

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT  
ALBUQUERQUE, N.M.

In re FURR'S SUPERMARKETS, INC.,

Case No. 01-10779-SA

Chapter 11

Debtor.

**CONDITIONAL AND PROTECTIVE OBJECTION  
TO DEBTOR'S AMENDED WIND-DOWN MOTION**

Desert States Employers & UFCW Unions Pension Plan (the "Plan"), by its attorneys, hereby conditionally objects to the Amended Motion for Approval of Wind-Down Budget, Settlement, and Related Matters (the "Wind-Down Motion"), filed by Furr's Supermarkets, Inc. (the "Debtor"). This objection is protective only, in the event any of the Debtor's postpetition obligations to the Plan will not be timely paid as a result of the Wind-Down Motion, as more fully explained below.

1. The Plan provides certain retirement benefits to employees of the Debtor who are members of the United Food and Commercial Workers Union (the "Union").
2. Under the Debtor's collective bargaining agreement, a portion of Union employees' compensation consists of contributions on their behalf to the Plan. Such contributions are due on the 10th of each month, and are calculated by a formula based on total hours worked by covered employees during the previous calendar month. For example, the contribution in July (based on June hours) was approximately \$110,000.
3. The Debtor has not yet paid the contribution due on August 10, 2001 for hours worked in July. Based on work already performed by covered employees during

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August, the Debtor has incurred additional obligations to the Plan that will be due on September 10, 2001. The Plan has filed a proof of claim, asserting an administrative expense priority for \$220,000, reflecting the Debtor's estimated liability through the end of August.

4. Under section 1113 of the Bankruptcy Code, the Debtor has taken no action to reject the collective bargaining agreement, nor has it requested authority to implement any interim changes in the terms, conditions, wages or benefits provided by the collective bargaining agreement. In fact, without actually assuming the collective bargaining agreement, the Debtor has been operating since the beginning of this case under an order authorizing the Debtor to "continue postpetition the employee benefit plans and programs in effect immediately before the filing of this case."

5. Thus, Union employees have faithfully worked for the Debtor, relying on promises that the benefits being accrued with each hour of postpetition work would be paid in full. Furthermore, the secured parties in this case have benefited directly and substantially from the Union employees' continued labor, which has been instrumental in preserving the going-concern value of the secured parties' collateral.

6. The Wind-Down Motion does not specifically state that all postpetition obligations to the Plan are included in the proposed budget and will be timely paid if the Wind-Down Motion is approved. However, the Debtor's counsel has assured the Plan's counsel that the proposed budget does include sufficient money to pay all of the Debtor's employee benefit obligations, including those owed to the Plan.

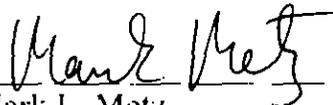
7. In reliance of the Debtor's assurances that its postpetition obligations to the Plan will be paid if the Wind-Down Motion is approved, the Plan does not object to the Wind-Down Motion. However, to the extent there is any change, limitation, reservation or wavering in the commitment of the Debtor and the secured parties to pay all postpetition obligations owed to the Plan, the Plan objects to the Wind-Down Motion and reserves the right to present testimony and argument at the hearing on the Wind-Down Motion.

WHEREFORE, the Plan conditionally objects to the Wind-Down Motion unless (a) the Debtor and the secured parties specifically confirm and acknowledge in writing or on the record that all obligations to the Plan incurred by the Debtor postpetition will be paid in full when and as they come due and (b) the order approving the Wind-Down Motion so provides.

Dated this 22<sup>nd</sup> day of August, 2001.

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