

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Debtor.

Case No. 7-01-10779-SA  
Chapter 7

FILED  
12:00 MIDNIGHT  
JUL - 1 2003

DROP BOX  
United States Bankruptcy Court  
Abuquerque, New Mexico

**MOTION TO APPROVE SETTLEMENT OF  
ADVERSARY PROCEEDING 02-1117 S**

Yvette Gonzales, the Chapter 7 Trustee (the "Trustee"), by counsel, moves the Court for an order approving the settlement of all preferential transfer claims the estate has against Wisconsin's Finest, Inc., as set forth in the adversary proceeding No. 02-1117-S, captioned *Yvette J. Gonzales, Trustee v. Wisconsin's Finest, Inc.* (the "Adversary Proceeding"), pursuant to F.R.Bankr.P.9019, and in support hereof states:

1. **Commencement and Conversion of Case.** On February 8, 2001, (the "Petition Date"), the Debtor filed a Voluntary Petition in this Court under Chapter 11 of the Bankruptcy Code. On December 19, 2001, this Court entered an Order converting the Chapter 11 case to a case under Chapter 7.

2. **Appointment of Chapter 7 Trustee.** On December 19, 2001, the United States Trustee appointed Yvette Gonzales as the Trustee for the Debtor's bankruptcy estate, in which capacity she continues to serve.

3. **Jurisdiction and Venue.** The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§1408 and 1409.

4. **The Adversary Proceeding.** In the Adversary Proceeding, the Trustee sought to recover Two Hundred Four Thousand Nine Hundred Seventeen Dollars and 00/100

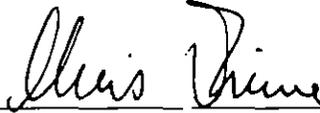
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(S204,917.00) from Wisconsin's Finest, Inc., plus all other amounts, if any, recoverable pursuant to 11 U.S.C. §547.

5. **The Settlement.** Wisconsin's Finest, Inc. has offered to pay the Trustee One Hundred Eighty Thousand Dollars and 00/100 (\$180,000.00) payable in four installments of \$45,000.00 each, due on August 1, 2003, January 15, 2004, April 15, 2004 and July 15, 2004 in full satisfaction of any and all claims asserted in the Adversary Proceeding (the "Settlement"). The full terms of the Settlement are set forth in the attached Settlement Agreement. The Settlement is fair and equitable, and in the best interests of and beneficial to the Debtor's estate and the creditors.

WHEREFORE, the Trustee requests that the Court enter an Order approving the Settlement and for such other relief as may be just.

**DAVIS & PIERCE, P.C.**



Chris W. Pierce, Esq.

Post Office Box 6

Albuquerque, New Mexico 87103

(505) 243-6129

I hereby certify that a true and correct copy of the foregoing was served on counsel and parties as indicated below this 1<sup>st</sup> day of July, 2003.

Ronald F. Andazola  
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Albuquerque, New Mexico 87103

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Chris W. Pierce, Esq.

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

1. Parties. The parties to this Settlement Agreement and Mutual Release (hereinafter, "Agreement") are YVETTE J. GONZALES, Chapter 7 Trustee in United States Bankruptcy Court, District of New Mexico, case entitled In Re: Furr's Supermarkets, Inc., Debtor, No. 7-01-10779 SA, for herself and on behalf of the Furr's Supermarkets, Inc. bankruptcy estate, and its or each of their current or former general partners, limited partners, officers, directors, stockholders, employees, attorneys, agents, servants, successors and assigns, spouses, heirs, executors, administrators, attorneys, and any and all other related persons, entities, associations or corporations, whether or not herein named or referred to (collectively, hereinafter, "TRUSTEE"), and WISCONSIN'S FINEST, INC., and its current or former general partners, limited partners, officers, directors, stockholders, employees, attorneys, agents, servants, successors and assigns, spouses, heirs, executors, administrators, attorneys, and any and all other related persons, entities, associations or corporations, whether or not herein named or referred to (collectively, hereinafter, "WISCONSIN'S FINEST").

2. Payment. Following execution by the parties of this Agreement, and no later than the dates set forth below, WISCONSIN'S FINEST agrees to pay TRUSTEE the sum of \$180,000.00. Payments shall be:

<u>Amount</u>	<u>Date</u>
\$45,000.00	August 15, 2003
\$45,000.00	January 15, 2004
\$45,000.00	April 15, 2004
\$45,000.00	July 15, 2004

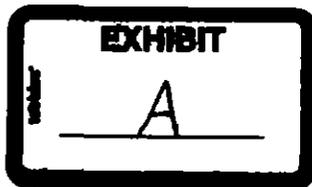
Interest shall not accrue on the payments to be made under this Agreement. Payments may be made without penalty in advance of their due dates. Payments shall be made to the TRUSTEE at \_\_\_\_\_.

3. Security, Default, Notice And Opportunity To Cure. In order to secure payment of the amounts provided for in this Agreement, WISCONSIN'S FINEST, through its attorney, shall approve a form of judgment that provides for judgment by the TRUSTEE against WISCONSIN'S FINEST in the amount of \$203,917.00, together with interest thereon at the federal statutory judgment rate from the date of entry of that judgment.

