

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

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

Trustee.

**CHAPTER 7 TRUSTEE'S MOTION TO RETAIN MICHAEL J. CAPLAN AS EXPERT  
WITNESS**

Yvette J. Gonzales, the Chapter 7 Trustee (the "Trustee"), by counsel, requests that the Court approve the Trustee's retention of Michael J. Caplan ("Caplan") to render professional services to the Trustee as an expert witness in connection with one or more of the Trustee's pending adversary proceedings to recover preferential transfers (the "Avoidance Actions"), and in support hereof states:

1. On February 8, 2001, Furr's Supermarkets, Inc. (the "Debtor") commenced this bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
2. On December 19, 2001, the Debtor converted the case to a Chapter 7 bankruptcy case, and the Trustee was appointed the interim Chapter 7 trustee.
3. The Trustee wishes to employ Caplan as an expert witness in connection one or more of the Avoidance Actions, to testify about issues arising under, inter alia, 11 U.S.C. §547(b)(5) and/or §547(c)(6). Caplan is well qualified to be an expert witness. Caplan is an experienced Chapter 7 Trustee, and is very knowledgeable about the types of issues raised by these Code sections.

4. Caplan has represented in his disclosure filed pursuant to Bankruptcy Rules 2014 and 2016 (the “Caplan Disclosure”) that, to his knowledge, he does not have any interests that are materially adverse to the Trustee or the estate except as set forth therein.

5. In general, the professional services Caplan would render to the Trustee include:

(a) Testifying in deposition or at trial about issues arising under §547(b)(5) and/or §547(c)(6); and

(b) Otherwise assisting the Trustee in the Avoidance Actions, in any matter where his unique knowledge, experience, and qualifications are needed.

6. As compensation for his work as an expert witness, the estate would pay Caplan \$175 per hour, plus gross receipts tax and out-of-pocket costs.

7. To the best of the Trustee’s knowledge, information, and belief, employment of Caplan would be in the best interest of the estate, and Caplan has no interest that is adverse to the Trustee, the estate, its creditors, or any other party in interest or their respective attorneys, other than any interests set forth in the Caplan Disclosure.

8. The Trustee requests that she be authorized to make interim payments to Caplan on a monthly basis, upon receipt of Caplan’s billing statements and prior to the Court’s determination of the allowability of Caplan’s compensation, equal to 75% of his fees and associated gross receipts tax, and 100% of any reimbursable costs and gross receipts tax.

9. Caplan’s employment is in the best interest of the estate and should be made effective as of the date this motion is filed.

WHEREFORE Trustee requests approval of the Court to employ Caplan to provide expert witness services pursuant to 11 U.S.C. § 327(a) under the terms of this motion, effective

as of the date hereof, to make interim payments to Caplan prior to allowance of compensation, as described above, and for all other just and proper relief.

JACOBVITZ, THUMA & WALKER  
A Professional Corporation

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This certifies that a copy of  
the foregoing document was  
served by first class mailed on:

United States Trustee  
P.O. Box 608  
Albuquerque, NM 87103

this 2d day of February, 2004.

Filed electronically  
David T. Thuma