

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

In re: FLEMING COMPANIES, INC., et al., Debtors.	: : : : : :	Chapter 11 Case No. 03-10945 (MFW) (Jointly Administered) Hearing Date: 10/20/03 at 2:00 p.m. Objection Deadline: 10/13/03 at 4:00 p.m. Related to Docket No. 3880
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**OBJECTION OF INTERNATIONAL BUSINESS MACHINES CORPORATION AND
IBM CREDIT LLC, f/k/a IBM CREDIT CORPORATION, TO DEBTORS' MOTION FOR
ORDER PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE
AUTHORIZING THE DEBTORS TO REJECT CERTAIN UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY AND EXECUTORY CONTRACTS IN
CONNECTION WITH SALE ORDER (OCTOBER 20, 2003 HEARING)**

International Business Machines Corporation ("**IBM**") and IBM Credit LLC, f/k/a IBM Credit Corporation ("**IBM Credit**") (collectively, **IBM** and **IBM Credit** may be referred to as the "**IBM Entities**"), by and through their attorneys, Stevens & Lee, P.C., hereby submit their Objection (the "**Objection**") to the Motion For Order Pursuant to Section 365(a) of the Bankruptcy Code Authorizing The Debtors To Reject Certain Unexpired Leases of Nonresidential Real Property And Executory Contracts In Connection With Sale Order (October 20, 2003 Hearing) (the "**Motion**"). In support of the Objection, the **IBM Entities** state the following:

BACKGROUND

1. **IBM** and the Debtors¹ are parties to certain agreements (the "**IBM Contracts**") including, but not limited to, maintenance and service contracts relating to hardware and software, help

¹ All words capitalized herein but not otherwise defined in the Objection shall have the definitions ascribed in the Motion.

desk functions, consulting, software application, software licenses, installation and training on both IBM and non-IBM equipment, among other items.

2. IBM Credit and the Debtors are parties to a certain Term Lease Master Agreement No. 3410000 (the "**Master Lease**"), and various supplements to the Master Lease (the "**Supplements**") entered into in accordance with the Master Lease. (Hereinafter the Master Lease and all Supplements, addendums, additions, and amendments thereto, shall be referred to as the "**Leases**"). Under the Leases, IBM Credit agreed to lease to Debtors certain computer and computer related equipment including but not limited to data processing equipment (collectively, the "**Equipment**") for use by the Debtors.

3. In the Motion, the Debtors seek authorization to reject the executory contracts and unexpired leases identified in Exhibit A to the Motion. Pursuant to the Debtors' proposed order, the Debtors' seek to have the rejection effective retroactively as of September 30, 2003. In addition, the Debtors' proposed order seeks authority to abandon the personal property being rejected.

4. Original Exhibit A to the Motion did not list any contracts or leases between the IBM Entities and the Debtors. On October 1, 2003, the Debtors filed a Notice of Filing Amended Exhibit "A" to the Motion (the "**Amended Exhibit**"). The Amended Exhibit lists two (2) leases in which IBM is identified as the counterparty: No. 51, Contract ID No. 1844, identified as an Equipment Lease with IBM Corporation ("**Contract 1844**"); and No. 79, Contract ID No. 1885, identified as an Equipment Lease with IBM Corporation ("**Contract 1885**").

IBM AND IBM CREDIT'S OBJECTIONS

5. The IBM Entities object to the Motion and the Amended Exhibit to the extent that the Motion and Amended Exhibit fail to adequately identify the IBM Contracts and/or IBM Credit Leases

being rejected. Neither of the IBM Entities use a numbering system that includes Contract 1844 or Contract 1885, thus, the IBM Entities are unable to determine just what agreements the Debtors are rejecting.

6. The IBM Entities object to the Debtors' request that the effective date of rejection be retroactive as of September 30, 2003. The IBM Entities believe, and therefore aver, that the IBM Contracts and the Leases conferred benefits upon the Debtors during the post-petition period up to and including the current transition period with the Purchaser. Thus, the IBM Entities object to the Debtors' attempt to limit the IBM Entities' post-petition administrative claim by creating an early effective rejection date. The IBM Entities believe that the rejection of the IBM Contracts and Leases should be on the later of (a) the date the Equipment subject to any lease being rejected is returned to IBM Credit or (b) the date of the docketing of an order approving the Motion with regard to any IBM Contracts, and not a date approximately three (3) weeks prior to the entry of the order.

7. IBM Credit objects to the Motion to the extent that the Debtors seek authority to abandon the Equipment. IBM Credit believes, and therefore avers, that the Debtors must return the rejected Equipment pursuant to the terms of the Leases.

8. The IBM Entities reserve their right to make any further objections up to the date and time of the hearing on the Motion.

WHEREFORE, IBM and IBM Credit respectfully request that the Court enter an Order (a) denying the Debtors' Motion as stated, and (b) granting IBM and IBM Credit such other relief as is just.

Dated: Wilmington, Delaware
October 10, 2003

STEVENS & LEE P.C.

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*Attorneys for IBM Corporation and IBM
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the OBJECTION OF INTERNATIONAL BUSINESS MACHINES CORPORATION AND IBM CREDIT LLC, f/k/a IBM CREDIT CORPORATION, TO DEBTORS' MOTION FOR ORDER PURSUANT TO SECTION 365(A) OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO REJECT CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND EXECUTORY CONTRACTS IN CONNECTION WITH SALE ORDER (OCTOBER 20, 2003 HEARING) was duly served on this 10th day of October, 2003, upon the following and in the manner indicated:

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