to the Transferees under the Loan Documents, Dunigan was not in default under any of the obligations to its creditors on the Petition Date and was generally paying its debts as they became due.

190. Upon information and belief, Fleming's default under the Loan Documents and Dunigan's purported liability for the Fleming Obligations thereunder was the reason Dunigan filed its Petition.

E. The Effect On Dunigan's Trade Creditors of Dunigan's Purported Liability Under The Loan Documents

191. Upon information and belief, Fleming and its affiliates withdrew cash resources from Dunigan prior to the Petition Date to satisfy claims of their own creditors, including the Transferees, to the detriment of Dunigan and its creditors.

192. The Transferees provided neither money nor goods nor services to Dunigan. Dunigan's trade creditors provided goods and services on credit to Dunigan for which Dunigan had ample cash flow, cash reserves, earnings, and profits to permit payment in full.

193. The harm to Dunigan and its trade creditors resulting from Dunigan's purported liability under the Loan Documents and the filing of the Petitions includes Dunigan's failure to pay approximately \$10,000,000 in trade claims, which Dunigan would have been able to pay in full in the ordinary course of its business.

194. Dunigan suffered disruptions in its creditor relations with its suppliers and depletion of its cash resources as a result of the withdrawal of cash resources from Dunigan by Fleming and its affiliates, the filing of the Petitions and the claims of the Transferees.

195. The filing of the Petitions and the claims of the Transferees caused Fleming to shut down Dunigan's operations even though Dunigan had a positive cash flow on and prior to the Petition Date.

**FIRST CLAIM FOR RELIEF -
AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS
PURSUANT TO SECTION 548 AND 550 OF THE BANKRUPTCY CODE**

196. The Dunigan Committee repeats and realleges the allegations contained in paragraphs 1 through 195 as though fully set forth herein.

197. Dunigan's purported execution of certain of the Loan Documents, its purported agreement to be liable for the Fleming Obligations, the purported recording of any

financing or other documents with a state or local recording authority, and Dunigan's subsequent payment of funds that were used to make payments to the Transferees in partial satisfaction of the Fleming Obligations (collectively the "Fraudulent Transfers") occurred on or within one year before the Petition Date and was undertaken with the actual intent to hinder, delay, or defraud Dunigan's creditors.

198. The Fraudulent Transfers occurred on or within one year before the Petition Date in exchange for less than reasonably equivalent value and Dunigan was either insolvent at the time or became insolvent as a result of the Fraudulent Transfers.

199. As a result, the Fraudulent Transfers constitute fraudulent transfers pursuant to section 548 of the Bankruptcy Code, and the Dunigan Committee may avoid and recover the Fraudulent Transfers or the value thereof from the Transferees, or any immediate or mediate transferees, pursuant to sections 548 and 550 of the Bankruptcy Code.

**SECOND CLAIM FOR RELIEF -
AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS
PURSUANT TO SECTIONS 544 AND 550 OF THE BANKRUPTCY CODE
AND APPLICABLE STATE LAW**

200. The Dunigan Committee repeats and realleges the allegations contained in paragraphs 1 through 199 as though fully set forth herein.

201. Dunigan made the Fraudulent Transfers with the actual intent to hinder, delay, or defraud its creditors.

202. Dunigan made the Fraudulent Transfers without receiving reasonably equivalent value in exchange for the Fraudulent Transfers at a time when Dunigan was engaged or was about to engage in a business or a transaction for which the remaining assets of Dunigan were unreasonably small in relation to the business or transaction and at a time when Dunigan

intended to incur, or believed or reasonably should have believed that Dunigan would incur, debts beyond Dunigan's ability to pay as they became due.

203. The Fraudulent Transfers involved the purported pledging of substantially all of the Dunigan Assets to the Transferees and, upon information and belief, the Dunigan Assets were free of any liens prior to the Fraudulent Transfers.

204. Dunigan made the Fraudulent Transfers without receiving reasonably equivalent value in exchange for the transfers and Dunigan was insolvent at that time or Dunigan became insolvent as a result of the Fraudulent Transfers.

205. By virtue of the foregoing, the Fraudulent Transfers or any part thereof were fraudulent pursuant to section 544 of the Bankruptcy Code and applicable state law, and the Dunigan Committee is entitled to avoid and recover such Fraudulent Transfers or the value thereof from the Transferees, or any immediate or mediate transferee, pursuant to sections 544 and 550 of the Bankruptcy Code and applicable state law.

