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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE LETTER OF REQUEST)
FROM THE UKRAINE)
IN THE MATTER OF)
FLEMING, LLC)

Misc. No. 04-

04-081-

APPLICATION FOR ORDER (28 U.S.C. 1782)

The United States of America, by the undersigned, Richard Andrews, Assistant United States Attorney for the District of Delaware, petitions this Court for an Order pursuant to Title 28, United States Code, Section 1782, in the form submitted, to facilitate the taking of testimony of witnesses residing within the jurisdiction of this Court, and other actions as requested by a letter of request issued by the Ukrainian authorities.

COLM F. CONNOLLY
United States Attorney

By: Richard G. Andrews

Richard G. Andrews
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Dated: 5-4-04

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GOVERNMENT'S MEMORANDUM OF LAW
IN SUPPORT OF APPLICATION FOR ORDER

This memorandum of law is submitted in support of the Application for an Order pursuant to Title 28, United States Code, Section 1782, in order to execute a letter of request from the Ukraine. A copy of the translation is attached.

FACTUAL BACKGROUND:

This investigation is being conducted by the Ukrainian authorities who are investigating a case of alleged money laundering.

EVIDENCE SOUGHT:

The Ukrainian authorities seek information from the Delaware Secretary of State's Office and a company that resides in this District. The authority for this Court to accede to this request is contained in Title 28, United States Code, Section 1782, which states in part:

- (a) The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory issued, or request made, by a

foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure.

The proper criteria for determining whether the court should exercise its discretion in favor of executing the request are outlined in In Re Request for Judicial Assistance from the Seoul District Criminal Court, 555 F.2d 720, 723 (9th Cir. 1977) (citation omitted):

Under the statute the only restrictions explicitly stated are that the request be made by a foreign or international tribunal, and that the testimony or material requested be for use in a proceeding in such a tribunal... [and] that the investigation in connection with which the request is made must relate to a judicial or quasi-judicial controversy.

Moreover, " (t)he judicial proceeding for which assistance is sought ... need not be pending at the time of the request for assistance; it suffices that the proceeding in the foreign tribunal and its contours be in reasonable contemplation when the request is made." In Re Letter of Request from the Crown Prosecution Services of the United Kingdom, 870 F.2d 686, 687 (D.C. Cir. 1989).

The letter of request in this case shows that the

information sought is for use in such proceedings in the Ukraine and hence the request comes well within those circumstances contemplated by Congress in expanding the Federal Courts' authority to act in such matters. In Re Letter of Request from the Crown Prosecution Service of the United Kingdom, 870 F.2d 686, 689-91 (D.C. Cir. 1989); In Re Letters Rogatory from the Tokyo District, Tokyo, Japan, 539 F.2d 1216, 1219 (9th Cir. 1976). Therefore, I ask this Court to honor the request for assistance.

The reception of letters of request and the appointment of a Commissioner to execute them are matters customarily handled ex parte, and persons with objections to the request raise those objections by moving to quash any subpoenas issued by the Commissioner. *Id.*

WHEREFORE, the United States requests that the Court issue an Order, in the form, appended hereto, appointing a Commissioner in order to execute the request for assistance.

Respectfully submitted,

COLM F. CONNOLLY
United States Attorney

BY:


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Assistant U.S. Attorney
Delaware Bar I.D. No.2199
1201 Market Street
Wilmington, DE 19801
(302) 573-6277

Dated: 5-4-04

**SOLICITATION
for legal cooperation**

"__" February, 2004

Dnipropetrovsk city

To: Administration for International Affairs under Criminal Division of Justice of United States of America

As to: solicitation for help with the investigation of the case No.36031019, instituted as based on the fact of fictitious entrepreneurship (Article 205 of the Criminal Code of Ukraine), illegal opening and use of currency accounts outside of Ukraine (Article 208 of the Criminal Code of Ukraine), legalization (money-laundering) of funds, obtained from criminal activity (Article 209 of the Criminal Code of Ukraine).

