

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

2011-05-25 11:21
11/11/11

In re:

FURR'S SUPERMARKETS, INC.
a Delaware corporation,

Case No. 7-01-10779 SA
Chapter 7

Debtor.

**HELLER FINANCIAL, INC.'S MOTION TO COMPEL TAX AND REVENUE
DEPARTMENT TO ANSWER INTERROGATORIES AND PRODUCE DOCUMENTS**

COMES NOW Heller Financial, as agent for Fleet Capital Corp., Bank of America N.A. and Heller Financial, Inc. ("Heller") and moves to compel Taxation and Revenue Department ("TRD") to fully and completely answer Heller Financial, Inc.'s First Set of Interrogatories and Request for Production to New Mexico Taxation and Revenue Department and to produce the documents requested therein.

New Mexico Taxation and Revenue Department's Amended Responses to Heller's Discovery are attached hereto as Exhibit A. Because TRD failed to comply with Local Rule 7026-1.b. by failing to "fully quote each interrogatory or request before any answer, response or objection," attached hereto as Exhibit B are Heller Financial, Inc.'s First Set of Interrogatories and Request for Production to New Mexico Taxation and Revenue Department. Heller apologizes to the Court for the inconvenience resulting from the TRD's failure to follow the proper form. However, this Motion is limited to the substantive problems with the responses.

Heller requests the Court order TRD to correct the following deficiencies in the Discovery Responses:

1. TRD's purported answer to Interrogatory No. 5 (first) regarding the facts supporting its allegation that the lenders have significantly benefited from the case states that it is "based on a

1723

common sense appraisal of the facts of the case" as well as certain unidentified statements. The Interrogatory called for an identification of whatever those facts might be to which it applied its "common sense appraisal." TRD should be ordered to specifically identify those facts as requested.

2. Interrogatory No. 5 (second) requests the identity of the person who made the decision to oppose the Wind Down Motion. TRD is seeking to have the claims of Heller equitably subordinated as a result of the alleged stoppage of Heller of tax payments (after the Fleming sale). TRD is also seeking pursuant to § 552 (b) to have the secured claim of Heller eliminated on certain amounts of collateral based on the "equities" of the case. TRD's claims raise the conduct of all the parties as an essential issue. In particular, the reasons TRD chose to oppose a motion supported by the Lenders that would have paid the taxes in question raises serious questions. Heller is entitled to explore those issues in discovery. In order to do so, it must know who made those decisions of TRD so it may depose that person if it chooses to do so. There are many questions other than asking for attorney client privileged communications. Heller is entitled to explore the reasons for such opposition.

3. Secondly, Interrogatory No. 5 (second) requests disclosure of communications between the TRD or its representatives and other parties to the case. For the same reasons, Heller is entitled to explore the reasons for the opposition to the settlement now proposed. Heller requests that these communications be disclosed and, if in written or electronic form, produced.

4. With regard to Request for Production No. 3, TRD alleges it does not understand what the "proposed settlement agreement" could possibly refer to. Last week Heller clarified any possible confusion regarding the words "proposed settlement agreement." Of course it means the settlement which is the subject of the trial which is set for a two weeks from now. A copy of that

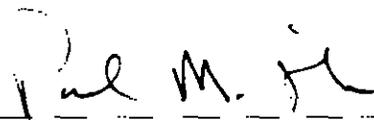
email is attached hereto as Exhibit C. Heller requests the documents be produced.

5. Request for Production No. 5 seeks production of the documents relied upon by the witnesses of TRD. Although Heller may well have all documents at issue (and it does not have the tax reports, for example), the point is that Heller wants the specific documents the witness relied upon as the basis for his/her testimony. This request is particularly important for expert witnesses. It does not matter whether the documents are currently in Heller's possession. Heller is entitled to know what the witnesses are relying upon.

6. Lastly, Heller has requested a date by which those documents TRD will produce will be actually be produced. Except for production of one document and some "assessment screens," TRD has never responded when it will produce that which it will produce.

