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FLEMING COMPANIES INC /OK/
Form 11-K
July 08, 2005

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 11-K

ANNUAL REPORT PURSUANT TO SECTION 15(d) of the
SECURITIES EXCHANGE ACT OF 1934

(Mark One)

Annual report pursuant to Section 15(d) of the Securities Exchange Act of
1934

For the fiscal year ended December 24, 2004

Or

Transition report pursuant to Section 15(d) of the Securities Exchange Act
of 1934

For the transition period from _____ to _____

Commission file number 001-08140

A. Full title of the plan and the address of the plan, if different from that of
the issuer named below:

THE FLEMING 401(k) PLAN
5801 North Broadway, Suite 100
Oklahoma City, Oklahoma 73118

B. Name of issuer of the securities held pursuant to the plan and the address of
its principal executive office:

FLEMING COMPANIES, INC.
5801 North Broadway, Suite 100
Oklahoma City, Oklahoma 73118

The Fleming 401(k) Plan (in liquidation)

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Report of Independent Registered Public Accounting Firm

Plan Sponsor and Trustee
The Fleming 401(k) Plan

We have audited the accompanying statements of net assets available for benefits of The Fleming 401(k) Plan as of December 24, 2004 and December 26, 2003, and the related statement of changes in net assets available for benefits for the year ended December 24, 2004. These financial statements are the responsibility of the Plan's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Plan is not required to have, nor were we engaged to perform an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Plan's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note A to the financial statements, the Board of Directors of Fleming Companies, Inc., the Plan's sponsor, adopted resolutions on October 15, 2003 to terminate the Plan. In accordance with accounting principles generally accepted in the United States of America, the Plan has changed its basis of accounting from the ongoing plan basis to the liquidation basis; however, such change had no effect on the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the net assets available for benefits of The Fleming 401(k) Plan as of December 24, 2004 and December 26, 2003, and the changes in net assets available for benefits for the year ended December 24, 2004 in conformity with accounting principles generally accepted in the United States of America.

Our audits were performed for the purpose of forming an opinion on the basic financial statements taken as a whole. The supplemental schedule of assets held for investment purposes is presented for the purpose of additional analysis and is not a required part of the basic financial statements but is supplemental information required by the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974. This supplemental schedule is the responsibility of the Plan's management. Such supplemental schedule has been subjected to the auditing procedures applied in the audits of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

GRANT THORNTON LLP

Oklahoma City, Oklahoma
June 30, 2005

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The Fleming 401(k) Plan (in liquidation)

STATEMENTS OF NET ASSETS AVAILABLE FOR BENEFITS

| | December 24, 2004 | December 26, 2003 |
|---------------------------------------|----------------------|----------------------|
| | ----- | ----- |
| ASSETS | | |
| Investments | \$ 386,640 | \$204,753,498 |
| Receivables | | |
| Participant contributions | - | 926 |
| Accrued interest, dividends and other | - | 5 |
| | ----- | ----- |
| | | 931 |
| Cash | - | 1,828 |
| | ----- | ----- |
| Total assets | 386,640 | 204,756,257 |
| LIABILITIES | | |
| Excess contribution payable | - | 239,292 |
| | ----- | ----- |
| NET ASSETS AVAILABLE FOR BENEFITS | \$ 386,640 | \$204,516,965 |
| | ===== | ===== |

The accompanying notes are an integral part of this statement.

The Fleming 401(k) Plan (in liquidation)

STATEMENT OF CHANGES IN NET ASSETS AVAILABLE FOR BENEFITS

Year ended December 24, 2004

| | | |
|---|----|---------------|
| Additions | | |
| Participant contributions | \$ | 44,598 |
| Interest and dividend income | | 302,234 |
| Net appreciation in fair value of investments | | 2,461,666 |
| | | ----- |
| | | 2,808,498 |
| | | ----- |
| Deductions | | |
| Benefits paid to participants | | 162,181,403 |
| Administrative fees | | 46,861 |
| | | ----- |
| | | 162,228,264 |
| | | ----- |
| Net decrease before transfers | | (159,419,766) |
| Net transfers to other plans | | 44,710,559 |
| | | ----- |

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| | | |
|--|--------------|---------------|
| | NET DECREASE | (204,130,325) |
| Net assets available for benefits at beginning of year | | 204,516,965 |
| | | ----- |
| Net assets available for benefits at end of year | \$ | 386,640 |
| | | ===== |

The accompanying notes are an integral part of this statement.

The Fleming 401(k) Plan (in liquidation)

NOTES TO FINANCIAL STATEMENTS

December 24, 2004 and December 26, 2003

NOTE A - DESCRIPTION OF PLAN

On October 15, 2003, the Board of Directors of the Plan Sponsor (Fleming Companies, Inc.) adopted resolutions to terminate The Fleming 401(k) Plan (the "Plan") effective January 31, 2004 and, as a result, all participants became fully vested in their benefits under the Plan as of January 31, 2004. In October 2003, participants were notified of the Plan's termination.

The following description of the Plan provides only general information. Participants should refer to the Plan document for a more complete description of the Plan's provisions.

The Plan, established in 1980, and amended and restated at various times, is a defined contribution plan subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The Plan was designed to provide retirement benefits to eligible employees of Fleming Companies, Inc. and its subsidiaries (the "Company").

The Plan provides for the appointment of a committee responsible for Plan administration. Historically, that committee was the Retirement Committee of Fleming Companies, Inc. However, as a result of the bankruptcy reorganization efforts and management departures, the Retirement Committee has not met since December 18, 2002. Subsequent to the bankruptcy filing, all Plan amendments were approved by the Finance Committee of the Board of Directors. See Note H.

