

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	Case No. 03-10945 (MFW)
FLEMING COMPANIES, INC., <i>et al.</i> ,)	
)	Hearing Date: 1/21/04 @ 9:30 a.m.
Debtors.)	Objection Deadline: 1/14/04 @ 4:00 p.m.

**OBJECTION OF ORVILLE E. ALDRICH AND GLENN E. ALDRICH
TO THE DISCLOSURE STATEMENT IN SUPPORT OF DEBTORS AND OFFICIAL
COMMITTEE OF UNSECURED CREDITORS' JOINT PLAN OF REORGANIZATION
OF FLEMING COMPANIES, INC. AND ITS FILING SUBSIDIARIES UNDER
CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE [DI # 4958]**

Orville E. Aldrich and Glenn E. Aldrich (jointly, "Landlord"), by and through their undersigned counsel, hereby objects to the *Disclosure Statement in Support of Debtors and Official Committee of Unsecured Creditors' Joint Plan of Reorganization of Fleming Companies, Inc. and its Filing Subsidiaries Under Chapter 11 of the United States Bankruptcy Code* [D.I. 4958] ("Disclosure Statement"), filed by the above-captioned debtors ("Debtors"). In support of this Objection, Landlord respectfully state as follows:

1. On April 1, 2003, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code ("Bankruptcy Code").
2. Prior to the Petition Date, Landlord and Fleming Companies, Inc., one of the Debtors, entered into a lease dated January 28, 1974 ("Lease"),¹ under which the Debtors lease from Landlord certain non-residential real property located in Columbus, Nebraska. Upon information and belief, the Debtors operate a grocery store on the leased premises. The original term of the Lease

¹A true and correct copy of the Lease is attached as Exhibit A to the *Objection of Orville E. Aldrich and Glenn E. Aldrich to the Notice Re Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Sale Motion* [D.I. 2002] [D.I. 2318] ("Cure Objection").

expired on July 23, 1995. Thereafter, a five year option was exercised and the term of the Lease was extended through July, 2000. From July, 2000 forward, the Lease has continued on a holdover, month-to-month basis, per its terms.

3. On December 12, 2003, the Debtors filed the *Debtors' and Official Committee of Unsecured Creditors' Joint Plan of Reorganization of Fleming Companies, Inc. and its Filing Subsidiaries Under Chapter 11 of the United States Bankruptcy Code* [D.I. 4959] ("Plan") and the Disclosure Statement. A hearing to approve the Disclosure Statement is set for January 21, 2004.

4. Landlord objects to the Disclosure Statement on the basis that it fails to satisfy the requirements of section 1125 of the Bankruptcy Code. *See Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 362 (3d Cir. 1996) ("Because creditors and the bankruptcy court rely heavily on the debtor's disclosure statement in determining whether to approve a proposed reorganization plan, the importance of *full* and honest disclosure cannot be overstated.") (emphasis added); *see also In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (E.D. Pa. 2001) ("[t]he general purpose of the disclosure statement is to provide 'adequate information' to enable 'impaired' classes of creditors and interest holders to make an informed judgment about the proposed plan and determine whether to vote in favor of or against that plan."). Specifically, the Disclosure Statement fails to disclose the Debtors' intentions with regard to the Lease under the Plan, and fails to meet the requirements of section 365(b) of the Bankruptcy Code to the extent that Debtors propose to reject the Lease as a result of the Plan.

5. The Disclosure Statement does not adequately address the Debtors' intentions with regard to the Lease. Section VI. I.1 of the Disclosure Statement states that leases will be rejected

unless one of four listed contingencies applies, including if such lease is listed on an Assumption Schedule, which will be filed 5 business days prior to the hearing on the Plan. As written, the Disclosure Statement does not provide Landlord with any certainty as to the proposed treatment of its Lease under the Plan.

6. To the extent that the Debtors intend to assume the Lease under the Plan, the Disclosure Statement does not adequately address the Debtors' obligation to cure defaults under the Lease, pursuant to section 365(b)(1) of the Bankruptcy Code. The Disclosure Statement merely states that defaults shall be satisfied. The Disclosure Statement does not indicate what amount, if any, the Debtors propose to pay to cure defaults under the Lease, nor does it provide a mechanism for Landlord to object to any cure amount the Debtors may propose, or a timetable for court determination of the appropriate cure amount. Based on the Debtors' obligation imposed by section 365(b)(1)(A) of the Bankruptcy Code to promptly cure any existing defaults, Landlord asserts that the Disclosure Statement must provide (i) the amount the Debtors propose to pay to cure defaults under the Lease, and (ii) a procedure and timetable for filing objections to such proposed cure amount and scheduling a hearing on the matter, if necessary.

7. Landlord will not know the proposed treatment of its interests or whether (a) it can or should vote to accept the Plan and/or (b) it should object to the Plan, until it receives the following information: (i) confirmation as to the proposed treatment, without equivocation or contingency, of the Lease under the Plan; (ii) if the Debtors intend to assume the Lease, information concerning any proposed cure due under the Lease and a proposed procedure and timetable for objection to the proposed cure amount and adjudication of the cure amount, if necessary; and (iii) if the

Debtors intend to reject the Lease, the proposed effective date of rejection and information regarding return of the keys to the property. Accordingly, Landlord cannot evaluate or make an informed judgment about the Plan based on the information contained in the Disclosure Statement. Landlord submits that the Debtors must unequivocally declare their intentions, as set forth above, to Landlord and its counsel no later than 10 days prior to the earlier of the deadlines to object to confirmation of the Plan or to vote on the Plan.

8. Landlord expressly reserves: (i) its right to object to any proposed plan of reorganization on any grounds, including any proposed assumption and assignment therein; and (ii) all of its rights and claims under the Lease and under section 365 of the Bankruptcy Code.

WHEREFORE, for all of the foregoing reasons, Landlord respectfully requests that this Court deny approval of the Debtors' Disclosure Statement.

Dated: January 14, 2004
Wilmington, Delaware

CONNOLLY BOVE LODGE & HUTZ LLP

/s/ Jeffrey C. Wisler

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