

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 7-01-10779 SA
Chapter 7

Debtor.

**ORDER ADOPTING CARVE-OUT PROCEDURE,
SETTING DEADLINES, AND GRANTING OTHER RELIEF**

This matter came before the Court on the Motion to Adopt Proposed Carve-Out Procedure, Set Deadlines, and for Other Relief (the "Motion") filed July 15, 2002 by Yvette J. Gonzales, Chapter 7 Trustee.

The Court held a preliminary hearing on the Motion on August 12, 2002 at 10:30 a.m. Counsel appeared at the preliminary hearing as noted on the record. The Court finds that the notice given of the Motion was sufficient in the circumstances, and that it is appropriate to grant relief granted in this Order. It is therefore

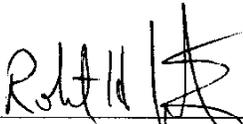
ORDERED that the carve-out and other procedures and matters set forth in Exhibit A hereto, which are incorporated into and made a part of this Order, are adopted in their entirety as an order of the Court.



THE HONORABLE JAMES S. STARZYNSKI
UNITED STATES BANKRUPTCY JUDGE

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a Professional Corporation

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CARVE-OUT AND OTHER PROCEDURES

A. Definitions. The following words and phrase have the following meanings.

“Adjusted Pro Rata Share” is defined in paragraph C.

“Allocation Statement” is defined in paragraph F(2).

“Carve-Out Procedures Motion” means the Chapter 7 Trustee’s Motion to Adopt Proposed Carve-Out Procedure, Set Deadlines, and for Other Relief.

“Carve-Outs” means the Pre-Closing Carve-Out, Post-Closing Carve Out, and JTW Carve-Out.

“Chapter 11 Fee Applications” is defined in paragraph G.

“Denominator” is defined in Attachment 1 hereto.

“DIP Financing Orders” means the Final DIP Financing Order and the First Post-Closing DIP Financing Order.

“Excluded Fees” means professionals fees and costs that meet the criteria set forth in the DIP Financing Orders as not to be paid from Carve-Out funds.

“Excluded Fees Statement” is defined in paragraph D(2).

“Eligibility Objections” is defined in paragraph D(3).

“Final DIP Financing Order” means the Final Order (1) Authorizing Debtor to Obtain Secured Financing, (2) Granting Adequate Protection and (3) Granting Other Relief, filed March 14, 2001.

“Final Fee Application Deadline” is defined in paragraph G.

“First Post-Closing DIP Financing Order” means the Final Post Closing Order Supplementing Final Order (1) Authorizing Debtor to Obtain Secured Financing, (2) Granting Adequate Protection and (3) Granting Other Relief, filed in September, 2001.

“Gross Pro Rata Share” is defined in Attachment 1 hereto.

“JTW Carve-Out” means the Carve-Out set forth in paragraph 9 of the First Post-Closing DIP Financing Order.

EXHIBIT “A”

“Net Pro Rata Share” is defined in Attachment 1 hereto.

“Numerator” is defined in Attachment 1 hereto.

“Percentage” is defined in Attachment 1 hereto.

“Post-Conversion” means after this bankruptcy case was converted from a case under chapter 11 case to a case under chapter 7.

“Pre-Closing Carve-Out Amount” is the amount of the Pre-Closing Carve-Out as set forth in paragraph 8(a) of the Settlement Order

“Pre-Closing Period” means on or prior to August 31, 2001.

“Post-Closing Carve-Out” is defined in paragraph 8(a) of the Settlement Order.

“Post-Closing Period” means on or after September 1, 2001.

“Post-Conversion Services Statement” is defined in paragraph D(3).

“Professionals” means professional persons employed in this bankruptcy case under Bankruptcy Code §327 or §1103.

“PJSC” means Peter J. Solomon Co.

“Settlement Order” means the Stipulation and Consent Order (i) Approving Compromise and Settlement Between the Trustee on Behalf of the Estate, Heller Financial, Inc., Bank of America, N.A., Fleet Capital Corporation and Metropolitan Life Insurance Company and (ii) Resolving All Objections Thereto, entered or to be entered by the Court.