Heller seeks to have proper information provided and the documents requested as soon as possible. Trial is in literally a few days. TRD is seeking millions of dollars and to derail an important settlement. TRD should comply with its obligations as a litigant.

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By:  _____

Paul M. Fish
Attorneys for Heller Financial, Inc., and as
Agent for Bank of America, N.A. and Fleet
Capital Corporation
Post Office Box 2168
Bank of America Centre, Suite 1000
500 Fourth Street NW
Albuquerque, New Mexico 87103-2168
Telephone: (505)848-1800

And

David S. Heller
Latham & Watkins
Sears Tower, Suite 5800
Chicago, Illinois 60606
Telephone: (312)876-7700

WE HEREBY CERTIFY that a true
and correct copy of the fore-
going pleading was faxed to
the following this 26th day of June, 2002:

Robert Jacobvitz
500 Marquette NW, Suite 650
Albuquerque, NM 87102

Ronald J. Silverman
Bingham Dana LLP
399 Park Avenue
New York, NY 10022-4689

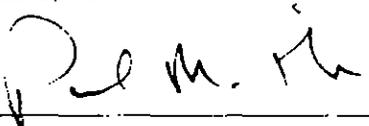
Jennie Behles
P.O. Box 849
Albuquerque, NM 87103

Donald F. Harris
NM Taxation & Revenue Dept.
P.O. Box 8485
Albuquerque, NM 87198-8485

Ron Andazola
P.O. Box 608
Albuquerque, NM 87103

Bill Davis
P.O. Box 6
Albuquerque, NM 87103

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: 
Paul M. Fish

W0238897.doc

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

Furr's Supermarkets, Inc.

Case No: 11-01-10779 SA

New Mexico Taxation and Revenue Department's
Amended Responses to Heller's Discovery

Now Comes the New Mexico Taxation and Revenue Department ("Department") responding to Heller's Interrogatories and Request for Production of Documents, states:

Restated Timely Objection made via e-mail on June 6, 2002:

The Department objects to all definitions and instructions. The definitions of whatever terms used should be those used by the English language, the relevant court rules and relevant court rulings. The same principle applies to instructions.

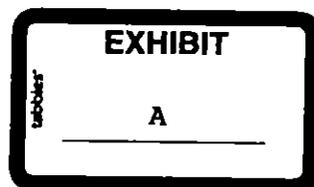
The Department partially objects to interrogatory 2 and 4 with regard to identification of witnesses or the documents relied upon or produced by those witnesses. The Department is under no duty to identify witnesses yet. However, the Department will cooperate and provide what information it has and will supplement its answers. The Department will provide full disclosure of witnesses in accordance with any future order of the court.

The Department objects to interrogatory number 5 (second) as pertaining to attorney/client discussions and pertaining to settlement discussions. Moreover, the answers to that interrogatory could not possibly lead to admissible evidence.

The Department objects to request for production ("RFP") numbers 1 and 2 insofar as answering those RFPs in good faith could be construed as precluding the Department from introducing other documents that are not initially produced in response to RFPs numbers 1 and 2. The Department is not required to produce its exhibits at this time. The Department will produce what documentation it currently seeks to introduce, and will supplement.

The Department objects to RFP number 3 in part because it does not understand the reference to "the proposed settlement agreement." Moreover, by asking for such information, the objectionable nature of the information (relating to inadmissible settlement discussions) is apparent. Finally, any discussions between counsel and other members of the Department are privileged.

The Department objects to RFP number 4 as being overbroad (in terms of time frame and scope) and not leading to admissible evidence. The Department concedes that there are benefits (e.g. taxing federal contractors) and burdens (e.g. more collection problems)



inherent in a non-trust-fund sales tax and any evidence that merely amplifies that point is repetitive, duplicative and therefore inadmissible. Nevertheless, the Department will make an attempt to provide whatever studies (if any) are in its possession and the existence of which is within the institutional memory of current employees of the Department.

