

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re: )  
 )  
FURR'S SUPERMARKETS, INC., )  
 )  
Debtor. )

Case No. 11-01-10779-JSS  
Chapter 11

**FILED**  
12:00 MIDNIGHT  
MAR 06 2002  
**DROP BOX**  
United States Bankruptcy Court  
District of New Mexico

**OBJECTION OF DELOITTE & TOUCHE LLP AND DELOITTE CONSULTING L.P.  
TO MOTION TO APPROVE SETTLEMENT AGREEMENT BETWEEN THE  
CHAPTER 7 TRUSTEE AND THE SECURED LENDERS**

Deloitte & Touche LLP and Deloitte Consulting L.P. (collectively "Deloitte") 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. 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. As proposed, the settlement 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 to the budgeted amount (included in the budget attached to the Final DIP Order) prior to a Carve-Out Event, and (b) following a Carve-Out Event, provides for a carveout of \$1,500,000 for "allowed professional

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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 inimical 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 Deloitte accepted employment and performed services.

3. 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.

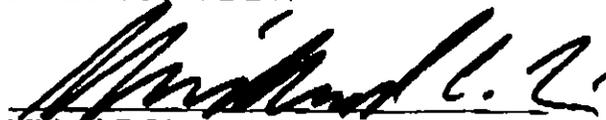
4. Finally, there is no definitive settlement agreement attached to the Trustee's motion, only what purports to be an "Outline of Terms of Settlement" nor has the Trustee yet provided Deloitte with definitive documents. Until the full terms of the settlement are made available, parties in interest, such as Deloitte, have no basis for evaluating the merits of the settlement.<sup>1</sup> Until definitive terms are made available with adequate opportunity for review, the settlement should not be approved. Deloitte reserves the right to supplement these objections and upon receiving definitive settlement documentation.

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

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<sup>1</sup> Drafts of settlement documents indicate, for example, that 50% of monies returned to the estate from professionals receiving more than a pro rata share of funds will not be allocated to other professionals, but instead will be paid to the secured lenders. The basis for such a term is unclear.

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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:

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