B. Payment of Pro Rata Share. Each Professional shall be paid its pro rata share of each of the Carve-Outs.

C. Calculation of Pro Rata Share. The Court will determine which of the two formulas set forth on Attachment 1 hereto is appropriate for calculating the pro rata share of each Professional for the Carve-Outs. Davis & Pierce P.C. shall have until August 19, 2002 to file and serve a written submission in support of its position that Formula #2 should apply. If Davis & Pierce P.C. does not timely file and serve such a submission, then Formula #1 shall apply. If Davis & Pierce P.C. does timely file and serve such a

submission, any Professional supporting use of Formula #1 may (but is not required to) file and serve a response on or before August 30, 2002.

D. Determination of Eligibility to Participate in Carve-Out Funds

(1) For purposes of computing distributions to professionals from the Carve-Outs, such distributions shall exclude any work performed which meets the criteria set forth in the DIP Financing Orders as not to be paid from Carve-Out funds, and any prior receipts or credits shall be deemed applied either to work eligible to be paid from Carve-Out funds or to work not eligible to be paid from Carve-Out funds as determined by the Court.

(2) Statement of Whether Fees Are Excluded Fees Not Payable from any Carve-Outs. Jacobvitz Thuma & Walker P.C.; Skadden, Arps, Slate, Meagher & Flom LLP; Pepper Hamilton LLC; Davis & Piece P.A.; and Deloitte & Touche LLP and Deloitte Consulting L.P., shall file, on or before the Final Fee Application Deadline, either (i) a statement specifically identifying any of their fees or costs (whether or not allowed or paid) which they recognize as Excluded Fees if allowed and unpaid; and specifying which such fees or costs have been paid or disallowed, or (ii) if any such Professionals believes that none of its fees are Excluded Fees, a statement to that effect (the "Excluded Fees Statement"). Further, the Excluded Fees Statement shall include the amount the Debtor in Possession paid such Professional, the credits (if any) the Professional gave the Debtor in Possession, and how the Professional applied the payments and credits. Further, if any of the above listed Professionals have received payment from or given credits to the Debtor in Possession, and recognize that a portion of their charges are Excluded Fees, each such Professional include in the Excluded Fees

Statement a statement of how they claim that such payments and credits should be applied as between Excluded Fees and fees that are not Excluded Fees.

(3) Statement of Intent to Claim Fees from a Carve-Out for Post-Conversion Work. If any Professional seeks or intends to seek payment from a Carve-Out for any services performed or costs incurred after December 18, 2001, the Professional is required to file and serve on or before the Final Fee Application Deadline, a notice of intent to seek payment of Post-Conversion fees or expenses from a Carve-Out (the “Post-Conversion Services Statement”), specifying (i) the types of Post-Conversion fees and expenses that the Professional seeks or intends to seek from the a Carve-Out (such as, fees for Post-Conversion services rendered and costs incurred to prosecute or defend fee applications); (ii) the amount of such compensation sought, to the extent liquidated; and (iii) from which Carve-Out(s) the Professional claims the compensation should be paid, and why.

(4) Objections to Eligibility. Any objections to the eligibility of any services rendered or costs incurred by any Professional for payment from any Carve-Outs as set forth in any Excluded Fee Statement or Post-Conversion Services Statement on the grounds that: (i) the fees are Excluded Fees, (ii) the objector disagrees with any claims in an Excluded Fee Statement, (iii) the fees are for Post-Conversion services or costs not covered by a Carve-Out, (iv) the objector disagrees with the Carve-Out(s) from which the Claimant asserts such compensation should be paid; (v) that payments from or credits given to the Debtor in Possession should be applied to Excluded Fees and/or (v) any other objections to any matters set forth in an Excluded Fee Statement or Post-Conversion Services Statement (“Eligibility Objections”), must be filed and served

within 30 days after the Final Fee Application Deadline. Any Eligibility Objection must specify the fees and/or costs the objector contends are not eligible for payment from the Carve-Outs or from a particular Carve-Out, and why; the payments or credits the Objector claims should be applied to Excluded Fees; and any other Eligibility Objections the objector asserts. If no Eligibility Objections are timely filed and served with respect to an Excluded Fee Statements or Post-Conversion Services Statement, the fees and costs for the Professionals filing such statement shall be deemed eligible to be paid from a Carve-Out to the extent the compensation is approved by the Court and as set forth in the applicable Excluded Fee Statement or Post-Conversion Services Statement to which no objection was made, and payments or credits will be applied as applied by the Professional as set forth in the applicable Excluded Fee Statement to which no objection was made.

