

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT
ALBUQUERQUE, NM

In re:

FURR'S SUPERMARKETS, INC.
Tax I.D. No. 22-3137244

Case No. 11-01-10779 SA

Debtor.

**UNITED STATES TRUSTEE'S MOTION FOR PROTECTIVE ORDER
AND NOTICE OF HEARING**

The United States Trustee (UST) moves the Court for a protective order. As her reasons therefor, UST states the following:

1. On January 22, 2002, the undersigned attorney for the U.S. Trustee was served with a subpoena issued by counsel for PricewaterhouseCoopers (PWC) to appear for a deposition scheduled for 1:00 p.m. on January 25, 2002.

2. Subpoenas were also served on Michele Lombard and Jean LaShelle, witnesses designated by the U.S. Trustee to testify on objections to various fee applications filed in the above referenced matter. The U.S. Trustee had previously advised counsel for PWC that these individuals would be made available for depositions and has no issue with regard thereto.

3. As stated by the Tenth Circuit:

Taking the deposition of opposing counsel not only disrupts the adversarial system and lowers the standards of the profession, but it also adds to the already burdensome time and costs of litigation. It is not hard to imagine additional pretrial delays to resolve work product and attorney-client objections, as well as delays to resolve collateral issues raised by the attorney's testimony. Finally, the practice of deposing to counsel detracts from the quality of client representation. Counsel should be free to devote his or her time and efforts to preparing the client's case without fear of being interrogated by his or her opponent."

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Boughton v. Cotter Corp. 65 F.3d 823, 829(10th Cir. 1995) quoting *Shelton v.. American Motors Corp.* 805 F.2d 1323,1327 (8th Cir.1986).

4. In order to take the deposition of opposing counsel, the party seeking to take the deposition must show (1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case. *Boughton v. Cotter Corp.* 805 F.3d at 829.

5. In this matter, much of the information requested by PWC has been provided in the form of exhibits consisting of summaries of PWC's own fee application. Additional information has been provided in the form of a settlement letter detailing many of the U.S. Trustee's objections. Further, some of the information requested is not factual in nature and seeks to discover attorney work product and/or attorney-client privileged matters.

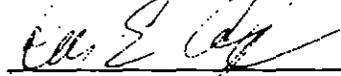
6. Counsel for PWC has failed to meet any of the above criteria and the U.S. Trustee respectfully requests that a protective order be issued prohibiting the deposition of the undersigned.

7. At the same time at which the undersigned has been subpoenaed to appear for deposition, the U.S. Trustee has currently scheduled the depositions of two other witnesses and cannot appear therefore.

8. A hearing on this motion will be held on Wednesday, January 23, 2002, at 8:45 a.m. (Mountains Standard time) before the Honorable Judge James S. Starzynski, in the United States Bankruptcy Court conference room, second floor, 421 Gold Avenue, S.W., Albuquerque, New Mexico.

Respectfully submitted,

BRENDA MOODY WHINERY
United States Trustee



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The undersigned certifies that a true and accurate copy of the foregoing was mailed and transmitted by fax to the below listed counsel this 22nd day of January, 2002



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