**THIRD CLAIM FOR RELIEF -
OBJECTION TO CLAIM
PURSUANT TO SECTION 502 OF THE BANKRUPTCY CODE**

206. The Dunigan Committee repeats and realleges the allegations contained in paragraphs 1 through 205 as though fully set forth herein.

207. According to the *Order Pursuant to Section 105(a), 501, 502, and 1111(a) of the Bankruptcy Code and Bankruptcy Rules 2002(a)(7), 3003(c)(3) and 5005(a) Establishing a Bar Date for Filing Proofs of Claim and Proofs of Interest and Approving Form and Manner of Notice Thereof*, dated June 25, 2003, the Transferees are purportedly not required to file a proof of claim because their claim (the "Claim") was purportedly established in the Final DIP Order and will be allowed absent an objection filed in accordance with the Final DIP Order. The Dunigan Committee's Third Claim for Relief constitutes such an objection.

208. The Claim is based upon Dunigan's purported execution of the Loan Documents, by which Dunigan purportedly guaranteed the Fleming Obligations.

209. The Dunigan Committee brings this objection to the Claim pursuant to sections 502(a), (b), and (d) of the Bankruptcy Code, and the bases for the objection includes, among other things, sections 506(b), 544, 548, and 550 of the Bankruptcy Code, as well as applicable state fraudulent conveyance law, and the common law theory of unjust enrichment, all as complemented by Bankruptcy Rules 3007, 7001, and 9014.

210. The Dunigan Committee is a party in interest under section 502(a) of the Bankruptcy Code and thus is entitled to object to the Claim.

211. Upon information and belief, Dunigan's purported execution of certain of the Loan Documents and purported agreement to guarantee the Fleming Obligations was made by Dunigan without Dunigan receiving either adequate or good and sufficient consideration or reasonably equivalent value in exchange for such agreement.

212. The Transferees should be estopped in equity from seeking enforcement of the Loan Documents against Dunigan due to:

(a) The absence of reasonably equivalent value or good and sufficient consideration to support a promise by Dunigan to pay any amount due under the Loan Documents;

(b) The limitation upon Dunigan's rights of contribution, indemnity, and subrogation under the Loan Documents;

(c) The failure of the primary obligors under the Loan Documents to pay or provide for payment of the amount due to the Transferees;

(d) The contractual subordination of any indebtedness of Fleming to Dunigan to the claims of the Transferees against Fleming;

(e) The negotiation by the Transferees of adequate protection payments provided, in part, by the cash deposits of Dunigan utilized by Fleming and its affiliates; and

(f) The failure of Dunigan to receive any benefit of the Credit Facility, which was the subject of the Loan Documents.

213. The Claim does not set forth or aver any payment to or benefit conferred upon Dunigan or other claimed basis for finding that Dunigan received adequate or sufficient consideration to support enforcement of the Loan Documents against Dunigan.

214. The Loan Documents and the Fleming Obligations did not confer a benefit upon Dunigan that would justify its agreement to guarantee the Fleming Obligations, which are due under the Loan Documents. Accordingly, the Loan Documents are unenforceable against Dunigan.

215. The Claim should be disallowed in Dunigan's chapter 11 case due to the lack of value and consideration given to Dunigan in exchange for its purported execution of certain of the Loan Documents.

216. The Claim should be disallowed in Dunigan's chapter 11 case because the Transferees did not provide reasonably equivalent value to Dunigan for the Claim.

217. The Claim should be disallowed in Dunigan's chapter 11 case pursuant to section 502(d) of the Bankruptcy Code because the Transferees received the Fraudulent Transfers and, thus, are transferees of transfers that are avoidable under sections 544 and 548 of

the Bankruptcy Code and because they hold property that is recoverable under section 550 of the Bankruptcy Code.

218. The Claim should be disallowed under the common law theory of unjust enrichment. The Transferees apparently required (and Fleming directed) the pledge of collateral by Dunigan to secure the Fleming Obligations. While the Transferees unquestionably received a benefit from the Fraudulent Transfers, Dunigan received no benefit whatsoever.

219. Upon information and belief, the Transferees have unfairly and wrongfully benefited by receiving the Fraudulent Transfers and have been unjustly enriched thereby, at Dunigan's expense.

220. By reason of the Transferees' unjust enrichment, the Fraudulent Transfers should be avoided for the benefit of Dunigan's estate and the Claim should be disallowed pursuant to section 502(b)(1) of the Bankruptcy Code.

