

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

FILED
MAY 31 PM 2:05

In Re:

FURR'S SUPERMARKETS, INC.

Debtor.

Chapter 11
No. 01-10779-SA

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

OBJECTION TO APPLICATION BY OFFICIAL UNSECURED CREDITORS' COMMITTEE TO RETAIN INVESTMENT BANKER

Heller Financial, Inc. as agent for Bank of America, N.A., Heller Financial, Inc., Metropolitan Life Insurance Company, Fleet Capital Corporation objects to the Application of the Chairperson of the Official Unsecured Creditors' Committee for Order Pursuant to 11 U.S.C. § 1103 Authorizing the Retention and Employment of Chanin Capital Partners, LLC ("Chanin") to Serve as Investment Banker to the Committee, and as grounds therefor would show the Court as follows:

1. The Court has previously heard the Application of the Debtor-In-Possession for the retention of Peter J. Solomon Company, Ltd. ("Solomon") as its investment banker. The fee structure for Solomon approved by the Court gives Solomon a strong incentive to maximize the proceeds of any reorganization of the Debtor. The proposed retention of Chanin would duplicate the services of and greatly increase the fees required to be paid by the estate.

2. The proposed retention of Chanin duplicates the Application of the Unsecured Creditors' Committee to retain Deloitte & Touche LLP and Deloitte Consulting L.P. (jointly "Deloitte"). Attached hereto as Exhibit A is a schedule listing the proposed services of Chanin compared to those of Deloitte. The duplicative services have been identified by leaving the item letters but categorizing and rearranging the order of the Chanin services so they may be put side-by-side with the corresponding Deloitte services.

523

3. Although the percentage fee to Chanin is only payable if at least \$160 million is obtained for sale of the estate, the monthly fee of \$100,000, with a minimum payment of \$400,000 is an expense that this estate simply cannot afford.

4. Pursuant to its pre-petition of financing agreements with the Debtor and pursuant to the post-DIP financing, all cash other than proceeds of fraudulent conveyance and preference actions are cash collateral belonging to these objecting creditors. The proposed expenditures of \$100,000 per month has never been budget approved by these objecting creditors, and these objecting creditors have never consented to the use of their cash collateral for the purpose of paying Chanin. These objecting creditors are not adequately protected from the dissipation of their cash collateral through the expenditure of these funds.

5. The status of this proceeding is such that the proposed fees to Chanin and the four month guarantee are not reasonable. The previous Order of the District Court in this case regarding the Post-Petition Financing establishes time limits which make the proposed work of Chanin too late. Further, as a result of the condition of the Debtor and the timing of sales of its assets, the proposed long-term retention of Chanin makes no economic sense.

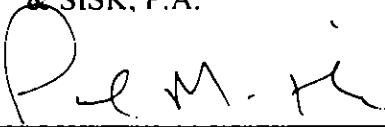
6. To the extent the Unsecured Creditors' Committee expects to pay Chanin under the Carve-Out provided in the Final Order Approving the DIP Financing, these objecting creditors note that the Carve-Out is a sum certain which will not be increased by the objecting creditors.

7. To the extent the Court disallows the indemnification or arbitration clauses in agreements of other professionals, those provisions should not be allowed for the benefit of Chanin.

WHEREFORE, Heller Financial, Inc., as agent for Bank of America, N.A., Heller Financial, Inc., Metropolitan Life Insurance Company, Fleet Capital Corporation prays that the Court deny the Application of the Unsecured Creditors' Committee to retain yet another professional at the expense

of this estate.

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: 

Paul M. Fish

Attorneys for Heller Financial, Inc.

Bank of America, N.A., Metropolitan Life Insurance
Company, Fleet Capital Corporation

Post Office Box 2168

Bank of America Centre, Suite 1000

500 Fourth Street, N.W.

Albuquerque, New Mexico 87103-2168

Telephone: (505) 848-1800

WE HEREBY CERTIFY that a true
and correct copy of the foregoing pleading
was mailed to the following this 31st day
of May, 2001.

Ron Andazola
United States Trustee
P.O. Box 608
Albuquerque, NM 87103-0608

William F. Davis
P.O. Box 6
Albuquerque, NM 87103

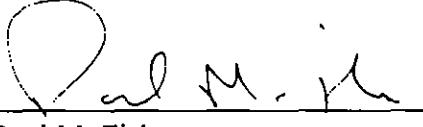
Stuart Hertzberg
Pepper Hamilton
100 Renaissance Center, #3600
Detroit, MI 48243

Alan Carr
Skadden, Arps, Slate, Meagher & Flom, LLC
Four Times Square
New York, NY 10036

Richard Levin
Skadden, Arps, Slate, Meagher & Flom, LLC
300 South Grand Avenue, Suite 3400
Los Angeles, CA 90071-3144

Robert H. Jacobvitz
Jacobvitz, Thuma & Walker, P.C.
500 Marquette NW, Suite 650
Albuquerque, NM 87102

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: 
Paul M. Fish

172730.doc

DELOITTE & TOUCHE

CHANIN CAPITAL PARTNERS

(From pp. 3-4 of Application)

(From pp. 1-2 of Retention Letter, Ex. A to Application)

1. ANALYSIS OF ON-GOING BUSINESS

- a) Assist the Committee in connection with assessing the Debtor's cash and liquidity requirements, as well as its future financing requirements;
- b) Assist the Committee in connection with monitoring the Debtor's financial and operating performance, including its statements of financial affairs, monthly operating reports, etc.;

- c) Assist the Committee in connection with evaluating the Debtor's businesses and operation, including stability plans, management retention, business outlook, etc.;

- e) Assist the Committee in connection with evaluating the Debtor's current operations, executory contracts, capital expenditures, and cost reduction opportunities;
- f) Assist the Committee in connection with evaluating the Debtor's business configuration, and operational alternatives;

2. PLANS AND FUTURE SALES

- d) Assist the Committee in connection with evaluating the Debtor's business, operational, and financial plans, both short-term and long-term;
- g) Assist the Committee in connection with evaluating restructuring-related alternatives, including tax implications;

EXHIBIT

<p>h) Assist the Committee in connection with restructuring-related negotiations and negotiations concerning plan or plans of reorganization;</p>	<p>i) Assist the Committee in developing, evaluating, structuring and negotiating the terms and conditions of a Plan;</p> <p>g) Assist the Committee in identifying and evaluating a potential acquisition of the Company as a going concern;</p> <p>h) Advise and assist the Committee in negotiations with potential acquirers of the Company as a going concern;</p> <p>i) Evaluate and monitor the sales process for the Company;</p> <p>j) Advise the Committee on the timing, nature, and terms of new securities, other consideration or other inducement to be offered pursuant to the restructuring relating to Chapter 11 case;</p>
<p>3. CLAIMS REVIEW</p> <p>i) Advise the Committee concerning the Debtor's claims;</p> <p>k) Assist the Committee, where appropriate, in reviewing the books and records of the Debtor for related party transactions and unenforceable claims; and</p>	<p>4. TESTIMONY AND MISCELLANEOUS</p> <p>j) Consistent with the scope of services set forth herein, attending and participating in appearances before the United States Bankruptcy Court;</p> <p>l) Provide such other related services as may be requested by the Committee or its counsel and as agreed to by Deloitte.</p>
<p>l) Assist the Committee in preparing documentation required in connection with the restructuring of the existing debt obligations;</p> <p>m) Provide testimony, as necessary, in any proceeding before the Bankruptcy Court; and</p> <p>n) Provide the Committee with other appropriate general restructuring advice.</p>	