

**FILED**  
12:00 MIDNIGHT

JUL 19 2002

**DROP BOX**  
United States Bankruptcy Court  
Albuquerque, New Mexico

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 7-01-10779-SA  
Chapter 7

Debtor.

**MOTION FOR RULE 2004 EXAMINATION OF PINNACLE LOGISTICS, INC.,  
COUNTRYWIDE LOGISTICS, INC., TIBBETT & BRITTEN NORTH  
AMERICA, INC., AND THEIR AFFILIATES**

Yvette J. Gonzales, the Chapter 7 Trustee in the above-captioned bankruptcy case, (the "Trustee"), by counsel, pursuant to Federal Rules of Bankruptcy Procedure 2004(a), 2004(c), and 9016, and Federal Rule of Civil Procedure 45, requests that the Court order Pinnacle Logistics, Inc., Countrywide Logistics, Inc., Tibbett & Britten North America, Inc., and any affiliates of the foregoing (together, the "Related Entities") to produce certain documents and submit to an examination by the Trustee. In support of this motion (the "Motion"), the Trustee states:

1. On February 8, 2001, Furr's Supermarkets, Inc. (the "Debtor") commenced this bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

2. On December 19, 2001, the Debtor converted the case to a Chapter 7 case. The Trustee was appointed as the Chapter 7 trustee on the same day.

3. On or about May 22, 2002, the Trustee filed her Complaint to Recover Preferential Transfers against Pinnacle and Countrywide (the "Preference Complaint"), seeking to recover an alleged preference of more than \$1,000,000.

4. On July 16, 2002, Pinnacle's and Countrywide's counsel informed the Trustee's counsel that Pinnacle and Countrywide were insolvent and could not answer any judgment entered on the Preference Complaint.

5. Because of the alleged insolvency, the Trustee believes it is her duty, before considering any settlement of the Preference Complaint, to determine

1761

whether there are grounds for seeking to avoid any transfers from Pinnacle and/or Countrywide to any corporate parent, affiliate, or other third party, whether under state fraudulent transfer statutes or otherwise.

6. One ground for avoiding a transfer under the Uniform Fraudulent Transfer Act is subject to a one-year statute of limitations. Given the timing of the Fleming asset sale, which closed in August, 2001, and the El Paso warehouse wind-down, the Trustee is concerned that any investigation into potential transfers be conducted immediately.

7. The Trustee requests that the Court direct the Related Entities to produce the documents described on the attached Exhibit A in Albuquerque within 7 days after the Court enters an order granting this Motion.

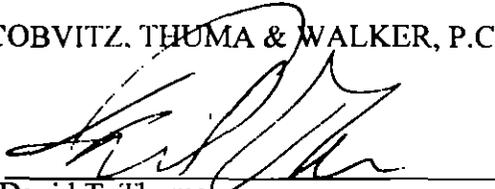
8. The Trustee further requests that the Court order a representative(s) of the Related Entities to submit to an examination promptly after the documents are produced to answer questions about the documents produced and any transfers made by Pinnacle or Countrywide to any of the Affiliated Entities after July 1, 2002. The representative(s) should be designated pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure.

9. Due to the time-sensitive nature of this Motion, the Trustee has not asked for any documents that may be relevant to avoidance actions with a longer statute of limitations. This Motion therefore is without prejudice to the Trustee to file additional motions or otherwise engage in discovery to ascertain if any transfers occurred prior to July 1, 2001.

10. *Pinnacle and Countrywide have not consented to the Motion.*

WHEREFORE, the Trustee request that the Court order the Related Entities to produce the identified documents, order a representative of the Related Entities to submit to an examination of the Trustee, and for all other just and proper relief.

JACOBVITZ, THUMA & WALKER, P.C.