In addition, the Department suggests that Heller might consider contacting the Legislative Finance Committee as well as organizations in Washington, D.C. who might have done such studies, including the Mutistate Tax Commission and the Federation of Tax Administrators.

Response to Interrogatory Numbers 1 and 2, Identity of Witnesses:

The Department may call:

Sonya Varela
New Mexico Taxation and Revenue Department
Bankruptcy Case Manager
PO Box 22690
Santa Fe, NM 87502
Phone 505-827-0730 (direct line)

Ms. Varela may testify about the amount of tax liability owing the department based on the Department's data base and the periods and types of taxes. Ms. Varela has not prepared any documents for her testimony, but any document she prepares will be provided to Heller. Ms. Varela, if she testifies, will be as a fact witness.

The Department contemplates that Ms. Varela will use information in the Department's data base regarding the nature and amount of taxes owed. Any summary of such information (which has not been created yet), and the backup thereto, will be provided in due course.

Allen Maury, Phd.
New Mexico Taxation and Revenue Department
Economist, Tax Research and Policy
PO Box 630
Albuquerque, NM 87505
Phone 827-0700 (switchboard)

Mr. Maury may testify about the economic effect on the state of New Mexico regarding the loss of tax revenue occasioned by the Furr's bankruptcy case as compared to a hypothetical situation if Furr's had closed on the Petition date. If he testifies, it will be as an expert witness. Mr. Maury is not expected to produce a report.

It is not known what documents, if any, Mr. Maury will use. The Department assumes that he may refer to Economics textbooks.

John Emery
Emery Company, Inc.
6401 Pepperdine, NE
Albuquerque, NM 87111
Phone: 401-2333 (cell)

Mr. Emery is an expert in managing and selling distressed companies and was hired by the Department on June 19, 2002 to begin doing a financial analysis of the comparison between the benefits of the bankruptcy case for the secured creditors versus the possible results if the case were not filed. The exact scope and opinion of Mr. Emery is not yet known, as Mr. Emery is in the process of collecting his data. Mr. Emery is expected to contact an entity or entities that liquidate grocery stores and is expected to incorporate that information in Mr. Emery's report. Any third party who is relied upon by Mr. Emery will be disclosed to Heller.

If Mr. Emery testifies, it will be as an expert.

The documents that Mr. Emery will use are or will be in Heller's possession, including documents that have been filed in the bankruptcy case and documents that were used in depositions. Mr. Emery may also rely on deposition testimony and any court testimony or exhibits.

Answer to Interrogatory Number 3, persons participating in answers.

Donald F. Harris
New Mexico Taxation and Revenue Department
Attorney
PO Box 8485
Albuquerque, NM 87198
505-841-6583

Mr. Harris also communicated with other attorneys in the Department and management personnel, but those communications are privileged and, insofar as most of the interrogatories relate to trial preparation rather than supplying discrete facts within the unique domain of the Department, the identity of the other individuals is irrelevant and would not help Heller in preparing for the trial.

Answer to Interrogatory Number 4, Testimony relating to Paragraph Number 18 of the Motion to Clarify:

Allen Maury

Answer to Interrogatory Number 5 (first): Basis for statement that lenders benefited, including documents.

The Department's determination that the Lenders benefited from the bankruptcy case is based on a common sense appraisal of the facts of the case, as well as statements in open court on the record of Mr. Silverman and Judge Starzynski. The actual financial analysis which will support that belief is in the process of being produced as stated herein.

Answer to Interrogatory Number 5 (second), information relating to Department's opposition to wind-down budget:

See objection above.