This form of judgment shall be held by TRUSTEE'S attorney and shall not be submitted to nor entered of record by the bankruptcy court except upon the occurrence of an uncured payment default by WISCONSIN'S FINEST.

If WISCONSIN'S FINEST fails to make any of the payments required by this Agreement by their due dates, the TRUSTEE may make written demand upon WISCONSIN'S FINEST, with such notice to specify the default and the curative action required, at WISCONSIN'S FINEST'S address as follows: Ken Meixelsperger, Wisconsin's Finest, Inc., 1111 Jupiter Rd. C-#105, P.O. Box 940425, Plano, TX 75094, with a copy to Michael W. Wile, Bingham, Hurst, Apodaca & Wile, P.C., 3908 Carlisle Blvd., N.E., Albuquerque, N.M. 87107-4504, or at such other address that WISCONSIN'S FINEST may designate by a notarized statement delivered to the TRUSTEE.

Notice in writing shall be given by certified mail, return receipt requested, addressed to WISCONSIN'S FINEST at the effective address for WISCONSIN'S FINEST as provided in this Agreement, with a copy to Wisconsin's Finest, Inc.'s attorney.



If WISCONSIN'S FINEST fails or neglects to cure any default within Fourteen (14) business days after the date TRUSTEE'S default notice is mailed, then the TRUSTEE may submit the form of judgment held by TRUSTEE'S attorney to the bankruptcy court for entry. In such event, TRUSTEE, upon entry of the judgment, shall cause to be filed a Partial Satisfaction Of Judgment in an amount equal to the sum payments paid prior to the default by WISCONSIN'S FINEST. By way of example, if prior to default WISCONSIN'S FINEST has paid the TRUSTEE a total of \$90,000.00, then in that event the TRUSTEE shall file a Partial Satisfaction Of Judgment in that amount, with the result being that the amount remaining due on the judgment would be \$113,917.50 (\$203,917.50 minus \$90,000 paid), plus applicable statutory interest accrued on the judgment from the date of entry of the judgment.

If the final day for curing the default shall fall on a Saturday, Sunday, or Federal holiday, then the period for curing the default shall extend to the close of business on the next regular business day.

4. No Admission. It is understood and agreed that the release of Claims in this Agreement is the compromise of doubtful and disputed Claims, and that the payment and consideration given for the release of Claims should not be construed as an admission of liability on the part of any party to this Agreement. Each party denies liability to the others and intends merely to avoid litigation by buying their peace.

5. Release of Claims. The TRUSTEE does hereby release and forever discharge WISCONSIN'S FINEST, and WISCONSIN'S FINEST does hereby release and forever discharge the TRUSTEE, from any and all rights, claims, demands, damages, actions, causes of action and suits, of any kind or nature whatsoever, whether known or unknown, contingent or certain, developed or undeveloped, liquidated or unliquidated (collectively, "Claims"), that each, individually or collectively, has now or might have in the future have against the other. The term "Claims" includes, but is not limited to, those claims asserted or which could have been asserted by the TRUSTEE or WISCONSIN'S FINEST in United States Bankruptcy Court for the District of New Mexico Adversary Proceeding No. 02-1117-S, entitled, Yvette Gonzales, Trustee, Plaintiff, vs. Wisconsin's Finest, Inc., Defendant.

6. Entire Agreement. This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement.

7. Parties Bound. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, successors and assigns.

8. No Assignment. Each party to this Agreement acknowledges and represents that he, she, or it is the owner of the Claims released by this Agreement, and has not voluntarily or involuntarily assigned the Claims released by this Agreement to any other person or entity.

9. Time. Time is of the essence in the performance of the promises contained in this Agreement.

10. Neutral Interpretation. This Agreement shall not be construed against any party because the Agreement was drafted by that party.

11. Terms Contractual. The terms of this Agreement are contractual and not mere recitals.

12. Counterparts. This Agreement may be executed in counterparts, each of which, including faxed copies, shall be taken to be an original.

WISCONSIN'S FINEST, INC.

TRUSTEE

\_\_\_\_\_  
Ken Meixelsperger, President  
1111 Jupiter Rd. C-#105  
P.O. Box 940425  
Plano, TX 75094  
Tel (972) 422-5667  
Fax (972) 422-7076

\_\_\_\_\_  
Yvette J. Gonzales  
Yvette J. Gonzales LLC  
Post Office Box 1037  
Placitas NM 87043-1037  
Tel (505) 771-0700  
Fax (505) 771-0621

ACKNOWLEDGEMENTS

STATE OF TEXAS            )  
  )ss.  
COUNTY OF COLLIN        )

The foregoing Settlement Agreement and Mutual Release was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by KEN MEIXELSPERGER as President of Wisconsin's Finest, Inc.

\_\_\_\_\_  
Notary Public

My commission expires:

STATE OF NEW MEXICO    )  
  )ss.  
COUNTY OF BERNALILLO    )

The foregoing Settlement Agreement and Mutual Release was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by YVETTE J. GONZALES, Chapter 7 Trustee in Furr's Supermarkets, Inc., Debtor, Chapter 7 bankruptcy case, No. 7-01-10779 SA.

\_\_\_\_\_  
Notary Public

My commission expires: