

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**

New Mexico United Food and Commercial Workers' Unions and Employers' Health and Welfare Trust Fund (the "Fund"), 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 post-petition obligations to the Fund will not be timely paid as a result of the Wind-Down Motion, as more fully explained below.

1. The Fund provides certain health and welfare 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 Fund. Such contributions are due on the 25th 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 \$701,000.

3. By the time of the hearing on the Wind-Down Motion, the Debtor will have failed to pay the contribution due on August 25, 2001 for hours worked in July. Based on work already performed by covered employees during August, the Debtor has incurred additional obligations to the Fund that will be due on September 25, 2001. The Fund has filed a proof of claim, asserting an administrative expense priority for \$1,504,560, 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 funds 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 Fund 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

Fund'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 Fund.

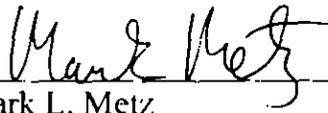
7. In reliance of the Debtor's assurances that its postpetition obligations to the Fund will be paid if the Wind-Down Motion is approved, the Fund does not object to the Wind-Down Motion. However, to the extent there is any change, limitation, reservation or wavering in the commitment of the Debtor and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