In January 2004, assets totaling approximately \$44.7 million, relating to the employees of the convenience distribution business, were transferred into a separate 401(k) plan established for the benefits of employees of the convenience distribution business. As contemplated by and required under the Plan of Reorganization, described in Note H, the convenience distribution business became part of the Reorganized Debtor, defined in the Plan of Reorganization, which continues as an ongoing business.

Partial Plan terminations occurred during 2003 due to the Company's bankruptcy restructuring in 2003. Participants who were affected by the partial Plan terminations became fully vested in Company contributions in their account.

Prior to January 31, 2004, employees were eligible to participate in the

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Plan after achieving three months of service and attaining 21 years of age, or participation in a prior plan. Through January 31, 2004, participants could have made deferrals of compensation contributions in accordance with the provisions of Internal Revenue Code (the "Code") section 401(k) of at least 1%, but not more than 25%, of the participant's compensation, subject to certain limitations. Participant deferral accounts are 100% vested. No contributions were made by the Company for the 2004 Plan year. Prior to the termination of the Plan, a participant was 100% vested in the Company's contribution after three years of credited service.

Due to the Company's bankruptcy reorganization, for 2004 and 2003 the Company eliminated its obligation to make Company matching and other annual contributions.

Until all assets are distributed from the Plan, separate accounts will be maintained for each remaining participant. Accounts are classified as follows:

- o Accounts attributable to Company contributions and related investment earnings.
- o Accounts attributable to contributions by participants under section 401(k) of the Code and related investment earnings.
- o Accounts attributable to contributions by participants on an after-tax basis and related investment earnings.

Prior to January 31, 2004, participants or beneficiaries, with certain limitations, could have borrowed from their vested accounts a minimum of \$500 up to a maximum of \$50,000 or 50% of their vested account balance, whichever is less. Each loan was collateralized by the balance in the borrower/participant's accounts and accrued interest at rates that, at December 24, 2004, were 5.75% and 6.5%, and at December 26, 2003, ranged from 5.0% to 11.5%. Loans mature at various dates; however, all loans become due and payable upon distribution of the borrower/participant's accounts.

Benefits of the Plan are payable upon reaching normal retirement, early retirement or termination of employment, or in the event of death or disability. Lump-sum distributions are the only distribution option available.

Historically, upon termination of a participant's employment with the Company, the nonvested portion of the Company contribution was forfeited. Forfeitures were used first to pay Plan expenses and then to reduce future Company contributions. At December 24, 2004, the forfeiture account balance totaled approximately \$39,000 which will be used to pay Plan expenses with any remaining balance paid to participants actively employed during 2004.

Until an account is distributed, participants may direct the investments of their accounts into various investment funds. Participants should refer to the information provided by Fidelity Management Trust Company for a complete description of the investment options.

NOTE B - SUMMARY OF ACCOUNTING POLICIES

A summary of the Plan's significant accounting policies consistently applied in the preparation of the accompanying financial statements follows.

1. Plan Year End

The Plan's fiscal year ends on the Friday before the last Saturday in

December.

2. Basis of Accounting

The financial statements have been prepared using the accrual method of accounting. As discussed in Note A, during 2003, the Plan was terminated and currently is in the process of liquidating. In accordance with accounting principles generally accepted in the United States of America, the Plan has changed its basis of accounting from the ongoing plan basis to the liquidation basis. Because plan assets and liabilities are very liquid and short-term in nature and were carried at fair values, changing to the liquidation basis had no effect on the realizability or carrying amounts of the assets and liabilities and had no effect on the financial statements.

3. Investments

Mutual funds are stated at net asset value as determined based on the closing market prices of the underlying investments held. Investments in shares of collective trust funds are valued at their estimated fair values, as determined in good faith by the trustee. Corporate common stocks are valued based upon quoted market prices. Participant loans are valued at cost which approximates fair value.

Purchases and sales of securities are recorded on a trade date basis. Interest income is recorded on the accrual basis. Dividends are recorded on the ex-dividend date.

Investment securities, in general, are exposed to various risks, such as interest rate, credit and overall market volatility. Due to the level of risk associated with certain investment securities, it is reasonably possible that changes in the values of investment securities will occur in the near term and that such changes could materially affect the amounts reported in the statements of net assets available for benefits.

4. Cash

The Plan maintains its cash in accounts which may not be federally insured. The Plan has not experienced any losses in such accounts and believes it is not exposed to any significant credit risks on cash.

5. Administrative Fees

Certain expenses incurred in connection with the general administration of the Plan are paid by the Plan and are recorded as administrative fees.

6. Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures; accordingly, actual results could differ from those estimates.

NOTE C - INVESTMENTS

The Plan's investments are held by Fidelity Management Trust Company ("Fidelity"). The following is a schedule of investments by type at:

| | |
|-------------------|-------------------|
| December 24, 2004 | December 26, 2003 |
| ----- | ----- |

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| | | |
|--|------------|---------------|
| Mutual funds | \$ 357,640 | \$178,335,200 |
| Collective trust funds | 1,896 | 21,908,659 |
| Corporate common stock - Fleming Companies, Inc. | - | 477 |
| Participant loans | 27,104 | 4,509,162 |
| | ----- | ----- |
| | \$ 386,640 | \$204,753,498 |
| | ===== | ===== |

The following table presents the fair value of investments that represent 5% or more of the Plan's net assets available for benefits at:

| | December 24, 2004 | | |
|-----------------------------------|---------------------|---------------|---------------------|
| | Number of shares | Fair value | Number of shares |
| | ----- | ----- | ----- |
| Fidelity Contrafund | 1,027 | \$58,260 | 260,8 |
| Fidelity Equity Income Fund | 721 | 38,034 | 290,5 |
| Fidelity Magellan Fund | 448 | 46,473 | 434,1 |
| Fidelity Managed Income Portfolio | | | |