(5) Response to Eligibility Objections. If any Eligibility Objections are timely filed, the Professional must file and serve a written response within 15 days after service.

E. Determination of Which Carve-Out Applies. For the determination of which fees are (i) eligible to be paid from the Pre-Closing Carve Out, (ii) eligible to be paid from the Post-Closing Carve-Out, and (iii) not eligible to be paid from any Carve-Outs, in addition to the above the following guidelines shall apply:

(1) Pre-Conversion Work. Allowed fees for services rendered or costs incurred on or before August 31, 2001 are payable from the Pre-Closing Carve-Out (if otherwise eligible to be paid from the Carve-Outs), regardless of when the invoice was sent for such fees; and that allowed fees for services rendered or costs incurred after

August 31, 2001 but before December 19, 2001 are payable from the Post-Closing Carve-Out (if otherwise eligible to be paid from the Carve-Outs).

(2) Post-Conversion Work. Whether any Post-Conversion fees or expenses are payable from a Carve-Out, and if so which Carve Out, shall be determined in accordance with paragraph D above.

(3) PJSC Claim. PJSC's remaining unpaid \$150,000 claim will be included in the Pre-Closing Carve-Out (not the Post-Closing Carve-Out). PJSC is not required to file an Allocation Statement.

F. Determining the Amounts Within Each of the Carve-Outs. The following procedure will apply to determine the amounts for each Professional payable from each of the Carve-Outs:

(1) Prorating Disallowed Amounts. For any fees for services rendered or costs incurred during both the Pre-Closing Carve Out Period and Post-Closing Carve-Out Period that the Court disallows in such a manner that it cannot be determined to what extent the disallowed amount is attributable to the Pre-Closing or Post-Closing Carve-Out Period, the disallowed amount shall be pro rated based on the relative amounts of services performed and costs incurred during the Pre- and Post-Closing Carve-Out Periods in the category of disallowed compensation.

(2) Statement by Professionals of Allocation Between Carve Out Periods. If a Professional rendered services in both the Pre-Closing Carve-Out Period and the Post Closing Carve-Out Period, and seeks or intends to seek payment from any of the Carve-Outs, then on or before the Final Fee Application Deadline the Professional shall file and serve a statement (the "Allocation Statement") setting forth (i) the amount

of compensation claimed to be payable from each Carve-Out from which payment is sought; and (ii) whether and to what extent the Court has approved the compensation claimed to be payable from each Carve-Out either by entry of an interim or final order.

(3) Objections to Allocation Statement. Any objections to the allocation between Carve Out periods set forth in the Allocation Statement must be filed and served within 30 days after the Final Fee Application Deadline. If no objections are timely filed and served, the allocation shall be made as set forth in the Allocation Statement. Any approved allocation between Carve Out periods remain subject to reduction for any fees or costs that are Excluded Fees or to the extent any of the compensation is not approved by the Court.

G. Deadline for Final Chapter 11 Fee Applications. The Court hereby fixes a deadline of 30 days after service of the Notice of Deadlines and Requirements Under Order Adopting Carve-Out Procedure, Setting Deadlines, and Granting Other Relief, for any Professionals to file final fee applications for any compensation (i) based on services rendered or costs incurred prior to December 19, 2001 (when the chapter 11 case was converted to a case under chapter 7) (“Chapter 11 Fee Applications”), or (ii) for services rendered after December 18, 2001 to prepare, prosecute and/or defend Chapter 11 Fee Applications (which claimed amount may be liquidated if such work has not been completed) (the “Final Fee Application Deadline”).

H. Service. Unless the Court orders otherwise, except for notice of final fee applications, service will be sufficient if service is made on the parties listed on Attachment 2 hereto at the addresses shown thereon.