Ukraine is addressing a request for obtaining legal help from the competent authorities in the US as based on the agreement between United States of America and Ukraine on mutual assistance in criminal matters signed in Kiev on July 22, 1998.

Dnipropetrovsk Regional Investigative Force under Ministry of Internal Affairs Administration in Ukraine is investigating the criminal case No.36031019. During the pre-trial investigation it was discovered that within the period of 2000-2002 a network of fictitious enterprises, registered as residents of Ukraine, transferred over 5 million USD to the Latvian Republic in favor of an offshore **FLEMING LLC** company (USA, STATE OF DELAWARE, 701 KING STREET, SUITE 555, WILMINGTON DELAWARE 19801, registration No. 981334507 - 2938182, date of registration: August 26, 1998; registration agent: 9231320 L.O.S. INC., New Castle; address 1220 N.MARKET STREET, SUITE 606, WILMINGTON 19801, DELAWARE; phone 302-421-5754). In what follows the funds were legalized (money-laundry) through payment for goods imported to Ukraine further on.

The investigation officer is in deed of the following information:

Relevant documents of registering the **FLEMING LLC**. Company (USA), the data on its economic activity, reports on tax payment on the US territory and activity in Ukraine, in order to find out whether the above enterprise is indeed a fictitious one or being used for money laundry without its owners' knowledge. The investigator also needs to organize interrogation of the L.O.S. Company representatives as for the circumstances of the **FLEMING LLC**. Company registration in 1998, as well as of the persons, requesting the above registration, and executive directors of the **FLEMING LLC**. Company.

Taking into account the fact that the pre-trial investigation of the case shall have been completed in four months, the Investigative Force of Ukraine is requesting urgent help with this inquiry.

The above Force assures competent authorities of United States that all the information obtained during the inquiry fulfillment shall be used solely for the purpose of investigating the aforesaid criminal case and its assize.

FACTS OF THE CASE:

Within the period of 2000-2002 citizens of Ukraine N.F. Dolinina, V.A. Kolygin, V.A. Gudramovych, S.V. Gotvyansky, I.M. Maltsev, L.O. Kulibanyeh, G.M. Opryshko, as based on a previous concert with the other members of the criminal group, established a number of fictitious commercial enterprises on the territory of Ukraine with the purpose of carrying out financial operations with the funds, obtained from criminal activity. Throughout the 2000-2002 illegal money-laundry financial operations were performed with the above fictitious structures' accounts with the funds, obtained from criminal activity.

Rest of the funds entering the fictitious enterprises accounts were converted into US dollars and transferred to offshore companies, as based on faked external economic contracts, including the FLEMING LLC company (USA, STATE OF DELAWARE, 701 KING STREET, SUITE 555, WILMINGTON DELAWARE 19801, registration No. 981334507 - 2938182, date of registration: August 26, 1998; registration agent: 9231320 I.O.S. INC., New Castle; address 1220 N.MARKET STREET, SUITE 606, WILMINGTON 19801, DELAWARE; phone 302-421-5754). In what follows the funds were legalized (money-laundry) through payment for goods imported to Ukraine further on.

Thus in 2000-2003 household chemical goods, produced by the Hayat Kimya Sanayi S.A. Turkish concern, were imported to Ukraine in accordance with the contract No.31/FU concluded between Ukrpromexport association and the FLEMING LLC Company. The above goods were imported under the terms of processing Ukrainian raw material on commission with further import of the ready to market products. It was also discovered that the contract No.31/FU was signed by Mr. Ricardo J. Perez on behalf of the FLEMING LLC. Company. According to the aforesaid contract a ton of the ready to market product cost USD50. At the same time the investigators carried out procedural activity on the territory of Latvia and discovered that the FLEMING LLC. Company account [REDACTED] with PAREX BANK had been opened by Aleksandr Rastegaev and Vladislav Streletskiy, who provided the bank with faked documents assigning them as the account holders with the authority of managing the funds, which enabled the above citizens to operate the FLEMING LLC. Company account. In this manner payment for the goods was made from the FLEMING LLC. Company account [REDACTED] with PAREX BANK in the amount of USD500 per ton, that is the remaining USD450 had previously been transferred from fictitious enterprises as based on faked contracts and then went to the Hayat Kimya Sanayi S.A concern., together with the funds, transferred by Ukrpromexport. Afterwards, the goods actually worth USD500per ton were declared at the customs as of USD50 per ton, which gave the criminals the opportunity of money-laundering of the funds, obtained from illegal activity.

