

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

In re:	)	Chapter 11
	)	
FLEMING COMPANIES, INC., <i>et al.</i> ,	)	Case No. 03-10945 (MFW)
	)	
Debtors.	)	(Jointly Administered)
	)	Hearing Date: 1/5/04 @ 2:00 p.m.

**JOINDER OF DAYMON WORLDWIDE TRADING f/k/a FOOD  
MARKETING GROUP, INC., ISG TECHNOLOGY, INC.,  
JOHN MIDDLETON, INC., AND SWEDISH MATCH NORTH  
AMERICA, INC. IN AND TO THE RESPONSE OF CERTAIN  
CREDITORS TO DEBTORS' MOTION [DOCKET NO. 5034] FOR  
AN ORDER AUTHORIZING DEBTORS TO OBTAIN REPLACEMENT  
POST-PETITION FINANCING AND RELATED RELIEF [DOCKET NO. 5209]**

Daymon Worldwide Trading f/k/a Food Marketing Group, Inc., ISG Technology, Inc., John Middleton, Inc. and Swedish Match North America, Inc. (collectively, the “Claimants”)<sup>1</sup> hereby join in (the “Joinder”) the Response of Certain Creditors to Debtors’ Motion for an Order Authorizing Debtors to Obtain Replacement Post-Petition Financing and Related Relief [Docket No. 5209] (the “Response”). In support of the Joinder, the Claimants respectfully represent as follows:

**BACKGROUND**

1. On December 16, 2003, the above-captioned debtors and debtors-in-possession (the “Debtors”) filed the Debtors’ Motion for an 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 (II) Authorizing Debtors to Repay Certain Outstanding Obligations Under the Pre-Petition Credit Agreement and the Post-Petition Loan Agreement.[Docket No. 5034] (the “Second DIP Financing Motion”).

2. On December 29, 2003, Clorox Sales Co., ConAgra Foods, Inc., Del Monte Foods, Kraft Foods North America, Inc., Masterfoods USA, Nestle USA, Inc., Nestle Purina Pet Care Company, Nestle Prepared Foods Company, Nestle Waters North America, Inc., Nestle Ice Cream Co. LLC, Sara Lee Corporation, Sara Lee Bakery Group, Inc. and S. C. Johnson & Son, Inc. filed the Response [Docket No. 5209].

3. Collectively, the Claimants have asserted timely reclamation demands aggregating in excess of \$2,000,000.

### **RELIEF REQUESTED**

4. The Claimants hereby join in support of the Response and seek authority to participate at the January 5, 2004 Hearing.

5. At the hearing on April 3, 2003, the following colloquy took place in connection with the Debtors’ request to approve their “First DIP Financing Motion”:

THE COURT: Well, you will not argue that the entry of the DIP or the cash collateral stipulation in any way adversely effects the rights of the reclamation claimants as they stood on the petition date?

MR. WYNNE: That’s correct. From the debtor’s point of view, Your Honor. I will check with counsel for the lenders.

MR. DeNATALE: Your Honor, we agree.

MR. WYNNE: Counsel for the lenders has indicated that they agree, Your Honor, which we think was the intent in any event.

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<sup>1</sup> The Claimants are not related parties and are filing this Joinder solely for convenience and efficiency purposes.

Transcript of First Day Hearing Before Honorable Mary F. Walrath United States Bankruptcy Court; April 3, 2003; ¶¶72.19-73.04.

THE COURT: Well, the debtor is not going to take the position that its use of the product, sale of the product, eliminates the reclamation rights, because they're calculated as of the petition date. Is that what you're saying?

MR. WYNNE: That is what I'm saying, Your Honor. And I think the reservation that we've just put on the record protects their rights, as they should be - -

THE COURT: Vis-à-vis the lenders?

MR. WYNNE: Vis-à-vis the lenders. And so, with that, Your Honor, we would ask that the objection be overruled, and that they are properly protected.

MR. COHEN: Bill Cohen, Your Honor. The statement just made by debtor's counsel in the preservation of the rights of the reclamation creditors to the extent they exist on the date of bankruptcy is acceptable to the ad hoc trade committee.

MR. BRANZBURG: Your Honor, I wasn't trying to bootstrap a lien where - - right through one - - ones didn't exist, they constitute a lien, and for that we would ask for adequate protection. But having - - and I think that's the legal argument. However, as a practical matter, if it is clear that neither the debtor nor any other party will raise a claim that the use of the reclaimed goods somehow impairs the reclamation claim - - impairs it or extinguishes it, or that this new \$50 million bridge facility or any rights granted in connection with it impairs or extinguishes it, I'm fine. As long as that's the understanding.

THE COURT: I think you have the lenders and the debtor's agreement to that. I don't know that I can speak for everybody else in the world.

Transcript of First Day Hearing Before Honorable Mary F. Walrath United States Bankruptcy Court; April 3, 2003; ¶¶ 74.13-75.17.

MR. BRANZBURG: Your Honor, I am comfortable with having the lender's aggregate consent and the debtor's consent to that - - to those statements.

THE COURT: All right. And I think that was made generally, in case this is another reclamation creditor coming up. All right.

Transcript of First Day Hearing Before Honorable Mary F. Walrath United States Bankruptcy Court; April 3, 2003; ¶¶ 76.01-76.06.

6. Similarly, at the hearing on April 10, 2003, the following statements were placed on the record in connection with further consideration of the First DIP Financing Motion:

THE COURT: Thank you. Hershey Foods.

MR. BRANZBURG: Your Honor, Morton Branzburg on behalf of Hershey Foods. We filed a limited objection to the financing motion originally, and that was - - there were statements made on the record that I want to make sure are preserved, and those included the rights of reclamation claimants will be preserved as they existed on the filing date, and that the post-petition financing is approved by the Court for the 50 million or any other financing will not adversely affect the rights of reclamation claimants as they existed on the filing date.

Transcript of Hearing Before Honorable Mary F. Walrath United States Bankruptcy Court; April 10, 2003; ¶¶ 15.04-15.14.

7. The Claimants respectfully request that to the extent the Court is inclined to approve the Second DIP Financing Motion, that similar language be incorporated into the Order expressly reserving and preserving all of the reclamation claimants' rights as they existed on the Petition Date.

8. This Court has ordered that the Debtors commence separate adversary proceedings against each of the reclamation claimants and within the context of those adversary proceedings is the proper forum to address, consider, and rule upon the reclamation claimants' rights in these cases. The Debtors' continual efforts to eliminate the rights of reclamation claimants through contested matter after contested matter, once again, must not be countenanced and, frankly, ought to be put to rest once and for all.

9. By this Joinder, the Claimants expressly incorporate the arguments set forth in the Response as if set forth herein and reserve all of their respective rights including, without limitation, the right to supplement this Joinder at the hearing.

**WHEREFORE**, the Claimants respectfully join in the Response, and, in the event the Court is inclined to grant the Second DIP Financing Motion, request entry of an Order reserving and preserving all of their rights and remedies with respect to their reclamation claims.

Dated: December 29, 2003

COZEN O'CONNOR

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