221. The Dunigan Committee also objects to the Claim to the extent the Transferees seek to recover interest, fees, costs, or charges pursuant to the Loan Documents because the Transferees are not entitled to such interest, fees, costs, or charges under section 506(b) of the Bankruptcy Code and because such fees and/or costs are not reasonable and have not been approved by the Court.

**FOURTH CLAIM FOR RELIEF -
SUBORDINATION AND EQUITABLE RELIEF
PURSUANT TO SECTION 510 OF THE BANKRUPTCY CODE**

222. The Dunigan Committee repeats and realleges the allegations contained in paragraphs 1 through 221 as though fully set forth herein.

223. In the event that the Court does not disallow the Claim, sufficient grounds exist to subordinate the Claim to those of Dunigan's trade creditors.

224. Upon information and belief, absent Dunigan's purported liability for the Fleming Obligations under the Loan Documents and the Indentures, Dunigan would not have been insolvent as of the Petition Date.

225. Upon information and belief, Dunigan had a positive cash flow at the time of its purported execution of certain of the Loan Documents and Dunigan's cash flow remained positive through the filing of its Petition.

226. Upon information and belief, Dunigan generated positive cash flow in excess of \$1,000,000 during the year prior to the Petition Date.

227. Upon information and belief, other than any obligations Dunigan purportedly owed to the Transferees under the Loan Documents, Dunigan was not in default under any of the obligations to its creditors on the Petition Date and was generally paying its debts as they became due.

228. Upon information and belief, Fleming's default under the Loan Documents and Dunigan's purported liability for the Fleming Obligations thereunder was the reason Dunigan filed its Petition.

229. Upon information and belief, Fleming and its affiliates withdrew cash resources from Dunigan prior to the Petition Date to satisfy claims of their own creditors, including the Transferees, to the detriment of Dunigan and its creditors.

230. The Transferees provided neither money nor goods nor services to Dunigan. Dunigan's trade creditors provided goods and services on credit to Dunigan for which Dunigan had ample cash flow, cash reserves, earnings, and profits to permit payment in full.

231. The harm to Dunigan and its trade creditors resulting from Dunigan's purported liability under the Loan Documents and the filing of the Petitions includes Dunigan's

failure to pay approximately \$10,000,000 in trade claims, which Dunigan would have been able pay in full in the ordinary course of its business.

232. Dunigan suffered disruptions in its creditor relations with its suppliers and depletion of its cash resources as a result of the filing of the Petitions and the claims of the Transferees.

233. The filing of the Petitions and the claims of the Transferees caused Fleming to shut down Dunigan's operations even though Dunigan had a positive cash flow on and prior to the Petition Date.

234. Those trade creditors who provided money, goods, and services to Dunigan should receive payment from Dunigan prior to any payments for borrowed money purportedly advanced to Fleming's affiliates pursuant to the Loan Documents.

235. The purported promises Dunigan made under the Loan Documents were gratuitous promises made by Dunigan (at the direction of Fleming) due to the domination of its controlling shareholder and parent corporations and the creditors of those other corporations that provided no benefit to Dunigan or its creditors.

236. It would be inequitable for the Transferees, as claimants under the Loan Documents, to share in the property of Dunigan's estate on the same priority with those trade creditors that had extended valuable goods and services to Dunigan and hold general unsecured claims in Dunigan's chapter 11 case.

**FIFTH CLAIM FOR RELIEF -
DECLARATORY RELIEF
PURSUANT TO SECTION 510 OF THE BANKRUPTCY CODE**

237. The Dunigan Committee repeats and realleges the allegations contained in paragraphs 1 through 236 as though fully set forth herein.

238. The terms of the Guarantee Agreement recognize the priority of general trade creditors in Section 23 of the Guarantee Agreement, but do not expressly subordinate the Claim to the claims of general trade creditors of Dunigan. Section 23 provides as follows:

23. Each Guarantor and each Secured Creditor (by its acceptance of the benefits of this Guaranty) hereby confirms that it is its intention that this Guaranty not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Code, the Uniform Fraudulent Conveyance Act of [sic] any similar Federal or state law. To effectuate the forgoing intention, each Guarantor and each Secured Creditor (by its acceptance of the benefits of this Guaranty) hereby irrevocably agrees that the Guaranteed Obligations guaranteed by such Guarantor shall be limited to such amount as will, after giving effect to such maximum amount and all other (contingent or otherwise) liabilities of such Guarantor that are relevant under such laws (excluding, to the maximum extent permitted by law, any guarantee by such Guarantor of any indebtedness (other than the Guaranteed Obligations) of the Borrower), and after giving effect to any rights to contribution pursuant to any agreement providing for an equitable contribution among such Guarantor and other Guarantors, result in the Guaranteed Obligation of such Guarantor in respect of such maximum amount not constituting a fraudulent transfer or conveyance.

