



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:	)	CHAPTER 11
	)	
FLEMING COMPANIES, INC., et al.	)	CASE NO. 03-10945 (MFW)
	)	(JOINTLY ADMINISTERED)
Debtors.	)	

**SECOND QUARTERLY INTERIM APPLICATION OF ERNST & YOUNG LLP AS INTERNAL  
AUDITOR AND TAX ACCOUNTANT TO THE DEBTORS AND DEBTORS IN POSSESSION FOR  
COMPENSATION AND REIMBURSEMENT OF PROFESSIONAL EXPENSES FOR  
THE PERIOD JULY 1, 2003 THROUGH SEPTEMBER 30, 2003**

Pursuant to 11 U.S.C. §§ 330 and 331 and Rule 2016 of the Federal Rules of Bankruptcy Procedure, Rule 2016-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, and the Court’s Administrative Order Under 11 U.S.C. §§ 105(a) and 331 Establishing Procedure for Interim Compensation and Reimbursement of Expenses of Professionals dated July 29, 2003, and entered in these cases at Docket No. 2568 (the “Administrative Order”), the firm of Ernst & Young LLP (“E&Y” or “Applicant”) hereby files this Second Quarterly Interim Application of Ernst & Young LLP as Internal Auditor and Tax Accountant to the Debtors and Debtors in Possession for Compensation and Reimbursement of Professional Expenses for the Period July 1, 2003 Through September 30, 2003 (the “Second Quarterly Fee Application”). By this Second Quarterly Fee Application E&Y seeks interim allowance of compensation in the amount of \$577,473.22 and reimbursement of actual and necessary expenses in the amount of \$0.00 for a total of \$577,473.22, or 100% of all compensation and expense reimbursement requested, for the period July 1, 2003 through September 30, 2003 (the “Interim Period”). In support of this Second Quarterly Fee Application, E&Y respectfully represents as follows:

**Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

### **Background**

2. On April 1, 2003 (the "Petition Date"), each of the captioned Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware.

3. Pursuant to an Order entered by this Court on May 6, 2003 (the "Retention Order," Docket No. 785) and attached hereto as Exhibit A, E&Y was employed to serve as internal auditor and tax accountant to the Debtors in connection with their Chapter 11 case. The Retention Order authorized E&Y to be compensated on an hourly basis and to be reimbursed for actual and necessary expenses incurred. At all relevant times, E&Y has been a disinterested person as that term is defined in § 101(14) of the Bankruptcy Code and has not represented or held an interest adverse to the interest of the Debtors. All services for which compensation is requested by E&Y were performed for, or on behalf of, the Debtors and not on behalf of any committee, creditor or other person.

4. Attached hereto as Exhibit C is a summary of the time spent and the fees charged by each E&Y professional during the period July 1, 2003 through September 30, 2003. The amount of time and expenses incurred by category during the period July 1, 2003 through September 30, 2003 are presented in Exhibits D and E, respectively.

4. Pursuant to the procedures set forth in the Administrative Order, professionals may request monthly compensation and reimbursement, and the notice parties listed in the Administrative Order may object to such request. If no notice party objects to a professional's request within twenty (20) days after the date of service of the request, the applicable professional may submit to the Court a

Certification of No Objection whereupon the Debtors are authorized to pay interim compensation and reimbursement of 80% of the fees and 100% of the expenses requested.

5. Furthermore, and also pursuant to the Administrative Order, professionals are to file and serve upon the notice parties a quarterly request (the "Quarterly Fee Application") for interim Court approval and allowance of the monthly fee applications filed during the quarter covered by the Quarterly Fee Application. If the Court grants the relief requested by the Quarterly Fee Application, the Debtors are authorized and directed to pay the professional 100% of the fees and expenses requested in the monthly fee applications covered by that Quarterly Fee Application less any amounts previously paid in connection with the monthly fee applications. Any payment made pursuant to the monthly fee applications or the Quarterly Fee Application is subject to final approval of all fees and expenses at a hearing on the professional's final fee application.

#### **Monthly Fee Applications Covered Herein**

6. The three monthly applications that are the subject of this Second Quarterly Fee Application and have previously been filed by E&Y, are for July, August and September, 2003. Summary information of the monthly applications is contained in Exhibit B. The Court has not previously approved any quarterly interim fee applications for E&Y as part of this case.

7. On September 9, 2003, E&Y filed its Fourth Monthly Application of Ernst & Young LLP as Internal Auditor and Tax Accountant to the Debtors and Debtors in Possession for Compensation and Reimbursement of Professional Expenses for the Period July 1, 2003 through July 31, 2003 (the "Fourth Application," Docket No. 3590) requesting \$994,173.30 in fees and \$23,296.00 in expenses. The Fourth Application is attached hereto as Exhibit F. No objections were received with respect to the Fourth Application and a Certificate of No Objection was filed on October 2, 2003

(Docket No. 3909). To date, E&Y has received \$795,338.64 in compensation and \$23,296.00 in expenses in connection with the Fourth Application.