Responses to Requests for Production ("RFP") numbers 1 and 2, exhibits and documents relied upon by witnesses:

The Department does not know what its exhibits will be yet. Inasmuch as the witnesses' testimony has not been prepared, the Department cannot inform Heller of the documents upon which the witnesses relied. All exhibits, other than its expert's report(s), are contemplated at this point to be documents that are either in Heller's possession, filed in the bankruptcy court or unobjectionable data base screens relating to Furr's taxes.

Response to RFP number 3, documents relating to "proposed settlement agreement."

See objection above.

Response to RFP number 4, studies relating to benefits of trust fund tax.

See objection above. The Department is aware of no such study. An historical analysis of the New Mexico gross receipts tax prepared by the Department has been provided to Heller.

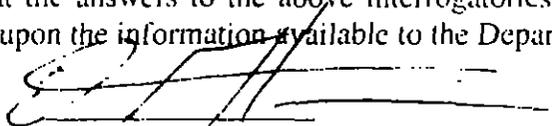
Response to RFP number 5, other documents identified in Interrogatories.

The Department has not specifically identified any document that is not in Heller's possession. If Heller wants copies of the Department's data base screens regarding Furr's tax obligations, those documents will be readily provided upon request. The Department does not understand that is what Heller is asking for at this point. Ms. Varela will provide a summary of the post-petition tax obligation, and provide that (along with all backup documentation) in due course.

Respectfully submitted,

Donald F. Harris
Special Assistant Attorney General
New Mexico Taxation and Revenue Department
PO BOX 8485
Albuquerque, NM 87108
505-841-6583
e-mail dharris@state.nm.us

I swear that the answers to the above interrogatories are true to the best of my recollection based upon the information available to the Department.

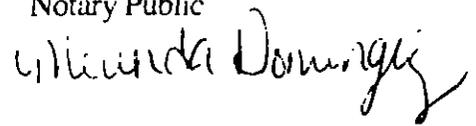


Donald F. Harris

SUBSCRIBED AND SWORN to before me this 20th day of June 2002.

My Commission expires: July 15, 2003

Notary Public



I certify that the foregoing was e-mailed to Paul Fish on June 20, 2002, and simultaneously mailed to the parties below.

Robert Jacobvitz
500 Marquette N.W., Suite 650
Albuquerque, NM 87102

Ron Andazola
PO Box 608
Albuquerque, NM 87102

Paul Fish
PO Box 2168
Albuquerque, NM 87103



Donald E. Harris

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO**

In re:

**FURR'S SUPERMARKETS, INC.
Tax I.D. No. 22-3137244**

Case No. 7-01-10779 SA

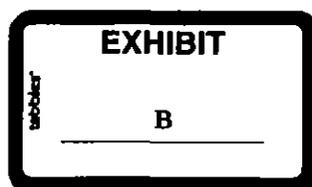
Debtor.

**HELLER FINANCIAL INC.'S FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION TO
NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

Heller Financial Inc., as agent for Fleet Capital Corp., Bank of America N.A. and Heller Financial, Inc. ("Heller") hereby propounds the following interrogatories and requests for production pursuant to the Federal Rules of Bankruptcy Procedure 7033 and 7034 to the New Mexico Taxation and Revenue Department to be fully and completely answered, under oath, and in writing within 20 days of service thereof (as set forth in the Order Resulting from Second Preliminary Hearing on Motion to Approve Settlement Agreement filed herein on April 3, 2002 at Docket No. 1633).

As used in these interrogatories and requests for production, the following terms have the meaning set forth below:

1. The words "Document" and "Record" are used herein in their broadest sense, and include any original, reproduction, or copy of any kind, typed, recorded, graphic printed, written or documentary matter, including but not limited to correspondence, e-mails, memoranda, inter-office communications, notes, diaries, contracts, drawings, plans, specifications, estimates, vouchers, permits, minutes or notes of meetings, invoices, billings, checks, reports, studies, telegraphs, notes of any and all communication or representation, including letters, words, pictures, sounds or symbols



or, combinations thereof, including electronic means of data recordation and computer media.