239. To the extent that the Claim asserts a right to share *pari passu* with Dunigan's trade creditors, the Dunigan Committee seeks a declaration and judgement subordinating the Claim, as it relates to Dunigan and its estate, to that of Dunigan's unsecured trade creditors.

240. The Claim does not set forth the amount actually claimed as due from Dunigan.

241. The Dunigan Committee seeks a determination of the actual amount claimed by the Transferees as due from Dunigan under the provisions of the Guarantee Agreement.

242. The Guarantee Agreement does not identify the point of time at which the calculations identified in Section 23 of the Guarantee Agreement must be made.

243. The Dunigan Committee seeks a declaration that the total amount claimed by the Transferees as due from Dunigan under the provisions of the Guarantee Agreement, if anything, should (a) not exceed an amount equal to the net worth of Dunigan as of June 2002, reduced by the net worth of Fleming and all other guarantors and (b) be calculated on a consistent basis with regard to the determination of the value of Dunigan's assets and the amount of its liabilities to determine whether Dunigan would be deemed insolvent under Section 23 as a result of the claims of the Transferees and all other claimants, including, without limitation, claims of the holders of the Indentures, the Pension Benefit Guarantee Corporation (if any), Dunigan's general trade creditors, and Dunigan's affiliates.

244. The terms of the Guarantee Agreement recognize Dunigan's rights of contribution against the Co-Guarantors, with respect to the Fleming Obligation, in Section 22 of the Guarantee Agreement. Section 22 provides as follows:

22. At any time a payment in respect of the Guaranteed Obligations is made under this Guaranty, the right of contribution of each Guarantor shall be determined as provided in the immediately following sentence, with the right of contribution of each Guarantor to be revised and restated as of each date on which a payment (a "Relevant Payment") is made on the Guaranteed Obligations under this Guaranty. At any time that a Relevant Payment is made by a Guarantor that results in the aggregate payments made by such Guarantor in respect of the Guaranteed Obligations to and including the date of the Relevant Payment exceeding such Guarantor's Contribution Percentage (as defined below) of the aggregate payments made by all Guarantors in respect of the Guaranteed Obligations to and including the date of the Relevant Payment (such excess, the "Aggregate Excess Amount"), each such Guarantor shall have a right of contribution against each other Guarantor who has made payments in respect of the Guaranteed Obligations to and including the date of the Relevant Payment in an aggregate amount less than such other Guarantor's Contribution Percentage of the aggregate payments made to and including the date of the Relevant Payment by all Guarantors in respect of the Guaranteed Obligations (the aggregate amount of such deficit, the "Aggregate Deficit Amount") in an amount equal to (x) a fraction the numerator of which is the Aggregate Excess Amount of such Guarantor and the denominator of which is the Aggregate Excess Amount

of all Guarantor's right of contribution pursuant to the preceding sentences shall arise at the time of each computation, subject to adjustment at the time of each computation; provided, that no Guarantor may take any action to enforce such right until the Guaranteed Obligations have been irrevocably paid in full in cash, it being expressly recognized and agreed by all parties hereto that any Guarantor's right of contribution arising pursuant to this Section 22 against any other Guarantor shall be expressly junior and subordinate to such other Guarantor's obligations and liabilities in respect of the Guaranteed Obligations and any other obligations owing under this Guaranty. As used in this Section 22: (i) each Guarantor's "Contribution Percentage" shall mean the percentage obtained by dividing (x) the Adjusted Net Worth (as defined below) of such Guarantor by (y) the aggregate Adjusted Net Worth of all Guarantors; (ii) the "Adjusted Net Worth" of each Guarantor shall mean the greater of (x) the Net Worth (as defined below) of such Guarantor and (y) zero; and (iii) the "Net Worth" of each Guarantor shall mean the amount by which the fair salable value of such Guarantor's assets on the date of any Relevant Payment exceeds its existing debts and other liabilities (including contingent liabilities, but without giving effect to any Guaranteed Obligations arising under this Guaranty) on such date. Notwithstanding anything to the contrary contained above, any Guarantor that is released from this Guaranty pursuant to Section 21 hereof shall thereafter have no contribution obligations, or rights, pursuant to this Section 22, and at the time of any such release, if the released Guarantor had an Aggregate Excess Amount or an Aggregate Deficit Amount, same shall be deemed reduced to \$0, and the contribution rights and obligations of the remaining Guarantors shall be recalculated on the respective date of release (as otherwise provided above) based on the payments made hereunder by the remaining Guarantors. All parties hereto recognize and agree that, except for any right of contribution arising pursuant to this Section 22, each Guarantor who makes any payment in respect of the Guaranteed Obligations shall have no right of contribution or subrogation against any other Guarantor in respect of such payment until all of the Guaranteed Obligations have been irrevocably paid in full in cash. Each of the Guarantors recognizes and acknowledges that the rights to contribution arising hereunder shall constitute an asset in favor of the party entitled to such contribution. In this connection, each Guarantor has the right to waive its contribution right against any Guarantor to the extent that after giving effect to such waiver such Guarantor would remain solvent, in the determination of the Required Lenders.

