

# **EXHIBIT 3**

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Date: December 2, 2003

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Re: In re Fleming Companies, Inc., et al., Case No. 03-10945 (MFW)  
Liska

Message: See attached letter.

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December 2, 2003

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Via Facsimile and Email

**RE: In re Fleming Companies, Inc., et al. - Robert Patrick Liska**

Dear Jeff:

I am in receipt of your letter dated December 2, 2003. First, on November 20, 2003 at approximately 5:16 p.m., I forwarded a courtesy copy of Mr. Liska's Motion directly to you. This Motion was only filed after extensive dialogue between us about this claim failed to yield the possibility of settlement without litigation. The Motion was timely filed for the December 8, 2003 hearing. Late in the afternoon on Wednesday, November 26, 2003, I received a telephone call from you indicating that there was critical discovery that had to be completed prior to Fleming responding to the Motion. At that time, I indicated that it was hard for me to imagine any information that Fleming did not have about Mr. Liska, but in order to insure that there was no delay in the scheduled hearing on December 8, 2003, Mr. Liska would reply so long as he received the discovery promptly. Despite repeated emails on and immediately after Thanksgiving, the discovery was not received until late in the day on December 28, 2003. Unfortunately, I was not at my computer when it arrived and I did not know of its existence until November 29, 2003. Nonetheless Mr. Liska fully answered the discovery on December 1, 2003.

First, Mr. Liska has produced everything in his possession or within his control that is responsive to the request for production or interrogatories. Mr. Liska does not possess the hard drive to his computer and does not have a copy of the hard drive from his computer. Mr. Liska adamantly denies that he did anything that might have affected Debtors access to his computer, including but not limited to wiping clean the hard drive. Nonetheless, Mr. Liska advised me that Fleming made a copy of the hard drive of his computer at the time Fleming was undergoing the

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SEC investigation. Consequently, if Fleming cannot access the hard drive of Mr. Liska's computer, Fleming should have a copy of it in their business records.

We also deny that the Interrogatory responses are at all deficient. In particular, the response to Interrogatory No. 2 describes the way the calculation of the claim was made. The administrative claim is based upon an apportionment of the pre- and post-petition period. Specifically Mr. Liska is seeking an administrative claim for the April 1, 2003 through May 29, 2003 service. This is 2/5 of the 5 month duration of his December 30, 2002 Agreement. (The productivity bonus and salary replacement in the agreement totals 322,500, consequently 2/5 of that sum is \$129,000). Interrogatory No. 3 also was fully responsive. Mr. Liska was not given a reason for his termination, he was presented with the termination letter that was attached as an exhibit to the Motion. As for Interrogatories Nos. 4 and 5, Mr. Liska did his job as required and kept the company profitable. His duties were multiple and complex and have been summarized. It would be impossible for him to itemize every single thing he did every minute of the day. However, the responses are complete. In connection with Interrogatory No. 7, the individuals he spoke to on a daily basis who repeatedly provided him updates concerning his productivity bonus and salary replacement were identified in Interrogatory No. 6. He was consistently told by these individuals that the December 30, 2002 Agreement was going to be submitted to the Committee and the Court and that he did not have anything to worry about. Mr. Liska did not keep a log of these telephone calls, but much of the time there were daily calls addressing this issue. Finally, as it relates to Interrogatory No. 10, Mr. Liska did everything he could to benefit the company. He never disparaged the company and he fully complied with all of his obligations to the company. There is nothing more he can say.

In conclusion, despite this short time provided by Debtors to respond to interrogatories and requests for production, which we believe were unnecessary to begin with, Mr. Liska has responded as required under the rules. In order to insure that this matter proceeds on December 8, Mr. Liska is prepared to make himself available for a deposition on December 7, 2003 in Delaware. However, I can think of nothing further that he could offer and I believe that it would be a waste of time and an unreasonable expense billed to the Debtors' estate. As you are aware, Mr. Liska kept the Rainbow Division profitable. He did everything within his power to assist in continuing the operation of the Rainbow Division under extremely trying circumstances and his efforts were successful as demonstrated by the sale to Roundys. Mr. Liska is entitled to an administrative claim under his Agreement with the company and we intend to proceed with the Motion at the scheduled hearing on December 8, 2003.

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If you have any questions or concerns, or if you would like to schedule the deposition for Sunday, December 7, 2003, please let me know as soon as possible.

Very truly yours,



Rachel B. Mersky  
for Monzack and Monaco, P.A.

RBM/wlf  
Enclosure

cc: Robert Patrick Liska (via e-mail)  
Larry B. Ricke, Esquire (via e-mail)