

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re: Fleming Companies, Inc., *et al.*)
)
Debtor.)

No. 03-10945-MFW
(Jointly Administered)

NOTICE OF MOTION

To: All parties listed in the attached certificate of service

Movant UNIVERSITY PARTNERS has filed the attached Motion for Allowance of Administrative Claim (Peoria, Illinois).

You are required to file a response to the attached motion on or before **October 28, 2003**.

At the same time, you must also serve a copy of the response upon movant's attorneys: David L. Finger, Finger & Slanina, P.A., One Commerce Center, 1201 Orange St., Suite 725, Wilmington, DE 19801-1155 and Arnold H. Landis, 77 West Washington Street, Suite 702, Chicago, IL 60602.

A HEARING ON THE MOTION WILL BE HELD on **Tuesday, November 4, 2003 at 2:00 p.m.**

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

/s/ David L. Finger
David L. Finger (DE Bar ID #2556)
Finger & Slanina, P.A.
One Commerce Center
1201 Orange Street, Suite 725
Wilmington, DE 19801-1155
(302) 884-6766
Attorney for movant University
Partners

Dated: October 15, 2003

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re: Fleming Companies, Inc., *et al.*)
)
Debtor.)

No. 03-10945-MFW
(Jointly Administered)

**MOTION OF UNIVERSITY PARTNERS FOR
ALLOWANCE OF ADMINISTRATIVE CLAIM (PEORIA, ILLINOIS)**

UNIVERSITY PARTNERS, an Illinois General Partnership (“UNIVERSITY PARTNERS”), by its attorneys, moves this Court for allowance of an administrative claim against debtors-in-possession, compelling them to pay instantly its post-petition lease obligations. In support of this motion, UNIVERSITY PARTNERS states as follows:

1. UNIVERSITY PARTNERS is the owner of certain nonresidential real estate located at the University Plaza Shopping Center, 3433 North University Street, Peoria, Illinois.

2. Pursuant to a written shopping center lease dated March 9, 1988 (the “Lease”), debtors-in-possession leases a portion of the subject premises. A copy of the Lease is attached hereto and incorporated herein by reference. Payments due lessor under the Lease are payable to UNIVERSITY PARTNERS.

3. On April 1, 2003, debtor-in-possession filed a voluntary petition for relief under Chapter 11 of the Code.

4. Section 365(d) of the Code provides that the debtor-in-possession “shall timely perform all of the obligations of the debtor...from and after the order for relief under any expired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title.” 11 U.S.C. §365(d)(3).

5. Upon the failure of the debtor-in-possession to make timely rent payments post-petition, “[t]he court may order the immediate payment to the debtor’s landlord of rent that has

accrued from the petition date to the lease rejection date.” 1 Robert E. Ginsburg and Robert D. Martin, Bankruptcy: Text, Statutes, Rules §7.04(a)(4) (3rd ed. 1993) (citing In re: Galvan, 57 B.R. 732 (Bankr. S.D. Cal. 1986).

6. Notwithstanding debtor-in-possession’s obligation to pay post-petition rent to UNIVERSITY PARTNERS as it becomes due pursuant to Section 365(d)(3), debtors-in-possession have failed to pay all lease obligations for the leased premises since the entry of the order for relief.

7. Since the entry of the order for relief, \$34,604.08 is due and owing each month as and for post-petition rent and Common Area Maintenance charges.

8. Debtors-in-possession should be compelled to pay all outstanding amounts owed to UNIVERSITY PARTNERS, and to remain current pm such obligation.

WHEREFORE, for the foregoing reasons, UNIVERSITY PARTNERS respectfully requests that the Court enter the proposed form of Order granting this motion and require Debtors-in-possession to pay \$34,604.08 in back rent for each of September and October, and to make such payment each month hereafter.

Dated: October 15, 2003

Respectfully submitted,

/s/ David L. Finger
David L. Finger (DE Bar ID #2556)
Finger & Slanina, P.A.
One Commerce Center
1201 Orange Street, Suite 725
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- and -

Arnold H. Landis, Esq.
77 West Washington Street, Suite 702
Chicago, IL 60602
(302) 326-6268

In Re: Fleming Companies, Inc., <i>et al.</i>)	No. 03-10945-MFW
)	(Jointly Administered)
Debtor.)	

On this ____ day of _____, 2003, having considered the submissions
and the arguments of the parties, IT IS HEREBY ORDERED THAT:

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- Walrath, J.

CERTIFICATE OF SERVICE

I, David L. Finger, hereby certify that on this 15h day of October, 2003, I caused a copy of the foregoing document to be served via first class mail, postage prepaid, on the below listed counsel, except to the extent that service was effectuated via CM/ECF:

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