

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

In re	:	
	:	Chapter 11
FLEMING COMPANIES, INC., et al.,	:	
	:	Case No.: 03-10945 (MFW)
<u>Debtors</u>	:	(Jointly Administered)

**RESPONSE OF CERTAIN PACA CLAIMANTS TO
DEBTORS' THIRD SUPPLEMENTAL REPORT OF CLAIMS
UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT**

The following PACA Trust Creditors, Andrew & Williamson, C&C Produce Co., Inc., Central American Produce, Inc., Eclipse Berry Farms LLC, Farm Fresh Direct, Four Seasons, Freshpoint of Atlanta, H. Brooks Co., H.C. Schmieding Produce Co., Inc., J&J Produce, Inc., L&M Produce Companies, Inc., Mission, and Tropic Banana II, hereby file their Response to Debtors' Third Supplemental Report of Claims under the Perishable Agricultural Commodities Act ("PACA") [7 U.S.C. §499e].

Debtors filed their Third Supplemental Report of PACA Claims on September 16, 2003 (hereafter "the September 16 PACA Report"), pursuant to the Order Requiring Segregation of Funds to Cover Certain PACA Claims, etc. ("PACA Order").

The PACA Order requires Debtors to state in detail the legal and factual basis for listing any PACA claim as disputed or invalid. PACA Order, paragraph 10a. According to the PACA Order, the PACA Trust Creditors have 10 days following the 10-day objection period, to file a Response to an Objection to its PACA Claim or to the amount or validity of its PACA Claim as listed in the PACA Report. As to the September 16 PACA Report, the Response deadline is September 8, 2003.

The September 16 PACA Report lists certain amounts of the claims of Andrew & Williamson, C&C Produce Co., Inc., Central American Produce, Inc., Eclipse Berry Farms LLC,

Farm Fresh Direct, Four Seasons, Freshpoint of Atlanta, H. Brooks Co., H.C. Schmieding Produce Co., Inc., J&J Produce, Inc., L&M Produce Companies, Inc., Mission, and Tropic Banana II, as PACA ineligible or unreconciled. However, the September 16 PACA Report does not contain any legal or factual basis for listing the amounts as ineligible; and all claims should have been reconciled by this time.

The September 16 PACA Report states, at footnote 5, that Debtors will prepare and forward a future report (the “PACA-ineligible Report”) that will “detail” the line items that Debtors have determined to be PACA ineligible.

Debtors’ PACA-Ineligible Reports have not been received for all the above-named PACA Claimants, and those that were received contain insufficient legal or factual basis for listing the amounts as ineligible and for responding thereto.

Absent the detailed legal and factual analysis supporting Debtors’ disputes, the within-named PACA Claimants cannot prepare a particularized Response to the September 16 Report. Said Claimants state that their claims are valid PACA trust claims for which they have not been paid.

For the above reasons, Andrew & Williamson, C&C Produce Co., Inc., Central American Produce, Inc., Eclipse Berry Farms LLC, Farm Fresh Direct, Four Seasons, Freshpoint of Atlanta, H. Brooks Co., H.C. Schmieding Produce Co., Inc., J&J Produce, Inc., L&M Produce Companies, Inc., Mission, and Tropic Banana II, submit that their PACA Claims should be allowed in full.

DATED: October 2, 2003

ELZUFON AUSTIN REARDON
TARLOV & MONDELL, P.A.

/s/ Charles J. Brown, III

William D. Sullivan (No. 2820)
Charles J. Brown, III (No. 3368)
300 Delaware Avenue, Suite 1700
P. O. Box 1630
Wilmington, Delaware 19899-1630
(302) 428-3181

and

Stephen P. McCarron
MCCARRON & DIESS
4910 Massachusetts Avenue, N.W.
Suite 18
Washington, D.C. 20016
(202) 364-0400
(202) 364-2731 Fax

Attorneys for PACA Trust Creditors
Andrew & Williamson, C&C Produce Co.,
Inc., Chiquita, Four Seasons, Fresh America
Corp., Freshpoint of Atlanta, J&J Produce,
Inc., The Sanson Company and Tropic
Banana II

CERTIFICATE OF SERVICE

I, Charles J. Brown, III, hereby certify that on October 2, 2003, a copy of the foregoing Response Of Certain PACA Claimants To Debtors' Third Supplemental Report Of Claims Under The Perishable Agricultural Commodities Act was served upon the following parties.

Laura Davis Jones
Scotta Edelen McFarland
Pachulski Stang Ziehl Young & Jones
919 N. Market Street
16th Floor
Wilmington, DE 19899-8705

Julie L. Compton
Office of the U.S. Trustee
J. Caleb Boggs Federal Building
844 King Street
Suite 2313
Wilmington, DE 19801

Aaron A. Garber
Pepper Hamilton LLP
1201 Market Street
Suite 1600
Wilmington, DE 19899

James Sprayregen
Richard L. Wynne
Kirkland & Ellis
777 South Figueroa Street
Los Angeles, CA 90017

Ira D. Kharasch
Pachulski Stang Ziehl Young & Jones PC
10100 Santa Monica Blvd
11th Floor
Los Angeles, CA 90067

I certify the foregoing to be true and correct under the penalty of perjury.

Dated: October 2, 2003

/s/ Charles J. Brown, III
Charles J. Brown, III