

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

In Re:)	Chapter 11
)	
FLEMING COMPANIES, INC., et al.,)	Case No. 03-10945 (MFW)
)	
Debtors.)	Hearing Date: January 5, 2004
)	at 2:00 p.m.
_____)	

**LIMITED OBJECTION OF QUAKER SALES & DISTRIBUTION, INC.
TO DEBTORS' MOTION FOR AN ORDER AUTHORIZING DEBTORS TO
OBTAIN REPLACEMENT POST-PETITION FINANCING AND RELATED RELIEF**

Quaker Sales & Distribution, Inc. ("Quaker"), by its attorneys, submits this Limited Objection to the Debtors' Motion for Order (I)(A) Authorizing Debtors to Obtain Replacement Post-Petition Financing Under 11 U.S.C. § 364 and Bankruptcy Rule 4001(c) and Del. Bankr. LR 4001-2 and Assign the Existing Secured Lenders' Liens to the Replacement Lenders, and (B) Authorizing Debtors to Pay Certain Commitment and Related Fees and Expenses Relating to the Replacement Post-Petition Financing, (II) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363; and (III) Authorizing Debtors to Repay Certain Outstanding Obligations Under the Pre-Petition Credit Agreement and the Post-Petition Loan Agreement (the "Replacement Lender Motion"), and states:

1. On October 29, 2003, Quaker filed a Motion to Modify the Automatic Stay Pursuant to 11 U.S.C. § 362(d) to Permit the Setoff of Mutual Prepetition Obligations (the "Quaker Setoff Motion"). In the Quaker Setoff Motion, Quaker seeks to set off more than \$5.6 million that it owes Fleming from certain prepetition amounts that Fleming owes Quaker. The Quaker Setoff Motion is set for status conference on January 21, 2004.

2. Quaker also made a reclamation demand on the Debtors in excess of \$6.9 million. In its recent reclamation report to the Court, the Debtors seek to reduce Quaker's reclamation claim to a maximum of \$3,844,958.71.

3. In addition, Quaker has filed general unsecured proofs of claim against the Debtors totaling more than \$9 million. The Debtors have not yet objected to those claims.

4. On or about December 16, 2003, the Debtors filed the Replacement Lender Motion. Pursuant to that Motion, the Debtors seek to satisfy the outstanding claims of their existing lenders and enter into a new loan agreement with a new set of lenders.

5. Although Quaker is not opposed to the Debtors obtaining replacement financing if the Debtors can demonstrate that there is a reasonable likelihood that the Debtors can confirm a plan providing for the reorganization of Core-Mark and that such plan would be more beneficial for general unsecured creditors than would Core-Mark's sale, Quaker does object to certain aspects of the proposed new financing as it impacts Quaker's rights to setoff and reclamation.

6. With regard to setoff, the proposed new financing appears to make it an event of default if the Court modifies the automatic stay to allow any creditor to execute upon or enforce a lien on any of the Debtor's collateral. See Exh. A to Replacement Lender Motion at ¶ 8.1(n). The proposed new financing also does not allow the Debtors (without prior written consent of the proposed new lenders or Court order) to make any payment or transfer as a result of any prepetition lien that is subject to the stay. Id. at ¶ 6.21.

7. Although neither the Replacement Lender Motion nor the terms of the proposed new financing state that the above restrictions apply specifically to setoff rights, a creditor does hold a secured claim to the extent of its rights of setoff. See Lee v. Schweiker, 739 F.2d 870, 875 (3d Cir. 1984); In re Commercial Financial Services, Inc., 251 B.R. 397, 405 (Bankr. N.D. Okla. 2000).

8. As a result of its rights as a secured creditor, Quaker opposes the terms of the proposed new financing to the extent they would serve in any way to limit Quaker's ability to enforce its rights as set forth in Quaker's Setoff Motion.

9. With regard to reclamation, the Debtors appear to be using the proposed new financing to eviscerate reclamation rights of creditors like Quaker. See Replacement Lender Motion at ¶¶ 62-68. As this Court has indicated that reclamation rights should be determined in the context of adversary proceedings, Quaker opposes the Debtors' attempts to end run that ruling. In addition, Quaker adopts the arguments set forth in the Reclamation Creditors' Objection to Debtors' Motion for an Order Authorizing Debtors to Obtain Replacement Post-Petition Financing and Related Relief.

Dated: December 23, 2003

Respectfully submitted,

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