

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.) **Hrg. Date: TBD**
) **Obj. Date: TBD**
) **Related Docket Nos. 4596, 4812, and 4815**
)

**MOTION OF KROGER CO., PRAIRIE FARMS DAIRY, DESTINATION
PRODUCTS INTERNATIONAL, INC., THE DIAL CORPORATION, AND SUNSHINE
MILLS: (A) TO DEFER RESPONSE DATE, DIRECT THAT BANKRUPTCY RULE
7016 APPLY, RE-DESIGNATE PROPOSED HEARING DATE AS SCHEDULING
CONFERENCE, AND FOR RELATED RELIEF IN CONNECTION WITH DEBTORS'
MOTION TO DETERMINE THAT RECLAMATION CLAIMS ARE
VALUELESS; AND (B) FOR EXPEDITED HEARING**

Kroger Co., Prairie Farms Dairy, Destination Products International, Inc., The Dial Corporation, and Sunshine Mills (collectively, the "Movants"), pursuant to Rules 9006 and 9014 of the Federal Rules of Bankruptcy Procedure and Section 105 of the Bankruptcy Code, submit their Motion: (A) to Defer Response Date, Direct That Bankruptcy Rule 7016 Apply, Re-Designate Proposed Hearing Date as Scheduling Conference, and for Related Relief in Connection with Debtors' Motion to Determine that Reclamation Claims are Valueless; and (B) For Expedited Hearing (the "Motion"). In support of their Motion, the Movants respectfully state as follows:

1. The Movants are all reclaiming creditors who assert reclamation claims against the above-captioned debtors (collectively, the "Debtors") under section 546 of the Bankruptcy Code. The Movants' reclamation claims are among the reclamation claims subject to the Debtors' pending Combined Amended Reclamation Report And Motion To Determine That

Reclamation Claims Are Valueless [dkt. 4596] (the "Reclamation Motion"). In the Reclamation Motion the Debtors seek a determination that more than \$280 million in reclamation claims asserted against these estates have a value of \$0. Responses to the Reclamation Motion are currently due on December 16, 2003, and a hearing on the Reclamation Motion is currently scheduled to be held on December 23, 2003.

2. By this Motion, the Movants respectfully request the Court to enter an Order (i) directing that the December 23, 2003 hearing date be utilized as a scheduling conference in respect of the Reclamation Motion (as opposed to a hearing on the merits of the Reclamation Motion); (ii) extending the December 16, 2003 deadline for reclamation claimants to respond to the Reclamation Motion pending further Order of the Court (which date would be established at the December 23, 2003 scheduling conference); and (iii) providing that Fed. R. Bankr. Proc. 7016 apply to the Reclamation Motion.

3. In support of this Motion, the Movants adopt and incorporate by reference herein the arguments made by certain other reclaiming creditors in their December 8, 2003 "Motion To Defer Response Date, Direct That Bankruptcy Rule 7016 Shall Apply To This Matter, Re-Designate Proposed Hearing Date As Scheduling Conference, And For Other Relief On Debtors' Motion To Determine That Reclamation Claims Are Valueless" [Dkt. No. 4812](the "Motion to Defer").

4. Additionally, the Movants request the Court, pursuant to Rule 9006 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 9006-1(e), to convene an expedited hearing on this Motion for the reasons set forth in the December 8, 2003 Motion for Expedited Hearing on the Motion to Defer filed by certain other reclaiming creditors [Dkt. 4815].

5. Aside from the various arguments set forth in the Motion to Defer, the relief

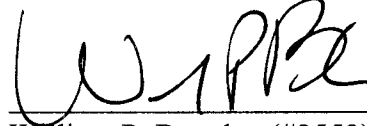
sought by this Motion is appropriate considering the context in which the Reclamation Motion was made. After more than 6 months into these cases – and after repeatedly leading reclamation creditors to believe their claims would be decided upon the merits of such claims (through the reconciliation process) – the Debtors now seek to eliminate, with one broad stroke, the entirety of asserted reclamation claims. In this regard, the Debtors raise a host of significant factual and legal issues which cannot be timely and properly addressed in the current procedural posture. The Movants, as well as all reclaiming creditors, should be accorded a fair opportunity to address the myriad factual contentions and legal theories upon which the Debtors rely. Indeed, the Debtors have enjoyed more than 6 months to formulate their current argument. Reclaiming creditors should be given the same opportunity.

6. Notice of the relief requested in this Motion has been given to: (i) counsel for the Debtors by hand and facsimile; (ii) counsel to the Creditors Committee by hand and facsimile; (iii) counsel to the United States Trustee by hand; (iv) counsel to the Debtors' lenders by hand and facsimile; and (v) those parties requesting notice pursuant to Bankruptcy Rule 2002 by hand or first class United States Mail.

WHEREFORE, the Movants respectfully request that the Court enter an Order in the form attached hereto granting this Motion and for such other and further relief as the Court deems just and appropriate.

Dated: December 9, 2003

ASHBY & GEDDES, P.A.

A handwritten signature in black ink, appearing to read 'W. P. Bowden', written over a horizontal line.

William P. Bowden (#2553)

Ricardo Palacio (#3765)

Joseph C. Handlon (#3952)

222 Delaware Ave., 17th Floor

P.O. Box 1150

Wilmington, DE 19899-1150

(302) 654-1888

Counsel for the Movants

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.)
)
) **Related Docket No. 4596**
)

**ORDER GRANTING MOTION TO DEFER RESPONSE DATE,
DIRECT THAT BANKRUPTCY RULE 7016 SHALL APPLY TO THIS
MATTER, RE-DESIGNATE PROPOSED HEARING DATE AS SCHEDULING
CONFERENCE, AND FOR OTHER RELIEF ON DEBTORS' MOTION TO
DETERMINE THAT RECLAMATION CLAIMS ARE VALUELESS**

Upon the motion (the "Motion") of Kroger Co., Prairie Farms Dairy, Dial Corporation, Destination Products, and Sunshine Mills (collectively, the "Movants") for the entry of an order, pursuant to, among other things, Rules 9006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Section 105(a) of Title 11 of the United States Code (the "Bankruptcy Code"), directing that Bankruptcy Rule 7016 apply, deferring the December 16, 2003 response deadline pending further Order of the Court, and re-designating the December 23, 2003 hearing on the Combined Amended Reclamation Report and Motion to Determine That Reclamation Claims Are Valueless (the "Reclamation Motion") as a scheduling conference; and this Court having reviewed the Motion and any response thereto; and sufficient cause appearing therefor; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 158(a); and after due deliberation, it is hereby ORDERED THAT:

1. The Motion is granted.

2. The December 16, 2003 deadline for objecting or otherwise responding to the Debtors' Reclamation Motion is deferred pending to further Order of this Court.

3. Rule 7016 of the Federal Rules of Bankruptcy Procedure ("Rule 7016") is hereby made applicable to the contested matter raised by the Reclamation Motion.

4. The December 23, 2003 hearing date noticed for the Reclamation Motion is continued. In lieu thereof, the Court shall conduct a conference pursuant to Rule 7016 on _____, at _____:_____._____.

Dated: _____, 2003

The Honorable Mary F. Walrath
Chief United States Bankruptcy Judge