LEGISLATURE:

Article 205. Fictitious enterprise.

1. Fictitious enterprise, i.e. creation or acquisition of subjects of business activity (juridical persons) with the purpose of concealment of illegal activity or providing prohibited activity, - shall be punishable by a fine from 300 up to 500 tax-free minimum incomes, or restraint of liberty for a term up to three years.

2. The same acts, if repeated, or caused a big financial damage to the state, or a bank, or credit establishments, or other juridical persons or citizens, - shall be punishable with imprisonment for a term from three to five years.

Article 208. Illegal opening of bank accounts outside Ukraine

1. Illegal opening or using currency accounts of physical persons with violation of the order envisaged by law, committed by a citizen of Ukraine, residing on its territory, and accounts of juridical persons, acting within the territory of Ukraine, committed by an official of the enterprise, institution or organization or on behalf of another person, as well as commitment of the above acts by a person, carrying out business activity without acquiring the status of juridical person, -

shall be punishable by a fine from 500 up to 1000 tax-free minimum incomes or by correctional labor for the term up to two years, or by deprivation of liberty within two to four years, with confiscation of currency values from the aforesaid accounts.

2. The same acts, if repeated, or committed by prior arrangement with cluster of persons, - shall be punishable with imprisonment for a term from three to five years with disfranchisement to hold definite offices or conduct a definite activity and with confiscation of currency values from the aforesaid accounts.

Article 209. Income's legalization (laundering), obtained by criminal way

1. Fulfillment of financial operation or completing an agreement with means or other properties, obtained as a result of fulfillment of unlawful act, preceding the legalization, and also fulfillment of acts, directed to receiving or disguising of illegal origin of such means or other properties or being their owner, the right to means or properties, the sources of their origin, location, transference and finding, possession or utilization of means or other properties, obtained as a result of fulfillment of unlawful act, which preceded to income's legalization (laundering),-

are deprived of freedom within three to six years with disfranchisement to hold definite offices or occupy a definite activity within two years with confiscation of means or other properties, obtained by criminal way, and with confiscation of properties.

2. The acts, provided by first part of the article, committed repeatedly or by prior arrangement with cluster of persons, or at big rate,-

are deprived of freedom within seven to twelve years with disfranchisement to hold a definite offices or conduct a definite activity within three years with confiscation of means or other properties, obtained by criminal way, and with confiscation of properties.

3. The acts, provided by first part of the article, committed by organized group or at big rate,-

are deprived of freedom within eight to fifteen years with disfranchisement to hold a definite offices or occupy a definite activity within three years with confiscation of means or other properties, obtained by criminal way, and with confiscation of properties.

PERTAINING PHYSICAL PERSONS:

1. Aleksandr Mikhailovich Rastegaev

Date of birth: [REDACTED]

Place of birth: Kryvy Rig, Ukraine

Nationality: Ukrainian

Sex: Male

Height: 175 cm.

Weight: 75 kg.

Eye color: hazel

Hair color: black

Passport No.: (Ukraine) [REDACTED]

Address: 15/2 Kosmichna St., apt.56, Dnipropetrovsk, Ukraine

2. Vladislav Anatoliyevich Streletskiy
Date of birth: [REDACTED]
Place of birth: Dnipropetrovsk, Ukraine
Nationality: Ukrainian
Sex: Male
Height: 180 cm.
Weight: 85 kg.
Eye color: blue
Hair color: light brown
Passport No.: (Ukraine) [REDACTED]
Address: 21 Shelgunova St., apt.86, Dnipropetrovsk, Ukraine

PERTAINING PHYSICAL PERSONS:

3. FLEMING LLC, USA, STATE OF DELAWARE, 701 KING STREET, SUITE 555, WILMINGTON DELAWARE 19801, registration No. 981334507 - 2938182, date of registration: August 26, 1998; registration agent: 9231320 I.O.S. INC., New Castle; address 1220 N.MARKET STREET, SUITE 606, WILMINGTON 19801, DELAWARE; phone 302-421-5754.