2. When asked to "Identify" a document, state the title, subject matter, author, date and addressee, file designation or other identifying designation and the present location and custodian of the document. In the alternative, you may produce the Document. When asked to "Identify" a person or entity, state the name, address, phone number, and if a person, state the name of the person's employers and the position held by such person.

3. The term "Motion" shall mean the Motion to Approve Settlement Agreement Between the Chapter 7 Trustee and the Secured Lenders filed by the Trustee in this case and to which you have objected.

4. The term "You" or "Your" refers to the party to whom these Interrogatories and Requests for Production are addressed, together with its affiliates and/or predecessors and successors in interest, agents, directors, officers, employees, contractors, consultants, accountants, attorneys, and other representatives.

5. The terms "Relates To" and/or "Relating To" shall mean commenting upon, including, concerning, relating to pertaining to, regarding, discussing, reflecting, relevant to, used in connection with, embodying, or evidencing, and should be construed in the broadest possible sense in this regard.

6. "Communication" or "Communications" is defined as any transmission of information by written, oral, mechanical, magnetic, electronic, optical, digital, laser, photographic, pictorial, or other means, including without limitation documents, personal

conversations, telephone calls, meetings, computer bulletin boards, e-mail messages, telegrams, telefacsimile transmissions, wires, and the like.

7. The term "DIP Financing Order" means the Final Order (1) Authorizing Debtor to Obtain Secured Financing, (2) Granting Adequate Protection and (3) Granting Other Relief which was entered in this case on March 14, 2001.

8. The term "Motion to Clarify" means the Motion to Clarify or to the Extent Necessary to Modify The Final Financing Order Entered March 14, 2001 to Provide that the Chapter 7 Trustee May Surcharge, Pursuant to § 506(c), The Secured Creditors With Respect to Costs or Expense Incurred During the Chapter 11 Case which You filed in this proceeding.

INSTRUCTIONS

1. Upon producing any requested Documents, indicate to which production request each Document produced is responsive.

2. The request for production covers, without limitation, all responsive Documents that are within Your possession, custody, or control or are otherwise available to You, as well as all responsive Documents that are in the possession, custody or control or are otherwise available to Your agents, servants, employees, attorneys, representatives, accountants, consultants, or other persons or entities acting or purporting to act on Your behalf.

3. If an objection is made to a request, or any portion thereof, please explicitly state the objection and ground therefor.

4. With respect to any Documents, or portion thereof, that You withhold on the basis that the document is privileged or confidential, you must provide a written statement specifically setting forth:

- a. the dates on which the Document was prepared, transmitted, and received;
- b. the name and job title of each author, addressee, and recipient of the Document;
- c. the name and job title of each person who was furnished with a copy or other manifestation of the Document, who had possession of the Document or any copy or other manifestation thereof, and/or who had access to the Document;
- d. the number of pages in the Document (or equivalent measure of length, as appropriate);
- e. the nature and subject matter of all information or data contained in the Document;
- f. the specific basis for asserting that the document is privileged or confidential;
- g. the precise legal and factual basis upon which the privilege or other asserted ground for non-production is claimed; and
- h. the number of the request or requests to which the Document is or may be responsive.

5. If any Document that would have been responsive to the requests below has been destroyed or is no longer in Your possession, custody, or control, you must provide a written statement setting forth:

- a. the dates on which the Document was prepared, transmitted, and received;

b. the name and the job title of each author, addressee, and recipient of the Document;

c. the name and the job title of each person who was furnished with a copy or other manifestation of the Document, had possession of the Document, and/or had been given access to the Document;

d. the person or persons in whose custody You believe said Documents or any copy or other manifestation thereof can presently be found;

e. the number of pages in the Document (or equivalent measure of length, as appropriate);

f. the nature and subject matter of the Document;

g. the date on which the Document was destroyed, lost transferred, or otherwise left Your possession, custody, or control;

h. the name and job title of the person responsible for, requesting, or performing the destruction, loss, transfer, or other occurrence by which the Document left Your possession, custody, or control;

i. the conditions of and reasons for such loss, transfer, destruction, or other occurrence by which the Document left Your possession, custody, or control; and

j. the number of request or requests to which the Document would have been responsive.

