

**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)
	)	
Debtors.	)	(Jointly Administered)

**Objection Deadline:** 12/1/03 at 4:00 p.m. EST  
**Hearing Date:** 12/8/03 at 9:30 a.m. EST

**MOTION OF ROBERT PATRICK LISKA  
TO COMPEL PAYMENT OF ADMINISTRATIVE CLAIM**

Robert Patrick Liska by and through his counsel, Rachel B. Mersky, Esquire of Monzack and Monaco respectfully moves this Honorable Court for an Order pursuant to Sections 105 and 503(b) of the United States Bankruptcy Code for an order allowing an administrative claim for severance and in furtherance thereof states as follows:

1. Robert Patrick Liska ("Liska") was the Eastern Region Retail President of the Rainbow Foods Division of the Fleming Companies until May 29,2003.
2. On December 30, 2002 the Fleming Companies Inc. entered into a special severance package agreement (the "Agreement") with Liska to induce and encourage Liska to remain in his position as Eastern Region Retail President of Rainbow Foods while that division was being marketed for sale. (A copy of the Agreement is attached hereto as Exhibit "A" and incorporated herein by reference.) As a requirement of the Agreement Liska executed a General Release in which he waived rights he had federal employment laws. The Release is Exhibit "A" to the Agreement.
3. Under the terms of the Agreement Liska was to receive a productivity bonus of \$107,500 upon the sale or other disposition of all, or substantially all, of the assets of Rainbow

Foods. In addition Liska was to receive a salary replacement upon the completion of the sale in the amount of \$215,000.

4. 5. Liska's right to the productivity bonus and salary replacement was in lieu of rights he had under the Company's regular severance policy in connection with a sale and the only reason Liska would not be entitled to the productivity bonus and salary replacement was, if prior to a closing he was terminated for cause or if he voluntarily resigned.

5. On April 1, 2003 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

6. Liska remained as the Eastern Region Retail President of Rainbow Foods and he was integral to the successful sale of the Rainbow Division to Roundy's.

7. Liska's dedication in keeping Rainbow Foods profitable and operational while it was being marketed and sold increased the price realized by the Debtors and his involvement was crucial to the completion of the sale to Roundy's.

8. Fleming Management repeatedly told Liska that the Agreement was going to be submitted to the Bankruptcy Court and he was advised that the matter had to be scheduled to accommodate the Bankruptcy Court's busy docket. Liska was also told that the Employee's Severance and Pay to Stay was going to be submitted to Bankruptcy Court for approval and that the delays in obtaining Court approval of the Agreement and the Employee Severance and Pay to Stay were as a result of the Bankruptcy Court's busy docket. (See emails from Fleming management attached hereto as Exhibit "B" and incorporated herein by reference confirming Fleming's intent to obtain Bankruptcy Court approval).

9. In mid May 2003 key employees essential to the operation of the Rainbow Division through the transition of the sale to Roundy's had given notice or informed Liska that

they planned to leave before completion of inventory. Fleming Management, and in particular Chris Hyatt, asked Liska to put together a list of key employees essential to the continued operation of the Rainbow Division until the sale to Roundy's was closed.

10. On May 20, 2003, with the sale to Roundy's anticipated to close in just weeks, Liska, sent a memo by e-mail to Chris Hyatt identifying the short list of key employees that were necessary through a closing with Roundy's. He advised Mr. Hyatt that the people identified in the e-mail would stay if Fleming committed to a retention package. (A copy of the May 20, 2003 e-mail is attached hereto as Exhibit "C" and incorporated herein by reference.)

11. On May 29, 2003 Liska received a letter dated May 27, 2003 from Fleming terminating his employment with Fleming based upon the view he expressed in the May 20, 2003 Memo. (A copy of the termination letter is attached hereto as Exhibit "D" and incorporated herein by reference.)

12. Liska fulfilled all of his obligations under the Agreement and the sale of the rainbow Division to Roundy's closed shortly after he was terminated. Liska was not terminated for cause and he is entitled to payment under the Agreement.

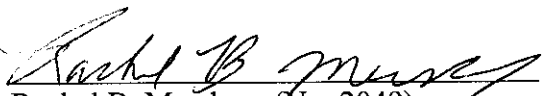
13. On June 4, 2003, after Liska was terminated, after he had completed all of his obligations under the Agreement, and when the only remaining obligation under the Agreement was for Fleming to pay Liska, Fleming obtained an Order rejecting the Agreement. The Order rejecting the Agreement stated that the reason for the rejection was a change in severance policy. Liska was not served with the Motion, was never told of a change in the severance policy and did not learn about the Order until after it had been entered. In fact, the May 27, 2003 termination letter from Fleming to Liska referenced the Agreement and advised Liska, for the first time, that Fleming was not going to honor the Agreement.

14. The Agreement between Fleming and Liska was executed on December 30, 2003, therefore Liska has an administrative priority claim based on a pro rata apportionment of the post petition service from April 1, 2003 through May 29, 2003. Liska is entitled to payment of an administrative claim in the amount of \$129,000.00.

WHEREFORE, Robert Patrick Liska requests that this Honorable Court grant his Motion and enter an Order to pay Robert Patrick Liska an allowed administrative claim for \$129,000 and for such other and further relief as is just and equitable.

DATED: November 20, 2003

MONZACK AND MONACO, P.A.



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