245. The Dunigan Committee seeks a determination and declaration of the amount if any that may be calculated under Section 22 of the Guarantee Agreement to reduce the liability of Dunigan under the Guarantee Agreement purportedly executed by Dunigan.

246. The Dunigan Committee seeks a declaration that, in the event that the Court does not disallow the Claim, the terms of Section 23 of the Guarantee Agreement constitute a contractual subordination of the claims under the Guarantee Agreement to the claims of Dunigan's general unsecured trade creditors.

247. The Dunigan Committee seeks a determination that the Guarantee Agreement is void and unenforceable as it pertains to Dunigan due to its indefiniteness caused by the application of Sections 22 and 23 of the Guarantee Agreement in calculating the amount due.

WHEREFORE, the Dunigan Committee prays as follows:

1. That the Court enter an order (i) declaring that the Fraudulent Transfers constitute fraudulent transfers under sections 544 and 548 of the Bankruptcy Code, (ii) finding that (a) such Fraudulent Transfers may be avoided for the benefit of Dunigan's chapter 11 estate, and (b) the Transferees are liable to the Dunigan estate for the amount of any payments made by Dunigan in connection with the Fraudulent Transfers, (iii) ordering that amounts paid in connection with the Fraudulent Transfers be recovered by the Dunigan estate pursuant to section 550 of the Bankruptcy Code, and (iv) awarding the Dunigan estate interest, punitive damages, plus reasonable attorneys fees and costs;

2. That the Court enter an order disallowing and expunging the Claim in its entirety in the Dunigan Chapter 11 case;

3. That, to the extent the Claim is allowed, the Court enter an order subordinating the Claim to the claims of Dunigan's general unsecured trade creditors in the Dunigan Chapter 11 case;

4. That the Court enter a binding declaration of the rights and liabilities of the Transferees and Dunigan under the Guarantee Agreement fixing and determining the amount

due, if anything, under the provisions of Section 23 of the Guarantee Agreement and enter Judgment that Dunigan owes the Transferees nothing;

5. That the Court enter a binding declaration of the rights of Dunigan under the provisions of Section 22 of the Guarantee Agreement or other applicable law to assert claims in indemnity and contribution against its affiliates and to receive from its affiliates the full amount of its liability under the Guarantee Agreement, notwithstanding any subordination and waiver of those claims that Dunigan was forced by its controlling shareholder and parent corporations to accept under the Guarantee Agreement;

6. That the Court enter a binding declaration of the amount if any that may be calculated under Section 22 of the Guarantee Agreement to reduce the liability of Dunigan under the Guarantee Agreement purportedly executed by Dunigan;

7. That the Court reimburse members of the Dunigan Committee under section 503 of the Bankruptcy Code for their reasonable attorneys fees and costs in connection with the prosecution of this adversary proceeding on the basis that such fees and costs were the actual, necessary expenses incurred by such members in making a substantial contribution to Dunigan's chapter 11 case; and

8. That the Court enter such other relief as is equitable, appropriate, and just.

Dated: September 5, 2003
Wilmington, Delaware

THE UNOFFICIAL COMMITTEE OF UNSECURED
TRADE CREDITORS OF DUNIGAN FUEL, INC.

By its attorneys,

GORDON, FOURNARIS & MAMMARELLA, P.A.

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