6. With regard to and Document which is in existence and in Your control, but not physically within the possession or custody of You or Your attorneys, You are to execute all necessary authorizations and take all other steps necessary and appropriate to secure

possession of the Document and/or allow defendants or their agents or representatives to obtain and examine the Document.

7. Documents responsive to a request for production shall be produced in the condition and order or arrangement in which they existed when this document request was served.

8. Each Document called for by a request for production shall be produced in and with the folder or other Documents (for example, envelope, file cabinet marker, etc.) in which the said Document was located when this discovery request was served.

9. Any Document maintained by You in a computer coded or encrypted form shall be produced together with all necessary programming and other necessary software and hardware needed to recover the information contained therein and present it in a readily cognizable form or printed out so it is legible.

10. Where a Document exists in any medium other than on paper, You are instructed to present for inspection the actual device or storage medium for that Document, together with any printouts or other tangible rendering of that Document capable of being produced by the storage medium, or print out the document so it is legible.

11. These requests for production shall be deemed to be continuing so as to require supplemental production of Documents by You as You obtain additional information after the time of the initial production.

INTERROGATORIES

Interrogatory No. 1. Please identify by name, address, position, employer, and telephone number, each and every witness, including expert witnesses, whom You intend to call to testify at the final hearing on the Motion.

Interrogatory No. 2. With respect to each witness You intend call at the final hearing on the Motion, state the following:

- (a) the subject matter on which each witness is expected to testify;
- (b) the substance of the facts to which each witness is expected to testify, including any mental impressions or opinions held by each witness;
- (c) Identify all Records or other Documents which each witness reviewed or relied upon;
- (d) Identify all Records or other Documents as to which that witness will testify; and
- (e) state whether the witness is an expert witness and, if such witness will be testifying as an expert, state the compensation paid to such witness, the qualifications of such witness, Identify all documents and other evidence reviewed by such witness, Identify all documents evidencing communications with such witness, and Identify all expert witness reports or other expressions of opinion produced by such witness in connection with this case.

Interrogatory No. 3. Please identify all individuals participating in the formulation of answers to these interrogatories and responses to the following requests for production by stating the name, address, position, employer, and telephone number of each.

Interrogatory No. 4. Identify the experts to be called by You intend to call regarding the allegations in paragraph 18 of your Motion to Clarify.

Interrogatory No. 5. State all facts on which you base the allegations in paragraph 20 of your Motion to Clarify that "The lenders have significantly benefited because of this case," including all comparisons between what the lenders would have received but for the bankruptcy and what they actually received, and Identify all documents on which you base your Answer.

Interrogatory No. 5. Identify all persons involved in making the decision that You would oppose the Wind-Down Motion, and state (1) all reasons for such opposition, (2) describe all discussions or contacts between representatives of Yours and any other party in interest, including but not limited to representatives of the Unsecured Creditors Committee, regarding the possibility of any split of proceeds whether in connection with the Wind Down Motion or any other portion of this case. Identifying the persons having the discussions, the dates of the discussions, the substance of the discussions, and Identify any and all documents relating to those discussions or contacts.

REQUESTS FOR PRODUCTION

Request for Production No. 1. Please produce all Records or other Documents which each witness listed above reviewed or relied upon. Also please produce all Records or other Documents as to which each listed witness will testify.

RESPONSE:

Request for Production No. 2. Please produce copies of all exhibits which You intend to introduce at the final hearing on the Motion.

RESPONSE:

Request for Production No. 3. Please produce copies of Documents Relating To any Communication between You and any other party in interest or their representative relating to the proposed settlement agreement, including but not limited to all

correspondence, e-mails, memoranda, notes or memoranda of conversations and any other document relating to such Communication.

