

# EXHIBIT “1”

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December 23, 2003

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VIA FAX NO. 302-573-6497

Joseph McMahan, Esquire  
Office of U.S. Trustee  
844 King Street, Suite 2207  
Wilmington, DE 19801

Re: Fleming Companies

Dear Mr. McMahan:

We represent Hershey Foods, a creditor with a reclamation claim of approximately \$12,000,000.00. The purpose of this letter is to urge the U.S. Trustee's Office to appoint an official committee of reclamation claimants to represent the interests of approximately 600 claimants with claims aggregating \$256,000,000.00. The debtor asserts that the reclamation claims are valueless. The debtor also asserts that if the claims are not valueless, they should be reduced to approximately \$50,000,000.00. On the other hand, reclamation claimants argue that they hold valuable claims that should be afforded administrative or lien status.

The request to form a new official committee is being made because reclamation claimants who assert administrative or lien rights are not, and cannot be represented by an unsecured creditors committee who owe a fiduciary duty to unsecured non-priority creditors. There appears to be a direct conflict in promoting the interests of unsecured non-priority creditors – a role the existing committee now plays – and promoting the interests of reclamation claimants who seek a higher priority in payment. The request to appoint an official committee of reclamation claimants is made by Hershey on its own behalf and also on behalf of various other

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reclamation claimants who, by copy of this letter, I would ask to express their views to your office.

At the inception of this case, the Office of the United States Trustee appointed an unsecured creditors committee comprised of members of the trade and bondholders. The bondholders dominate. While certain members of the trade have reclamation claims, they may feel constrained not to represent reclamation interests because those interests are not purely "unsecured". Instead, under § 546(c) of the Bankruptcy Code, reclamation creditors are entitled to administrative or lien status. This has prevented the existing creditors committee from representing the interests of reclamation creditors at all. In fact, the existing committee has recently taken the position that all reclamation claims are valueless.

This situation leaves 600 claimants with reclamation claims of approximately \$256,000,000.00 without any official committee representation. It is this inequity that we urge you to recognize and change.

At the commencement of this case, the debtors recognized that reclamation claimants had valuable claims which would be afforded lien or administrative status. In fact, the debtors filed motions seeking to cause reclamation claimants to prove up their individual reclamation claims; leading reclamation claimants to believe that if those claims could be proven, they would be recognized and paid. This is the only reasonable conclusion that could be drawn from the debtors' actions. Why else would reclamation claimants spend untold hours and hundreds of thousands or millions of dollars producing information for the debtors and then have the debtors spend millions more to reconcile them, if the debtors intended to simply have all claims determined to be valueless as a matter of law. Unfortunately, only recently have the debtors changed their tact, now asserting that regardless of the proof of any individual claim, all reclamation claims are valueless.

As a result of the debtors' tactics, it is in the best interests of reclamation claimants and the estates, to have an official committee of reclamation creditors appointed. The purpose of this committee would be to: (i) litigate issues common to all reclamation creditors; (ii) determine procedures for streamlining litigation; (iii) negotiate possible global settlements; (iv) negotiate plan treatment; and (v) if plan treatment were to be unacceptable, litigate same.

A committee should be appointed under 11 U.S.C. § 1102(a) "if necessary to assure adequate representation." This determination is on a case by case basis. The factors to be considered include, among others: (i) ability of existing committee to function; (ii) standing and desire of various constituencies; (iii) whether different classes may be treated differently under a plan and need representation; (iv) the ability of creditors to effectively participate in the case without a committee; (v) the movant's motivation; (vi) timeliness; (vii) the nature of the case and; (viii) the tasks that a separate committee is to perform. In re: McLean Industries, Inc., 70 B.R. 852, 860 (Bankr. S.D.N.Y. 1987); In re Enron Corp. 279 B.R. 671, 690 (Bankr. S.D.N.Y. 2002); In re Hills Stores Co., 137 B.R. 4, 7 (Bankr. S.D.N.Y. 1992). See also In re: Dow Corning, Corp., 194 B.R. 121, 142 (Bankr. E.D.Mich. 1996) reversed on other grounds, In re:

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Dow Corning, Corp., 212 B.R. 258 (E.D.Mich. 1997) (noting consideration of similar factors such as nature of the case, the interests of the various creditor groups, the composition of the committee and the ability of the committee to function properly). Courts and the United States Trustee's Office often use a bifurcated approach, under which, it is first determined whether a party is adequately represented by an existing committee. If inadequate representation exists, a second level of analysis evaluates factors such as the cost involved, the timing of the application, the potential for added complexity, and the presence of other avenues for creditor participation. See Dow Corning, 154 B.R. at 141 (discussing the bifurcated approach).

In the Fleming case, it is apparent that reclamation claimants are not represented by the existing committee and that the Office of the United States Trustee should exercise its discretion to appoint a committee consisting solely of reclamation claimants, some of whom have vendor liens and some of whom do not. A majority of the factors weigh in favor of forming a new committee.

1. Reclamation claimants are not adequately represented by any other existing committee.
2. Reclamation creditors are significant in number and amount of claims.
3. Reclamation creditors are treated different than other constituencies under the debtors' proposed plan.
4. Given the number of reclamation creditors and the small size of many of them, they need a committee to effectively represent their interests.
5. The cost of a reclamation committee will not be significant when compared to the assets and liabilities in the estate and in light of the administrative claims that have already been incurred and are likely to be incurred by other constituencies.
6. The request for the formation of a committee occurred shortly after it became apparent that such a committee was necessary.
7. The involvement of a reclamation committee would simplify the resolution of reclamation claims rather than making the resolution of those claims more complex.

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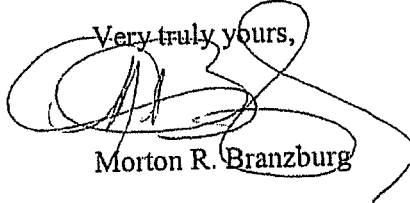
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For all the foregoing reasons, we would respectfully urge the appointment of a reclamation claimants committee. If you have any questions, we would be glad to discuss them with you. We would expect that you would hear from other reclamation claimants on this issue. Thank you in advance for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Morton R. Branzburg', written over the typed name. The signature is stylized with loops and a long horizontal stroke extending to the right.

Morton R. Branzburg

MRB/jlt  
06380-0025