

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF NEW MEXICO**

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

**In re FURR'S SUPERMARKETS, INC. §
SERVICES, INC. §**

Debtor

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

**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 objects to the Motion for Order Authorizing Use of Cash Collateral (the "Motion"), filed by Furr's Supermarkets, Inc. (the "Debtor"). The grounds for this objection are that the Motion and attached budget improperly fail to provide for the payment on September 25, 2001 of amounts owed to the Fund for services already provided by certain of the Debtor's employees. In support of this objection, the Fund states as follows:

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 agreements, 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

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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. Monthly contributions to the Fund are a critical element of the covered employees' compensation package, not some sort of bonus or soft benefit. As part of the bargaining process, Union employees have agreed to accept less in direct wages in exchange for the employer's funding of their health and welfare benefits.

4. The Fund does not have any surplus or reserve. It provides coverage and pays employees' health-related claims only from the monthly contributions it receives from the employers.

5. During each hour that they worked for the Debtor and the lenders in August 2001, the Union employees were earning coverage for September. Their loyal labor has in fact earned them the right to have their health and welfare benefits paid during September, but the Fund will be forced to deny them that coverage unless the Fund receives an immediate commitment that the required contribution will arrive on September 25. Because the proposed cash collateral budget does not include any payment to the Fund, the Fund cannot process or honor employee claims presently being made without the Fund itself risking going broke.

6. 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." See Docket #28 (the "Benefits Continuation Order").

7. The Benefits Continuation Order has never been modified, rescinded or abated in any way. To the extent that the Benefits Continuation Order must now be modified due to expiration of the prior cash collateral orders, such modifications ought to be prospective only, and not excuse the lenders from paying for benefits earned while the Benefits Continuation Order was in full force.

8. The expectation that their post-petition health and welfare benefits would be paid in full, as provided in the Benefits Continuation Order, has been reinforced by pronouncements from representatives of the secured lenders. Less than two weeks ago, counsel for the lenders declared in open court that his client(s) would "do right" by the employees, and that the employees would be paid for services rendered while on the lenders' "watch."

9. The Fund, the Union and the employees were not aware that the lenders' idiosyncratic definition of "doing right" included nothing more than letting employee paychecks clear, while ignoring other in-lieu-of-wages obligations being earned and accrued daily for the employees' benefit.

10. The Court should not condone secured lenders accepting benefits which accrue but are not payable during the term of one cash collateral arrangement, and then

omitting the payment for those accrued benefits from the succeeding cash collateral arrangement because the payment is no longer "necessary." Unlike some administrative claimants, employees cannot protect themselves by switching to a COD basis for their post-petition labor -- they must accept it on faith that the mere delay between earning their benefits and receiving their benefits will not cause payment for their post-petition labors to fall between the cracks of two cash-collateral periods. This Court should protect that faith.

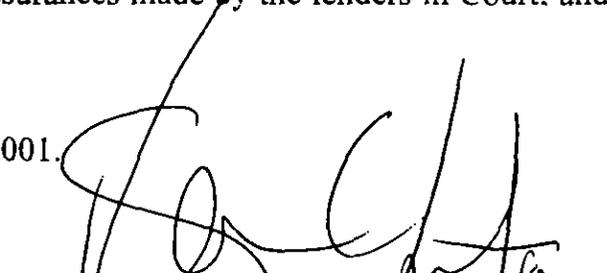
WHEREFORE, the Fund objects to the Motion because it (a) is inconsistent with a prior order of this Court, on which the Fund and covered employees relied, (b) it is inconsistent with pronouncements and reassurances made by the lenders in Court; and (c) it is inconsistent with public policy.

Dated this 10TH day of September, 2001.

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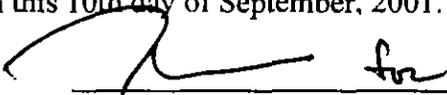
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument **CONDITIONAL AND PROTECTIVE OBJECTION TO DEBTOR'S AMENDED WIND-DOWN MOTION** was sent to the fore-mentioned list via facsimile, on this 10th day of September, 2001.



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