

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

In re:)	
)	Chapter 11
FLEMING COMPANIES, INC., <i>et al.</i> ,)	Case No. 03-10945(MFW)
)	(Jointly Administered)
Debtors.)	
)	Hearing Date: October 2, 2003 at 2:00 p.m.
)	Objection Deadline: September 25, 2003 at 4:00 p.m.

**LIMITED OBJECTION OF H.N.A., INC. TO THE DEBTORS'
MOTION FOR ORDER ESTABLISHING AMOUNT OF
ADEQUATE PROTECTION RESERVE PURSUANT TO THE SALE ORDER**

H.N.A., Inc. (“HNA”), by and through its undersigned counsel, hereby files this Limited Objection to the Debtors’ Motion for Order Establishing Amount of Adequate Protection Reserve Pursuant to the Sale Order (the “Objection”). By this Objection, HNA requests that the Court require the Debtors (collectively, the “Debtors” or “Fleming”) to maintain an additional three hundred and fifty thousand dollars (\$350,000) in reserve. In support of this Objection, HNA respectfully states as follows.

JURISDICTION

1. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (G) and (O). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.
2. The statutory base for the relief sought herein are Sections 105(a), 364, and 365 of Title 11 of the United States Code (the “Bankruptcy Code”).

BACKGROUND

3. HNA owns and operates three grocery stores, one located in Evanston, Wyoming, one located in Kemmerer, Wyoming, and one located in Morgan, Utah. On or about December 2002, HNA entered into a facility standby agreement (the “FSA”) with Fleming. Under the FSA, Fleming agreed to “standby” with sufficient capital, employees, inventory, equipment, and facilities to supply HNA with groceries and related products (collectively, the “Products”). The FSA set a minimum target service level (“Service Level”) requiring Fleming to provide HNA with \$9,400,000 worth of Products per year.

4. Notwithstanding the FSA, the Debtors closed their Salt Lake wholesale distribution division. The Salt Lake wholesale distribution division supplied Products to grocers in Utah and Wyoming, including HNA.

5. In connection with the FSA, HNA executed a promissory note and a forgiveness note in favor of Fleming.

6. The Debtors have correctly included the \$52,366 balance of HNA’s promissory note in the reserve amount.

7. The Debtors did not, however, include the balance of HNA’s forgiveness note, which stands at three hundred and fifty thousand dollars (\$350,000).

8. The forgiveness note provided that Fleming would forgive HNA’s indebtedness if HNA purchased Products from Fleming at the Service Level for five (5) years.

9. Because the Debtors failed and refused to supply any more products to HNA, HNA was forced to obtain Products from an alternate wholesale grocery supplier in order to

remain in business and has been deprived of the ability to retire HNA's forgiveness note by performing under the FSA.

RELIEF REQUESTED

10. Since the Debtors have not included the balance of HNA's forgiveness note in the reserve amount, HNA requests that the Court require the Debtors to increase the reserve amount by the \$350,000 balance of HNA's forgiveness note.

Conclusion

For the reasons set forth above, HNA respectfully requests that the Court enter an Order:

A. Requiring the Debtors to increase the reserve amount by \$350,000 to account for the balance of HNA's forgiveness note.

Dated: September 24, 2003

DURHAM JONES & PINEGAR

_____/s/ Penrod W. Keith_____
Penrod W. Keith
Ryan L. Jensen
111 East Broadway, # 900
Salt Lake City, Utah 84111
Telephone: (801) 415-3000
Facsimile: (801) 415-3500

Attorneys for H.N.A., Inc.