

FILED

UNITED STATES BANKRUPTCY COURT DEC 21 PM 1:26
DISTRICT OF NEW MEXICO

U.S. BANKRUPTCY COURT
ALBUQUERQUE, NM

In re:

FURR'S SUPERMARKETS, INC.,

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

Trustee.

**THE CHAPTER 7 TRUSTEE'S MOTION TO EMPLOY
DAVIS & PIERCE, P.C. AS COUNSEL FOR THE TRUSTEE**

Yvette J. Gonzales, the interim Chapter 7 trustee in the above-captioned bankruptcy case (the "Trustee"), pursuant to 11 U.S.C. § 327(a) and 327(e), requests that the Court approve its employment of Davis & Pierce, P.C., a Professional Corporation ("D&P") to represent the Trustee as general counsel under 11 U.S.C. § 327(a), and/or as special counsel under 11 U.S.C. §§ 327(a) and (e), in such matters as the Trustee may request of D&P and D&P may agree to perform. In support of this Motion (the "Motion"), the Trustee states:

1. On February 8, 2001 (the "Petition Date"), the Debtor 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 case, and the Trustee was appointed the interim Chapter 7 trustee.
3. The Trustee wishes to employ D&P as counsel for the Trustee in such matters as the Trustee may request of D&P and D&P may agree to perform, except D&P will not advise or otherwise represent the Trustee with respect to any issues specifically relating to Safeway, Inc., or any creditor of Furr's that D&P represents in any matters wholly unrelated to this bankruptcy case. D&P is qualified to represent the Trustee as chapter 7 trustee in this case. D&P has represented in

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its disclosure filed pursuant to Bankruptcy Rules 2014 and 2016 (the "D&P Disclosure") that it has no conflict, except for the matters disclosed therein, and that D&P represented the Official Committee of Unsecured Creditors in the chapter 11 case (the "UCC"), and has a claim for attorneys fees incurred while representing the UCC. In addition, D&P asserts it is entitled to payment of such unpaid fees from a professional carve-out set forth in DIP financing orders. D&P currently represents Safeway, Inc. as local counsel in an adversary proceeding filed against Furr's Supermarkets, Inc. on October 12, 2001 in Adversary Case No. 01-01214-S. D&P will withdraw from representation in this matter as local counsel, and will not discuss this matter with the Trustee or her counsel.

4. In general, the professional services D&P may render to the Trustee include (but are not limited to):

(a) If D&P's retention is approved solely as special counsel under Bankruptcy Code §§ 327(a) and (e), D&P may represent the Trustee as may be mutually agreed:

(1) In adversary proceedings, including but not limited to preferential transfer actions, and actions to collect funds;

(2) With respect to the sale of assets;

(3) To negotiate and seek approval of settlements, including settlements with secured lenders;

(4) To assert claims under Bankruptcy Code §506(c);

(5) To perform any other legal services for the Trustee as the Trustee deems appropriate and D&P agrees to perform, other than to represent the Trustee in conducting the chapter 7 case.

(b) If D&P's retention also is approved as general counsel under Bankruptcy Code §§ 327(a), representing the Trustee as may be mutually agreed:

(1) In any or all aspects of conducting this bankruptcy case, including, without limitation, meetings of creditors, claims objections, and any or all hearings before this Court; and

(2) Performing any other legal services for the Trustee as the Trustee deems appropriate and D&P agrees to perform. Further, the Trustee may engage D&P to represent her in aspects of conducting this bankruptcy case pending a ruling on this motion.

5. A copy of D&P's Retainer Agreement with the Trustee, dated December 20, 2001 ("Retainer Agreement"), is attached hereto as Exhibit "A" and incorporated herein by reference.

6. To the best of the Trustee's knowledge, information and belief, D&P has no connection with the Trustee, the estate's creditors, or any other party in interest or their respective attorneys, other than any connections set forth in the D&P Disclosure.

7. The fees, costs, and gross receipts tax D&P will charge the Trustee are set forth in the Retainer Agreement. The Trustee and D&P, subject to further Court approval, may modify the terms of compensation for certain services.

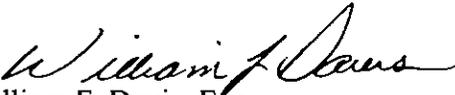
8. D&P requests that the Trustee be authorized to make interim payments to D&P on a monthly basis (75% of fees and 100% of costs) upon receipt of D&P's billing statements and prior to the Court's determination of the allowability of D&P's compensation.

9. D&P's employment should be made effective as of the date hereof.

WHEREFORE the Trustee requests approval of the Court to employ Davis & Pierce, P.C. as her counsel pursuant to 11 U.S.C. § 327(a) and (c) under the terms of the Retainer Agreement and this Motion, effective as of the date hereof; and to make interim payments to Davis & Pierce, P.C. prior to allowance of compensation, as described above.

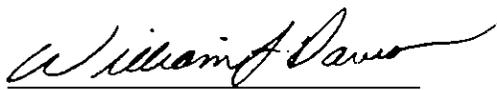
Respectfully submitted,

DAVIS & PIERCE, P.C.


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This certifies that a copy of
the foregoing document was
served by first class mailed on
this 21st day of December, 2001:

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



William F. Davis, Esq.