

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

---

In re: Case Numbers: 03-10945 (MFW) *et al.*  
FLEMING COMPANIES, INC., *et al.* Chapter 11  
Debtors. (Jointly Administered)  
**Objection Deadline: November 18, 2003**  
**Hearing Date: November 25, 2003 at 9:30 a.m. (Eastern)**

---

**LIMITED OBJECTION OF NESTLE USA, INC., NESTLE WATERS  
NORTH AMERICA INC. AND NESTLE ICE CREAM CO. LLC  
TO AMENDED MOTION OF DEBTORS FOR ENTRY OF AN ORDER  
AUTHORIZING AND APPROVING ARBITRATION OF CERTAIN CLAIMS  
AND CAUSES OF ACTION ASSERTED BY OR AGAINST THE DEBTORS**

Nestle USA, Inc., Nestle Waters North America Inc. and Nestle Ice Cream Co. LLC (collectively, "Nestle"), by their attorneys, submit this Limited Objection to Amended Motion of Debtors for Entry of an Order Authorizing and Approving Arbitration of Certain Claims and Causes of Actions Asserted by or Against the Debtors (the "Arbitration Motion"), and state:

1. On or about October 31, 2003, the Debtors filed the Arbitration Motion, in which the Debtors seek to compel arbitration of various matters, including those apparently involving setoff claims. The Debtors seek to compel arbitration where the applicable agreement between the Debtors and the other contracting party contain a provision requiring arbitration of disputes. They further seek authority to enter into an agreement with any party to arbitrate disputes where their agreements do not contain an arbitration clause. See Arbitration Motion at ¶¶ 9 and 15(b).

2. Nestle is not presently aware of any agreements which contain arbitration provisions. Fleming cannot compel Nestle to arbitrate any disputes between them in the absence of an agreement requiring arbitration. See *Painewebber Inc. v. Hartmann*, 921 F.2d 507, 511 (3<sup>rd</sup>

Cir. 1990) (“As a matter of contract, no party can be forced to arbitrate unless that party has entered into an agreement to do so.”).

3. Nestle does not oppose the relief sought by the Debtors provided that it in no way be interpreted to require the arbitration of any dispute between Nestle and Fleming.

Respectfully submitted,

Dated: November 14, 2003

/s/ David L. Finger  
David L. Finger (#2556)  
Finger & Slanina, P.A.  
One Commerce Center  
1201 Orange Street  
Suite 725  
Wilmington, Delaware 19801-1155  
Telephone: (302) 884-6766  
Facsimile: (302) 984-1294

and

Richard M. Kremen, Esquire  
Maria Ellena Chavez-Ruark, Esquire  
Piper Rudnick LLP  
6225 Smith Avenue  
Baltimore, Maryland 21209-3600  
Telephone: (410) 580-3000  
Facsimile: (410) 580-3001

Counsel for Nestle USA, Inc., Nestle Waters  
North America Inc. and Nestle Ice Cream Co. LLC

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

---

In re:

Case Numbers: 03-10945 (MFW) *et al.*

FLEMING COMPANIES, INC., *et al.*

Chapter 11  
(Jointly Administered)

Debtors.

---

**CERTIFICATE OF SERVICE**

I, David L. Finger, hereby certify that on this 14<sup>th</sup> day of November, 2003, a copy of the Limited Objection of Nestle USA, Inc., Nestle Waters North America Inc. and Nestle Ice Cream Co. LLC to Amended Motion of Debtors for Entry of an Order Authorizing and Approving Arbitration of Certain Claims and Causes of Actions Asserted by or Against the Debtors was served on each of the following by electronic mail and overnight mail:

Laura Davis Jones, Esquire  
Pachulski Stang Ziehl Young Jones & Weintraub  
919 North Market Street, 16<sup>th</sup> Floor  
Wilmington, Delaware 19899-8705  
ljones@pszyj.com  
*Counsel for the Debtors*

Richard L. Wynne, Esquire  
Kirkland & Ellis  
777 South Figueroa Street  
Los Angeles, California 90017  
richard\_wynne@la.kirkland.com  
*Counsel for the Debtors*

Scott D. Cousins, Esquire  
Greenberg Traurig LLP  
The Brandywine Building  
1000 West Street, Suite 1450  
Wilmington, Delaware 19801  
cousins@atlaw.com  
*Counsel for DIP Lenders*

Andrew P. DeNatale, Esquire  
White & Case  
1155 Avenue of the Americas  
New York, New York 10036-2787  
adenatale@whitecase.com  
*Counsel for DIP Lenders*

Joseph McMahon, Esquire  
Office of the United States Trustee  
844 King Street, Room 2313  
Wilmington, Delaware 19801  
joseph.mcmahon@usdoj.gov  
*United States Trustee*

Paul S. Aronzon, Esquire  
Milbank, Tweed, Hadley & McCloy LLP  
601 South Figueroa Street  
Los Angeles, California 90017  
paronzon@milbank.com  
*Counsel for the Creditors' Committee*

I. William Cohen, Esquire  
Pepper Hamilton LLP  
100 Renaissance Center, 36<sup>th</sup> Floor  
Detroit, Michigan 48243-1157  
coheniw@pepperlaw.com  
*Counsel for the Creditors' Committee*

Dated: November 14, 2003

/s/ David L. Finger

David L. Finger (#2556)  
Finger & Slanina, P.A.  
One Commerce Center  
1201 Orange Street, Suite 725  
Wilmington, Delaware 19801-1155  
Telephone: (302) 884-6766  
Facsimile: (302) 984-1294

and

Richard M. Kremen, Esquire  
Maria Ellena Chavez-Ruark, Esquire  
Piper Rudnick LLP  
6225 Smith Avenue  
Baltimore, Maryland 21209-3600  
Telephone: (410) 580-3000  
Facsimile: (410) 580-3001

Counsel for Nestle USA, Inc., Nestle Waters  
North America Inc. and Nestle Ice Cream Co. LLC