

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW MEXICO

In re:

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

Case No. 11-01-10779 SA

Debtor.

**UNITED STATES TRUSTEE'S LIMITED OBJECTION TO  
APPLICATION FOR APPOINTMENT OF BERGER & ASSOCIATES**

The United States Trustee for the District of New Mexico hereby objects on a limited basis to the application for appointment of Berger & Associates and as her reasons therefore states the following:

1. The application for appointment of Berger & Associates, in addition to requesting authorization to act as a noticing agent pursuant to 28 U.S.C. §156, also requests authorization for the provision of professional services which should be subject to 11 U.S.C. §327(a).

2. In defining the term "professional," this Court has adopted the test set forth in Matter of Seatrain Lines, Inc., 13 B.R. 980 (Bankr.S.D.N.Y.1981). In that case, the Court stated:

For the purpose of section 327 (a), "professional person" is limited to persons in those occupations would play a central role in the administration of the debtor proceeding. Court approval is required for the retention of attorneys, accountants, appraisers, auctioneers, and other persons in other professions intimately involved in the administration of the debtor's estate.

In re Channel 2 Associates, 88 B.R. 351 (Bankr.D.N.M.1988) quoting Matter of Seatrain Lines, Inc., 13 B.R. 980, 981 (Bankr.S.D.N.Y.1981).

3. The declaration of John Vander Hooven filed in support of the Berger & Associates' application, at paragraph 5, states that Berger specializes in providing consulting and data processing services to Chapter 11 debtors. At paragraph 3 of the Vander Hooven declaration, it

is further stated that, inter alia, (1) Berger will assist the Debtor in the preparation of the schedules and the statement of financial affairs and (2) the reconciliation and resolution of claims.

4. The letter agreement dated February 4, 2001 from Mr. Vander Hooven to Stephen Mortensen filed in support of the Berger application, states that services will be rendered for rates ranging from \$35 to \$245 an hour.

5. The services which Berger proposes to perform for the Debtor are both sophisticated and central to the administration of this proceeding.

6. The services and charges which Berger proposes go beyond the range of services contemplated under 28 U.S.C. §156 (c).

7. Burger must be considered a professional within the meaning of §327(a) and should therefore be subject to the requirements of Bankruptcy Rule 2014 and 11 U.S.C. §§330 & 331.

Respectfully submitted,  
BRENDA MOODY WHINERY  
United States Trustee

Filed electronically 3/2/01  
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The undersigned certifies that a true and accurate copy of the foregoing was mailed to the below listed counsel on this 2<sup>nd</sup> day of March, 2001.

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