I. Notice. A notice of these procedures substantially in the form of Attachment 2 hereto is sufficient and appropriate.

Attachment 1

FORMULA #1

The Pro Rata Share of each Professional to the Pre-Closing Carve-Out shall be determined by the following formula:

1. The Pre-Closing Carve-Out Amount is added to the amount paid by the Debtor in Possession to all Professionals for services rendered and costs incurred during the Pre-Closing Period, and the Sum is defined as the “Numerator”;

2. The total amount of Professional fees allowed by the Court that is eligible to be paid from the Pre-Closing Carve-Out is defined as the “Denominator”;

3. The result of dividing the Numerator by the Denominator is defined as the “Percentage”; and

4. The amount of Professional fees allowed by the Court for each Professional that is eligible to be paid from the Pre-Closing Carve-Out is multiplied by the Percentage, and the result is defined as the Professional’s “Gross Pro Rata Share;” and

5. The amount already paid to the Professional for services rendered and costs incurred during the Pre-Closing Period is deducted from the Gross Pro Rata Share, and the result is defined as the “Net Pro Rata Share.”

The following example illustrates the formula (the assumptions are for illustration only):

Assumptions:

- (a) Pre-Closing Carve-Out Amount is \$1,825,000;
- (b) The Debtor in Possession paid a total of \$750,000 to all Professionals for services rendered and costs incurred during the Pre-Closing Period;
- (c) Court allowed a total of \$4,300,000 to all Professionals that is eligible to be paid from the Pre-Closing Carve-Out;
- (d) The Professional in question has allowed compensation eligible to be paid from the Pre-Closing Carve-Out in the amount of \$250,000; and
- (e) The Professional in question has been paid \$50,000 for services rendered during the Pre-Closing Period.

Example #1:

1. $\$1,825,000 + \$750,000 = \$2,575,000$ (the “Numerator”);
2. $\$4,300,000$ (the “Denominator”);
3. $\$2,575,000 \div \$4,300,000 = 59.88\%$ (the “Percentage”);
4. $59.88\% \text{ of } \$250,000 = \$149,700$ (the “Gross Pro Rata Share”); and
5. $\$149,700 - \$50,000 = \$99,700$ (the “Net Pro Rata Share”).

6. If the total Net Pro Rata Shares of all Professionals exceeds the Pre-Closing Carve-Out Amount because the Net Pro Rata Share of one or more Professionals is a negative number, then the Net Pro Rata Shares shall be adjusted, pro rata, so that the aggregate amount of the Net Pro Rata Shares equals the Pre-Closing Carve-Out Amount (the “Adjusted Pro Rata Share”).

FORMULA #2

The Pro Rata Share of each Professional to the Pre-Closing Carve-Out shall be determined by the following formula:

1. The Pre-Closing Carve-Out Amount is defined as the “Numerator”;
2. The difference between the total amount of Professional fees allowed by the Court and the amount paid by the Debtor in Possession to all Professionals for services rendered and costs incurred during the Pre-Closing Period, is defined as the “Denominator”;
3. The result of dividing the Numerator by the Denominator is defined as the “Percentage”; and
4. The unpaid amount of Professional fees allowed by the Court for each Professional that is eligible to be paid from the Pre-Closing Carve-Out is multiplied by the Percentage, and the result is defined as the Professional’s “Pro Rata Share.”

The following example illustrates the formula (the assumptions are for illustration only):

Assumptions:

- (a) Pre-Closing Carve-Out Amount is \$1,825,000;
- (b) The Debtor in Possession paid a total of \$750,000 to all Professionals for services rendered and costs incurred during the Pre-Closing Period;
- (c) Court allowed a total of \$4,300,000 to all Professionals that is eligible to be paid from the Pre-Closing Carve-Out, of which \$3,550,000 is unpaid;
- (d) The Professional in question has allowed compensation eligible to be paid from the Pre-Closing Carve-Out in the amount of \$250,000; and
- (e) The Professional in question has been paid \$50,000 for services rendered during the Pre-Closing Period for services eligible to be paid from the Pre-Closing Carve-Out, leaving an unpaid balance for such services of \$200,000.