By: 

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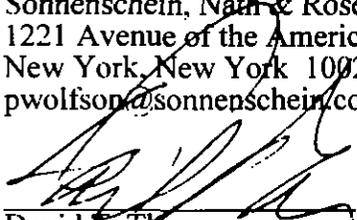
I hereby certify that a true and correct copy of the foregoing was served by First Class United States mail, postage prepaid, and by e-mail, on July 19, 2002 on:

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## EXHIBIT A--DOCUMENTS TO BE PRODUCED

### Definitions

"Affiliate" means any corporation, individual, or other entity that owns any capital stock of Pinnacle, Countrywide, or Tibbett & Britten; any corporation whose stock is owned by Pinnacle, Countrywide, or Tibbett & Britten; or any corporation whose stock is owned by any individual, corporation, or other entity who also owns stock of Pinnacle, Countrywide, or Tibbett & Britten.

"Related Entity" or "Related Entities" means any one or all of Pinnacle, Countrywide, Tibbett & Britten or any Affiliate.

"Countrywide" means Countrywide Logistics, Inc.

"Documents" is to be construed in the broadest sense and means any tangible thing, recording and reproduction, whether visual or auditory, in any Related Entity's possession, control, or custody, including without limiting the generality of its meaning, correspondence, pleadings, reports, depositions, personal memoranda, memoranda to files, inter-office memoranda, intra-office memoranda, drawings, prints, graphs, charts, photographs, phonographs, notes, studies, valuations, analyses, reports (whether expert or otherwise), reviews, working papers, books, notes, telegrams, pamphlets, video or audio tapes, voice recordings, computer tapes, printouts or cards, microfilms, microfiches, and any papers or items on which words have been written, printed, typed, or otherwise affixed, and shall mean a copy when the original is not in the possession, control, or custody of any Related Entity, and shall mean every copy of every document when such a copy is not an identical copy of an original. The term also means documents stored in a computer that could be printed or retrieved but currently are not in "hard copy" form.

"Pinnacle" means Pinnacle Logistics, Inc. a Delaware corporation.

"Tibbett & Britten" means Tibbett & Britten North America, Inc.

### Documents to be produced

1. Any and all documents in the possession, custody, or control of any Related Entity relating to any transfers of cash or other assets by Pinnacle to any Related Entity after July 1, 2001, including without limitation:

a. Any canceled checks, wire transfer requests, wire transfer confirmations, bills of sale, receipts, and similar documents that reflects any such transfers:

b. Any bank account statement of any Related Entity that shows a receipt of cash or assets from Pinnacle;

c. Any accounting record of any Related Entity reflecting the receipt of cash or other assets from Pinnacle;

d. All Bank account statements for each Pinnacle bank account for the time period after July 1, 2001; and

e. Pinnacle's monthly general ledger for each month after June 30, 2001.

2. Any and all documents in the possession, custody, or control of any Related Entity relating to any transfers of cash or other assets by Countrywide to any Related Entity after July 1, 2001, including without limitation:

a. Any canceled checks, wire transfer requests, wire transfer confirmations, bills of sale, receipts, and similar documents that reflects any such transfers;

b. Any bank account statement of any Related Entity that shows a receipt of cash or assets from Countrywide;

c. Any accounting record of any Related Entity reflecting the receipt of cash or other assets from Countrywide;

d. All Bank account statements for each Countrywide bank account for the time period after July 1, 2001; and

e. Countrywide's monthly general ledger for each month after June 30, 2001.

3. If there were any transfers from Pinnacle to any Related Entity after July 1, 2001, any and all documents in the possession, custody, or control of any Related Entity related to the exchange consideration for such transfer, including without limitation all promissory notes, loan agreements, purchase agreement, and records reflecting inter-company accounts.

4. Any and all documents that evidence the financial condition of Pinnacle as of February 8, 2001, August 1, 2001, and July 1, 2002, or the dates closest to such dates as information is available, including without limitation:

a. Audited or unaudited financial statements, including income statements, balance sheets, and/or cash flow statements; and

b. Federal tax returns for 2000 and 2001.

5. Any and all documents that evidence the financial condition of Countrywide as of February 8, 2001, August 1, 2001, and July 1, 2002, or the dates closest to such dates as information is available, including without limitation:

a. Audited or unaudited financial statements, including income statements, balance sheets, and/or cash flow statements; and

b. Federal tax returns for 2000 and 2001.