HELP REQUIRED:

Investigation officer suspects that the citizens of Ukraine Aleksandr Rastegaev and Vladislav Streletskiy, produced faked documents to the PAREX BANK JSC, assigning them the authority to hold and manage the funds of the account, which enabled the above citizens to conduct operations involving the account of the company at the above bank. The investigators also suppose that

Mr. Ricardo J. Perez, Director of the FLEMING LLC. Company has never appointed Aleksandr Rastegaev and Vladislav Streletskiy directors of the FLEMING LLC. Company, that neither has he signed the Contract No. 31/FU as of July 12, 2000 between the Ukpromexport Association, nor has he anything to do with importing the Hayat Kimya Sanayi S.A. Concern (Turkey) goods to Ukraine.

ACTION AND DOCUMENTS REQUIRED:

- We are asking you to provide sealed copies of the statutory documents of FLEMING LLC, USA, STATE OF DELAWARE, 701 KING STREET, SUITE 555, WILMINGTON DELAWARE 19801, registration No. 981334507 - 2938182, date of registration: August 26, 1998; registration agent: 9231320 I.O.S. INC., New Castle; address 1220 N.MARKET STREET, SUITE 606, WILMINGTON 19801, DELAWARE; phone 302-421-5754;
- To identify the persons, actually being the officials, responsible for the activity of FLEMING LLC. in 2001-2003.
- To recover personal data and place of residence of citizens Ricardo J. Perez and William Johnston, who initiated the registration of FLEMING LLC.
- To check, whether FLEMING LLC. is a tax payer on the territory of US or of any other state. If the FLEMING LLC. Company is a registered tax payer and a resident of US, determine the last time it has submitted financial and economic activity reports and paid franchise tax. Check, whether FLEMING LLC. submits reports on its activity on the territory of Ukraine.

TESTIMONIES REQUIRED:

1. Define and interrogate as witnesses the representatives of I.O.S. INC., New Castle; address 1220 N.MARKET STREET, SUITE 606, WILMINGTON 19801, DELAWARE; phone 302-421-5754 as for circumstances of registration of FLEMING LLC. in 1998 and the persons having initiated the registration as with the following questions:

- Who and when petitioned for the registration of FLEMING LLC.?
- What documents, identifying the persons, were submitted?
- What is known as the purpose of FLEMING LLC. registration?
- Who was given the originals of statutory documents and seal of FLEMING LLC.?
- What was the amount of finance or property (proprietary right) invested by the founders of FLEMING LLC. to its statutory fund?

2. Define and interrogate as witnesses Mr. Ricardo J. Perez, the director of FLEMING LLC., and acting on behalf of WorldFund Inc., Suite 302, East Building No.34/20, Cuba Avenue & No.34th St. Panam City 5, Panama, when registering FLEMING LLC., and Mr. William Johnston, representing interests of Euro-Amex Exchange Inc. Company, Suite 302, East Building No.34/20, Cuba Avenue & No.34th St. Panam City 5, Panama as with the following questions:

