

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779-SA
Chapter 11

Debtor.

**ORDER APPROVING MOTION TO EXPAND THE SCOPE OF EMPLOYMENT OF
IRELL & MANELLA LLP AS SPECIAL COUNSEL FOR THE TRUSTEE**

This matter came before the Court upon the Chapter 7 Trustee's Motion to Expand the Scope of Employment of Irell & Manella LLP ("I&M") as Special Counsel for the Trustee filed March 19, 2004 (the "Motion") (docket #2345). In the Motion the Chapter 7 Trustee Yvette J. Gonzales (the "Trustee") requested that the scope of I&M's employment be expanded to include additional ERISA related issues, including but not limited to those arising in Adversary Proceeding 03-1072 captioned *Yvette J. Gonzales, Trustee v. Sun Life Assurance Company of Canada* (the "Preference Action").

The Court FINDS:

A. On February 8, 2001 (the "Petition Date"), the debtor Furr's Supermarkets, Inc. (the "Debtor") commenced this bankruptcy case (the "Bankruptcy Case") by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code;

B. On December 19, 2001, the Debtor converted the case to a Chapter 7 case, and the Trustee was appointed the interim Chapter 7 trustee. The Trustee subsequently became the permanent chapter 7 trustee in the Bankruptcy Case;

C. On June 16, 2003 the Trustee filed a Motion to Employ

I&M, as Special Counsel or co-counsel for the Trustee (Docket #2119) to represent the Trustee in connection with issues arising under or relating to the Employee Retirement Income Security Act of 1974 ("ERISA") and other applicable law concerning the Furr's Supermarkets, Inc.'s Pension Plan;

I&M filed its disclosure pursuant to Bankruptcy Rules 2014 and 2016 (the "I&M Disclosure") on June 16, 2003 (docket #2020); Following notice and opportunity to object, the Court entered an Order on August 15, 2003 Approving Employment of I&M as Special Counsel for the Trustee (the "Employment Order") (Docket #2170);

D. On March 19, 2004, counsel for the Trustee served notice of the Motion and the deadline for objections to the Motion to all persons on the limited mailing matrix, as shown by the certificate of service on the notice (the "Notice") (docket #2347);

E. The Motion and Notice state, in part, that if the Motion is approved, "I&M will bill the estate at the rates approved in the Employment Order, with the following exceptions: Thomas A. Kirschbaum will bill at \$555.00 per hour and Zoila Villacorta will bill at \$395 per hour." The Supplemental Engagement Letter attached to the Motion as Exhibit A states that Mr. Kirschbaum's "hourly rate is now \$555.00," and that of Zoila Villacorta is now \$395.

F. The Notice was sufficient and appropriate in the particular circumstances;

G. The Notice specified a deadline of twenty days, plus three days based on service of the Notice by mail, for a total

of twenty-three days, or April 23, 2004, by which objections to the Motion had to be filed;

H. The objection deadline has expired and no objections to the Motion were filed;

I. The expansion of the scope of I&M's employment as special counsel for the Trustee, as set forth below, should be approved; and

J. No further notice of the Motion or of this order is necessary in the particular circumstances, prior to entry of this order, and entry of this order is appropriate.

IT IS, THEREFORE, ORDERED:

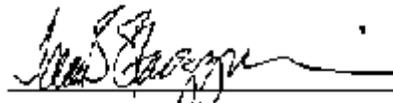
1. The Trustee's Motion to expand the scope of employment of I&M as special counsel, pursuant to Bankruptcy Code §327(e), is hereby approved effective as of March 19, 2004. The scope of Trustee's employment of I&M is expanded to include additional issues arising under or relating to ERISA, including but not limited to any issues involving ERISA arising in the Preference Action.

2. The rates charged by billing professionals of I&M, as approved by the Court in the Employment Order and as modified by the supplemental engagement letter attached to the Motion as Exhibit are hereby approved. Thomas A. Kirschbaum hourly billing rate of \$555.00 per hour and Zoila Villacorta's hourly billing rate of \$395 per hour are approved. The Trustee is hereby granted authority to give I&M an additional \$15,000 retainer. Upon rendition of its billing statements and approval thereof by the Trustee, I&M is authorized to pay from the

retainer, prior to the Court's determination of the allowability of I&M's compensation, up to and including 75% of fees, 100% of reimbursable costs, and 100% applicable gross receipts tax on fees and costs that are paid.

3. After the retainer is exhausted, the Trustee is authorized to pay I&M, upon receipt of I&M's billing statements and prior to the Court's determination of the allowability of I&M's compensation, up to and including 75% of fees, 100% of reimbursable costs, and 100% applicable gross receipts tax on fees and costs that are paid. All fees, costs, and gross receipts tax paid shall be subject to ultimate approval of the Bankruptcy Court under Bankruptcy Code §§ 330 and 331.

4. I&M shall file fee applications every 120-180 days, approximately.



THE HONORABLE JAMES S. STARZYNSKI
UNITED STATES BANKRUPTCY JUDGE

Submitted by:

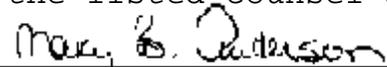
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Attorneys for the Chapter 7 Trustee

I hereby certify that on April 28, 2004, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties.



Mary B. Anderson