

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re:)	
)	Case No. 11-01-10779-JSS
FURR'S SUPERMARKETS, INC.,)	Chapter 11
)	
Debtor.)	

**OBJECTION OF PEPPER HAMILTON LLP TO MOTION TO APPROVE
SETTLEMENT AGREEMENT BETWEEN THE
CHAPTER 7 TRUSTEE AND THE SECURED LENDERS**

Pepper Hamilton LLP respectfully file this Objection to Motion to Approve Settlement Agreement Between the Chapter 7 Trustee and the Secured Lenders (the "Objection") and state as follows:

1. On February 8, 2002, Yvette G. Gonzales, as Chapter 7 Trustee for Furr's Supermarkets, Inc. (the "Trustee"), filed a motion seeking to compromise various outstanding issues with the secured lenders in the debtor's case (the "Settlement Motion"). Among these issues is the question of the amount of funds available to pay administrative claims of estate professionals for the period prior to occurrence of a "Carve-Out Event" as defined in paragraph 3 of the Final Order (1) Authorizing Debtor to Obtain Secured Financing, (2) Granting Adequate Protection and (3) Granting Other Relief entered on March 14, 2001 (the "Final DIP Order").

2. The notice attached to the Settlement Motion referenced an "outline" of settlement terms, and indicated that a final settlement agreement would be distributed to all parties "at least three days" prior to the preliminary hearing on the Settlement Motion, currently scheduled for March 7, 2002. At 7:00 p.m. (EST) on March 4, Pepper Hamilton received a proposed Settlement Agreement, which indicated that that "Trustees and Lenders Reserve the Right to Make Changes." At 8:00 p.m. (EST) on March 5, Pepper Hamilton received a revised

Settlement Agreement, which again stated that it was subject to further changes, “although any changes are expected to be very minor.”

3. Given the evolving nature of the Settlement Agreement, as well as the highly compressed timetable with which it can be reviewed, Pepper Hamilton objects on the basis that, Until definitive terms are made available with adequate opportunity for review, the settlement should not be approved. As such, Pepper Hamilton reserves the right to supplement these objections and upon receiving definitive settlement documentation.

4. In addition, the settlement as proposed would limit estate professionals to a single carveout of \$1,650,000 for all fees and expenses from the Petition Date through August 31, 2001. This is contrary to the express terms of the Final DIP Order which (a) provides that the claims of the secured lenders are subordinate to the claims of estate professionals up the budgeted amount (*i.e.* \$600,000 per month) *prior* to a Carve-Out Event and (b) following a Carve-Out Event, provides for a carveout of \$1,500,000 for "allowed professional fees and disbursements *incurred after* the occurrence and during the pendency of a Carve-Out Event." Final DIP Order, ¶ 3 (emphasis added). As such, the settlement is not fair and reasonable and is antithetical to both the express language of the Final DIP Order and the purposes underlying the Bankruptcy Code. It is contrary, moreover, to the terms under which Pepper Hamilton accepted employment and performed services.

5. Moreover, the proposed settlement also is not fair and reasonable because it requires estate professionals to wait until December 2002 to receive payment. Since local professionals were paid in full during the pendency of the debtor's chapter 11 case, the terms of this condition serve solely to disadvantage out-of-town professionals. The majority of the services in question were performed more than or almost a year ago. Funds from the budget and

from the carveout in the Final DIP Order should be made available immediately or the settlement should not be approved.

WHEREFORE, Pepper Hamilton requests that the Court sustain its Objection, deny the relief sought by the Trustee with respect to the Carveout, and grant Pepper Hamilton such other and further relief as the Court deems to be just and equitable under the circumstances.

PEPPER HAMILTON LLP

BY: /s/ I. William Cohen

I. William Cohen (P12016)

P. Casey Coston (P49871)

100 Renaissance Center, Suite 3600

Detroit, Michigan 48243-1157

(313) 259-7110

March 6, 2002

Certificate of Service

I hereby certify that on March 6, 2002 a copy of the above Objection was faxed to the following list of parties:

United States Trustee
Ronald Andazola
P.O. Box 608
Albuquerque, NM 87103-608
Fax: (505) 248-6558

Sam Bregman
The Bregman Law Firm, P.C.
Attorneys for Joseph Gallo Farms
4901 Chappel Dr. NE
Albuquerque, NM 87107
Fax: (505) 761-8280

Robert H. Jacobvitz
David T. Thuma
JACOBVITZ THUMA & WALKER, P.C.
Counsel for the Debtor
500 Marquette N.W., Suite 650
Albuquerque, NM 87102
Fax: (505) 766-9272

Jay M. Goffman
Alan J. Carr
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Counsel for the Debtor
Four Times Square
New York, NY 10036-6522
Fax: (212) 735-2000

Richard Levin
Peter W. Clapp
Stephen J. Lubben
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Counsel for the Debtor
300 South Grand Avenue, Suite 3400
Los Angeles, CA 90071-3144
Fax: (213) 687-5600

/s/I. William Cohen
I. William Cohen