Example #2:

- 1. \$1,825,000 (the "Numerator");
 - 2. $\$4,300,000 - \$750,000 = \$3,550,000$ (the "Denominator");
 - 3. $\$1,825,000 \div \$3,550,000 = 51.41\%$ (the "Percentage");
 - 4. $59.88\% \text{ of } \$200,000 = \$102,820$ (the "Pro Rata Share").
6. If the total Pro Rata Shares of all Professionals exceeds the Pre-Closing Carve-Out Amount because the Pro Rata Share of one or more Professionals is a negative number, then the Pro Rata Shares shall be adjusted, pro rata, so that the aggregate amount of the Pro Rata Shares equals the Pre-Closing Carve-Out Amount (the "Adjusted Pro Rata Share").

Attachment 2

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Albuquerque, NM 87102

Attachment 3

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 7-01-10779 SA
Chapter 7

Debtor.

**NOTICE OF DEADLINES AND REQUIREMENTS UNDER ORDER ADOPTING
CARVE-OUT PROCEDURE, SETTING DEADLINES, AND GRANTING OTHER
RELIEF**

On August ___, 2002, the Court entered an Order Adopting Carve-Out Procedure, Setting Deadlines, and Granting Other Relief (the "Order"), a copy of which is enclosed. The Order fixes the following deadlines:

1. Davis & Pierce P.C. Submission on Pro Rata Payment Formula. **August 19, 2002** is fixed as the last day for Davis & Pierce P.C. to file and serve any written submission it wishes to make in support of use of Formula #2 (Formula #1 and Formula #2 are set forth in Attachment 1 to Exhibit A the Order).

2. Responses to Davis & Pierce P.C. Submission on Pro Rata Payment Formula. **August 30, 2002** is fixed as the last day to file and serve any responses to the submission (if any) filed by Davis & Pierce P.C. on or before August 19, 2002. If Davis and Pierce dose not make such a submission, the default formula is Formula #1.

3. Final Chapter 11 Fee Applications. **September __, 2002** is fixed as the last day to file and serve final fee applications for any compensation (i) based on services rendered or costs incurred prior to December 19, 2001 (when the chapter 11 case was converted to a case under chapter 7) ("Chapter 11 Fee Applications") or (ii) for services rendered after December 18, 2001 to prepare, prosecute and/or defend Chapter 11 Fee Applications (which claimed amount may be liquidated if such work has not been completed).

4. Excluded Fee Statements. **September __, 2002** is fixed as the last day for Jacobvitz Thuma & Walker P.C., Skadden, Arps, Slate, Meagher & Flom LLP, Pepper Hamilton LLC, Davis & Piece P.A., and Deloitte & Touche LLP and Deloitte Consulting L.P., to file an Excluded Fee Statement. The required content of the Excluded Fee Statement is set forth in paragraph D(2) of Exhibit A to the Order.

5. Post-Conversion Services Statements. **September __, 2002** is fixed as the last day to file and serve Post-Conversion Services Statements. A Post-Conversion Services Statement needs to be filed by a Professional only if the Professional seeks or intends to seek payment from a Carve-Out for any services performed or costs incurred after December 18, 2001. The required content of the Post-Conversion Services Statement is set forth in paragraph D(3) of Exhibit A to the Order.

6. Allocation Statements. **September __, 2002** is fixed as the last day to file and serve Allocation Statements. An Allocation Statement needs to be filed by a Professional only if the Professional rendered services to the Debtor in both the Pre-Closing Carve-Out Period (2-8-01 through 8-31-02) and in the Post Closing Carve-Out Period (9-1-02 through 12-18-02). The required content of the Allocation Statement is set forth in paragraph F(2) of Exhibit A to the Order.

7. Objections to Eligibility and Allocation Statements. **October __, 2002** is fixed as the last day to file and serve any objections to any matters set forth in any of the Excluded Fee Statements and Post-Conversion Services Statements ("Eligibility Objections") and Allocation Statements.

8. Response to Eligibility Objections. If any Eligibility Objections are timely filed, the Professional to whom the objection is directed must file and serve a written response within 15 days after service of the objection.

JACOBVITZ THUMA & WALKER
a Professional Corporation

Date mailed: _____

By _____
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(505) 766-9272
(505) 766-9287 (fax)
Attorneys for the Chapter 7 Trustee

This certifies that on August __, 2002 a copy of the foregoing notice was served by first class United States mail on the persons listed on Exhibit A hereto at the addresses shown thereon.
