

FLEMING COMPANIES: Settles CHEP Claim Dispute for \$1.5 Million

Before the Petition Date, Scotta E. McFarland, Esq., at Pachulski Stang Ziehl Young Jones & Weintraub PC in Wilmington, Delaware, relates, CHEP and Fleming Companies, Inc. signed a distribution letter agreement authorizing Fleming to receive CHEP's pallets and containers from various manufacturers as a participating distributor in the CHEP pooling system. Before and after the Petition Date, Fleming, as a participating distributor, received CHEP pallets from its vendors.

Under the Agreement, Fleming agreed to pay CHEP \$15 for any lost or unaccounted for pallets, with a reduction to \$5 a pallet to the extent that the aggregate number of lost pallets during any 12-month period did not exceed 1% of the number of pallets transferred in that 12-month period.

In August 2003, CHEP filed a request to terminate the agreement and for allowance of an administrative claim based on Fleming's asserted inability to account for 285,983 CHEP pallets during the period from the Petition Date through and including July 31, 2003. The number of lost pallets was later raised to 316,401 for the period through August 22, 2003. CHEP asserts a \$4,279,472.70 administrative claim. The Debtors dispute this claim and the request to terminate the agreement.

The Settlement

To settle the dispute, the parties entered into a settlement agreement. The primary terms of the Settlement Agreement as they affect the Debtors are:

- (1) The Debtors will pay CHEP \$1.5 million to settle the claims and matters asserted by CHEP;
- (2) Upon receipt of the payment, the request is deemed automatically withdrawn with prejudice;
- (3) Each party bears its own attorney's fees and costs; and
- (4) The parties exchange mutual releases.

Lenders Object

Deutsche Bank Trust Company Americas, in its capacity as Administrative Agent, and JPMorgan Chase Bank, in its capacity as Collateral Agent on behalf of the Debtors' secured lenders, oppose the Settlement provision providing for immediate payment to CHEP. In light of the amount and priority status of the Lenders' claims, the Agents suggest that the payment to CHEP be deferred until confirmation of a Chapter 11 Plan.

Headquartered in Lewisville, Texas, Fleming Companies, Inc. -- <http://www.fleming.com/> -- is the largest multi-tier distributor of consumer package goods in the United States. The Company filed for chapter 11 protection on April 1, 2003 (Bankr. Del. Case No. 03-10945). Richard L. Wynne, Esq., Bennett L. Spiegel, Esq., Shirley Cho, Esq., and Marjon Ghasemi, Esq., at Kirkland & Ellis,

represent the Debtors in their restructuring efforts. When the Debtors filed for protection from its creditors, they listed \$4,220,500,000 in assets and \$3,547,900,000 in liabilities. (Fleming Bankruptcy News, Issue No. 29; Bankruptcy Creditors' Service, Inc., 215/945-7000)