

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

**IN RE:**

**FLEMING COMPANIES, INC., et al.,**

Debtors.

CASE NO. 03-10945  
(MFW) et al.

CHAPTER 11  
(Jointly Administered)

Objection Deadline:  
November 18, 2003

Hearing Date:  
November 25, 2003 at 9:30 a.m.  
(Eastern)

**LIMITED OBJECTION OF SUPERIOR DAIRY, INC., 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**

Superior Dairy, Inc.. (“Superior Dairy”), 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. Superior Dairy is not presently aware of any agreements which contain arbitration provisions. Fleming cannot compel Superior Dairy to arbitrate any disputes between them in the absence of an agreement requiring arbitration. See *Paine Webber, 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. Superior Dairy 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 Superior Dairy and Fleming.

Respectfully submitted,

Dated: November 18, 2003

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of November 2003, a copy of the Limited Objection of SUPERIOR DAIRY, INC., to the 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 was served on each of the following by electronic mail and overnight mail:

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Dated: November 18, 2003

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