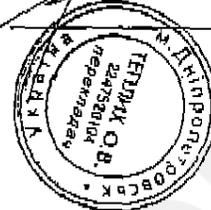
- Who petitioned for (requested) the registration of FLEMING LLC.?
- Who was given the seal and original statutory documents of FLEMING LLC.?
- Do Mr. Ricardo J. Perez and Mr. William Johnston know the citizens of Ukraine Aleksandr Rastegaev and Vladislav Streletskiy? If yes, how, when and where did they get to meet? What do the above citizens have to do with the activity of FLEMING LLC.?
- Did Mr. Ricardo J. Perez and Mr. William Johnston appoint the citizens of Ukraine Aleksandr Rastegaev and Vladislav Streletskiy executive directors of FLEMING LLC.? Did Mr. Ricardo J. Perez assign Aleksandr Rastegaev and Vladislav Streletskiy the right to open accounts of FLEMING LLC. with foreign banks, manage the accounts and enter into agreements, including external economic ones, and conduct business activity on behalf of the company?
- Are Mr. Ricardo J. Perez and Mr. William Johnston aware of the fact of Aleksandr Rastegaev opening an account of FLEMING LLC. Acc # [REDACTED] with PAREX BANK, beneficiary bank: PAREX BANK, RIGA, [REDACTED] Intermediary bank: Bankers Trust Company, NY, USA, SWIFT Code: [REDACTED]
- Did Mr. Ricardo J. Perez sign the agreement No.31/FU as of July 12, 2000 between Ukrpromexport Association, 56 Radgospna St., Yuvileyne urban village, Dnipropetrovsk, Ukraine and the FLEMING LLC. Company? Do the signatures in the contract belong to him?
- Did Mr. Ricardo J. Perez enter into the agreement with Hayat Sanayi S.A., Turkey, as the director of FLEMING LLC., as for importing household chemical goods to Ukraine?
- Does Mr. Ricardo J Perez have anything to do as the director of FLEMING LLC. as with the following actions:
 - purchasing technical sodium or sodium carbonate (Na₂CO₃) from the Ukrpromexport Assosiation (Ukraine);
 - supplying raw material on commission to the territory of Turkey in the form of sodium carbonate (Na₂CO₃), produced in Ukraine;

Я, приватний підприємець, перекладач Теплих Ольга Володимирівна, свідчу про те, що цей переклад з української на англійську мову виконано вірно та точно, в цьому перекладі немає ніяких змін, виправлень або доповнень щодо інформації, яка міститься в оригіналах документів.

Приватний підприємець перекладач Теплих О.В.

Телефон/ факс: (0562) 32-77-00, (056) 370-45-97
Україна, м. Дніпропетровськ

Дата: 18 лютого 2004 р.

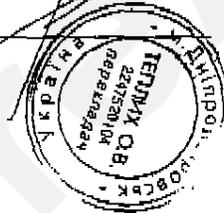


I, Teplykh Olga Volodymyrivna, the Translator, do hereby confirm that the documents annexed are translated from Ukrainian into English accurately and to the best of my knowledge and that this translation contains no changes, corrections or additions to the information included into the original documents.

Olga V. Teplykh, the Translator

Tel./Fax: +38 056 370 45 97
7 Moskovska St., Dnipropetrovsk

Dated: February 18, 2004



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE LETTER OF REQUEST)
FROM THE UKRAINE)
IN THE MATTER OF) Misc No. 04-
FLEMING, LLC)

04-081-

ORDER

Upon application of the United States of America; and upon examination of a letter of request from the Ukraine whose authorities are seeking certain testimony and information from individuals which may be found in this District, for use in a judicial proceeding in the Ukraine and the Court being fully informed in the premises, it is hereby

ORDERED, pursuant to Title 28, United States Code, Section 1782, that Richard G. Andrews, Assistant United States Attorney, hereby is appointed as Commissioner of this Court and is hereby directed to execute the letter of request from the Ukraine authorities as follows:

1. to take such steps as are necessary, including issuance of commissioner's subpoenas to be served on persons within the jurisdiction of this Court, to collect the evidence requested;
2. provide notice with respect to the collection of evidence to those persons identified in the requests as parties to whom notice should be given (and no notice to any other party shall

be required);

3. adopt procedures to collect the evidence requested consistent with its use as evidence in a proceeding before a Court in the Ukraine, which procedures may be specified in the request or provided by the Ukrainian authorities;

4. seek such further orders of this Court as may be necessary to execute this request; and

5. certify and submit the evidence collected to the Office of International Affairs, Criminal Division, United States Department of Justice, or as otherwise directed by that office for transmission to the Ukrainian authorities.

IT IS FURTHER ORDERED that, in collecting the evidence requested, the Commissioner may be accompanied by persons whose presence or participation is authorized by the Commissioner.

Dated: This _____ day of _____, 2004.

United States District Court Judge