8. On October 2, 2003, E&Y filed its Fifth Monthly Application of Ernst & Young LLP as Internal Auditor and Tax Accountant to the Debtors and Debtors in Possession for Compensation and Reimbursement of Professional Expenses for the Period August 1, 2003 through August 31, 2003 (the "Fifth Application," Docket No. 3915) requesting \$968,132.00 in fees and \$21,349.00 in expenses. The Fifth Application is attached hereto as Exhibit G. No objections were received with respect to the Fifth Application and a Certificate of No Objection was filed on October 28, 2003 (Docket No. 4225). To date, E&Y has not received any compensation or expenses in connection with the Fifth Application.

9. On November 12, 2003, E&Y filed its Sixth Monthly Application of Ernst & Young LLP as Internal Auditor and Tax Accountant to the Debtors and Debtors in Possession for Compensation and Reimbursement of Professional Expenses for the Period September 1, 2003 through September 30, 2003 (the "Sixth Application," Docket No. 4423) requesting \$925,060.80 in fees and \$27,394.00 in expenses. The Sixth Application is attached hereto as Exhibit H. The objection period for the Sixth Application expires on December 2, 2003. To date, no objections have been received with respect to the Sixth Application and E&Y has not received any compensation or expenses in connection with the Sixth Application.

#### **Compensation**

10. By this Second Quarterly Fee Application, E&Y requests that the Court approve the interim allowance of compensation for professional services rendered and the reimbursement of actual and necessary expenses incurred by E&Y from July 1, 2003 through September 30, 2003. The full scope of the services provided and the related expenses incurred are described in the monthly fee

applications for the Interim Period that already have been filed with the Court and are attached hereto as Exhibits F, G, and H.

11. Prior to the Petition Date, the Debtors paid a retainer to E&Y for services in the amount of \$600,000.00 in conjunction with its engagement of E&Y. As of the date of the filing of this Application, the retainer balance had been fully depleted, and therefore, no retainer is being applied against the fees and expenses outlined in this Application.

12. E&Y submits that its fees and expenses are reasonable in light of the magnitude, complexity and duration of this proceeding, and in light of the nature of the outsourcing functions which must be managed effectively by E&Y on behalf of the entire Debtors' estate.

13. In accordance with the factors promulgated in 11 U.S.C. § 330, the amounts requested in the Application Period are fair and reasonable given (a) the complexity of this case, (b) the time expended, (c) the nature and extent of the services rendered, (d) the value of such services, and (e) the cost of comparable services other than in a case under this title.

14. All services for which compensation is requested by E&Y were performed for, or on behalf of the Debtors, and not on behalf of any committee, creditor or other person.

15. There is no agreement or understanding between the Debtors and any other person, other than principals of E&Y, for the sharing of compensation to be received for services rendered in this case.

16. Although every effort has been made to include all fees and expenses incurred in the Fee Period, some fees and expenses might not be included in the Application due to delays caused by accounting and processing during the Fee Period. E&Y reserves the right to make further application to this Court for allowance of such fees and expenses not included herein. Subsequent fee applications

will be filed in accordance with the Bankruptcy Code, the Bankruptcy Rules, Local Bankruptcy Rules, and the Interim Compensation Order.


**NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION OR REQUEST FOR HEARING IS FILED WITH THE UNITED STATES BANKRUPTCY CLERK, MARINE MIDLAND PLAZA BUILDING, 824 MARKET STREET, 5<sup>TH</sup> FLOOR, WILMINGTON, DE 19801, WITHIN (20) DAYS FROM THE DATE OF FILING THIS APPLICATION, UNLESS THE COURT, SUA SPONTE, OR UPON TIMELY APPLICATION OF A PARTY IN INTEREST, SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION OR REQUEST FOR HEARING.**

**IF NO OBJECTION OR REQUEST FOR HEARING IS TIMELY FILED, THE APPLICATION SHALL BE DEEMED TO BE UNOPPOSED AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. THE COURT RESERVES THE RIGHT TO SET ANY MATTER FOR HEARING.**

WHEREFORE, E&Y respectfully requests payment for the period of July 1, 2003 through September 30, 2003 in the amount of \$577,473.22 as compensation for reasonable and necessary professional services rendered to the Debtors and \$0.00 for reimbursement of actual and necessary costs and expenses incurred during the course of the Applicants provision of services to the Debtors during the Application Period for a total of \$577,473.22; that the Debtors be authorized and directed to pay to E&Y the outstanding amount of such sums; and for such other and further relief as this Court deems proper.

ERNST & YOUNG LLP

Dated: November 14, 2003

By: 

Lisa P. Shield  
Partner  
201 Main Street  
Suite 1100  
Fort Worth, Texas 76102  
(817) 348-6056

**VERIFICATION**

Lisa P. Shield, after being duly sworn according to law, deposes and says:

I am a partner in the applicant firm, Ernst & Young LLP.

2. I have personally performed many of the services rendered by Ernst & Young LLP as tax accountant to the Debtors in this case and am familiar with all other work performed for the Debtors by the professionals in the firm.
3. The facts set forth in the foregoing Application are true and correct to the best of my knowledge, information and belief.

*Lisa P. Shield*

\_\_\_\_\_  
Lisa P. Shield

Sworn to and subscribed before me  
This 14 day of November, 2003.

*Caroline F. Whitlock*

\_\_\_\_\_  
Notary Public

My Commission Expires: 11-1-07