RESPONSE:

Request for Production No. 4. Please produce all Records or other Documents relating to any studies or analyses done by You or had done for You at any time relating to the financial impact on the State of New Mexico as a result of the imposition of a tax in the manner it does rather than a tax which has the tax collected by the vendor from customers deemed held in trust for the State.

RESPONSE:

Request for Production No. 5. Please produce all Records or other Documents Identified in your Answers to the Interrogatories.

RESPONSE:

Respectfully submitted.

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: Paul M. Fish

Paul M. Fish
Attorneys for
Post Office Box 2168
Bank of America Centre, Suite 1000
500 Fourth Street, N.W.
Albuquerque, New Mexico 87103-2168
Telephone: (505) 848-1800

and

DAVID S. HELLER
LATHAM & WATKINS
Sears Tower, Suite 5800
Chicago, Illinois 60606
Telephone: (312)876-7700

WE HEREBY CERTIFY that a true
and correct copy of the foregoing pleading
was sent via facsimile and mailed this 17th
day of May, 2002 to the following:

Donald F. Harris
NM Taxation & Revenue Dept.
P.O. Box 8485
Albuquerque, NM 87198

and mailed this 17th day of May, 2002 to the following:

Ron Andazola
U.S. Trustee
P.O. Box 608
Albuquerque, NM 87103-0608

Robert H. Jacobvitz
Jacobvitz, Thuma & Walker, P.C.
500 Marquette NW, #650
Albuquerque, NM 87102

Jennie Deden Behles
J.D. Behles & Associates, PC
P.O. Box 849
Albuquerque, NM 87103

James A. Askew
Rodey Dickason Sloan Akin & Robb PA
P.O. Box 1888
Albuquerque, NM 87103

I. William Cohen
Casey Coston
Pepper Hamilton, LLP
100 Renaissance Center, 36th Floor
Detroit, MI 48243-1157

Gail Gottlieb
Sutin, Thayer & Browne PC
P.O. Box 1945
Albuquerque, NM 87103

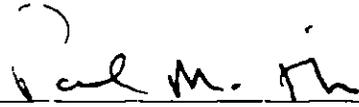
Michael C. Li
Baker & Botts, LLP
2001 Ross Avenue
Dallas, TX 75201

Ronald J. Silverman
Bingham, Dana LLP
399 Park Avenue
New York, NY 10022-4689

K. Lee Peifer
Law Offices of K. Lee Peifer
108 Wellesley Dr. SE
Albuquerque, NM 87106-1444

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By:

A handwritten signature in black ink, appearing to read "Paul M. Fish", is written over a horizontal line.

Paul M. Fish

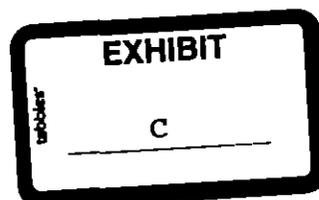
231273.DOC

Paul M. Fish

From: Paul M. Fish
Sent: Friday, June 21, 2002 2:09 PM
To: 'Harris, Donald'
Cc: 'DAVID.HELLER@lw.com'; rjacobvitz@jtwlawfirm.com; dthuma@jtwlawfirm.com; ronald. Andazola (E-mail); jbalter@bingham.com
Subject: Responses to Interrogatories and Requests for Production

Mr. Harris, I note in your responses to the Interrogatories and Requests for Production that you state that you do not know what "proposed settlement agreement" we are referring to in Request for Production Number 3. The proposed settlement referred to is the proposed settlement between the Trustee and the Lenders which is the subject of the trial beginning on July 9. Please state whether you will produce all requested documents (which are not communications between the TRD and its counsel or among TRD counsel with no disclosure to any non-TRD employees or counsel) which are requested.

Also please state when we can receive production of the documents requested in that and the other Requests which you will produce.



6/24/2002