

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.

Case No. 7-01-10779 SA
Chapter 7

Debtor.

**OBJECTION TO ALLOCATION STATEMENT AND EXCLUDED
FEE STATEMENT OF DELOITTE & TOUCHE L.L.P. AND
DELOITTE CONSULTING, L.P.**

Heller Financial, Inc. ("Heller") for itself, Bank of America, N.A. and Fleet Capital Corporation and on behalf of Metropolitan Life Insurance Company here objects to the Allocation Statement and Excluded Fee Statement of Deloitte & Touche L.L.P. and Deloitte & Touche Consulting, L.P. ("Deloitte") Submitted Pursuant to Order Adopting Carve-Out Procedures.

1. A substantial amount of the work performed by Deloitte is to be excluded from the Carve-Out allocations because it was work falling within the excluded work identified in paragraph 8(b) of the Stipulation and Consent Order (1) 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 (jointly the "Lenders") and (II) Resolving All Objections Thereto entered July 25, 2002 and in paragraph 3 of the Final Order (1) Authorizing Debtor to Obtain Secured Financing, (2) Granting Adequate Protection and (3) Granting Other Relief ("Final DIP Order") entered March 14, 2001.

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2. In particular, all work of Deloitte relating to the valuation of the leases of the Debtor was for purposes which require its exclusion from receiving payment from either cash collateral of the Lenders or from any Carve-Out. The lease valuation was performed for use in the failed adversary of the Unsecured Creditors' Committee styled *UCC vs. Bank of America, et al.*, Adversary No. 01-01096-S. In addition, that work was requested to be performed for the purposes of supporting UCC contentions relating to marshalling, that the leases had such a large value (and the Lenders were not perfected in the leases) so there was some amount to which the Lenders were not entitled, that the claim of the Lenders should be equitably subordinated, that the liens of the Lenders should be set aside as preferences, that the Lenders should be sur-charged and other claims which fall within the ambit of services which may not be compensated from the cash collateral and Carve-Out moneys of the Lenders.

3. In its determination regarding whether the Deloitte fees should be allowed announced May 14, 2002, the Court ruled that only one-third of the fees identified in the category identified as the lease valuation project, reducing \$416,609.25 to \$138,803.08. In addition, the Court reduced other certain categories by 20% to 25%, but it does not appear those are relevant to this objection. In addition, the Court disallowed time prior to March 14, 2001, and that amount is accounted for below.

4. A review of the various fee applications filed by Deloitte allows the identification of some of the fees which should be excluded. For example, it appears that the work of Ben Barnett, an appraiser, was totally directed toward the lease valuation project. Others worked on that project, and there was some post-Closing testimony during which the lease appraisal was placed in evidence. At the present time, Heller has

identified the following allowed fees which should be excluded from any cash collateral or Carve-Out recovery or calculation:

a. Pre-Closing:

Allowed fees on lease valuation (less \$2,736.50 pre March 14, 2002) -
\$136,066.58

b. Post-Closing (all apparently allowed in full):

Allowed fees on "Data Analysis" (Barnett "Analysis of leascholds") \$1,185.00

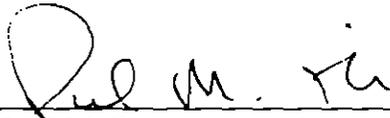
Allowed fees on "Litigation Consulting" (Barnett) \$4,937.50

Allowed fees on lease valuation \$3,500.00

5. In addition, Deloitte has sought to recover from the Post-Closing Carve-Out the fees and costs incurred in preparing its fee application arising from its pre-Closing work. To the extent allowed, if at all, those fees and costs should be allocated to the pre-Closing Carve-Out pool.

WHEREFORE, Heller Financial, Inc. for itself, Bank of America, N.A. and Fleet Capital Corporation prays that the Court disallow those fees and costs sought for work which must be excluded from any Carve-Out and to properly allocate the fees and costs sought for work arising from pre-Closing work.

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

By:  _____

Paul M. Fish
Attorneys for Heller Financial, Inc.,
Bank of America and 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

And

David S. Heller
Latham & Watkins
Sears Tower, Suite 5800
Chicago, Illinois 60606
Telephone: (312)876-7700

WE HEREBY CERTIFY that a true
and correct copy of the fore-
going pleading was mailed this
17th day of October, 2002
to the following:

Mark C. Walker
Mounce Green, Myer, Safi & Galatzan
P.O. Box 1977
100 N. Stanton
Suite 1700
El Paso, TX 79901-1448

James Pleasant
Gardere, Wynne & Sewell, LLP
300 Thanksgiving Tower
1601 Elm Street
Dallas, TX 75201-4761

Linda Aiken
20 Paseo de Peralta
Suite 201
Santa Fe, NM 87501

Daniel Porter
Hurley, Toevs, Styles, Hamblin & Panter, P.C.
4155 Montgomery Blvd. NE
Albuquerque, NM 87109

Laura M. Franze
Akin, Gump, Struass, Hauer & Feld
170 Pacific Avenue
Suite 4100
Dallas, TX 75201-4675

James Reist
Kraehbiel, Bannerman & Williams
6400 Uptown Blvd. NE
Suite 200W
Albuquerque, NM 87110

Kimberly A. Nunley
Arthur Andersen
6501 Americas Parkways, NE
Suite 400
Albuquerque, NM 87110

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

Ron E. Andazola
Assistant U.S. Trustee
P.O. Box 608
Albuquerque, NM 87103

Rachel Kefauver
Sage Accounting
1720 Louisiana Blvd. NE
Albuquerque, NM 87110

Bruce Mallot
Meyners & Co.
500 Marquette Ave. NW
Albuquerque, NM 87102

William F. Davis
Davis & Pierce, PC
P.O. Box 6
201 Broadway Blvd. SE
Albuquerque, NM 87103-0006

Jennie D. Behles
P.O. Box 7070
Albuquerque, NM 87194

William Cohen
Pepper Hamilton LLP
100 Renaissance Center, 36th Floor
Detroit, MI 48243-1157

Jack Leone
Sitrick & Co.
1840 Century Park East
Suite 800
Los Angeles, CA 90067

Morneau Sobeco
4445 Corporate Drive, #124
West Des Moines, Iowa 50266

Towers Perrin
12377 Merit Drive, Suite 1200
Dallas, TX 75251-3234

Chris abbot
PriceWaterhouseCoopers
2001 Ross Avenue, Suite 400
Dallas, TX 75201

Anthony D. Forcum
Deloitte & Touche
2200 Ross Avenue, Suite 1600
Dallas, TX 75201

Brad Dietz
PJ Solomon Co.
767 5th Avenue
26th Floor
New York, NY 10153

Randall Lambert
Chanin & Associates
Chanin Capital Partners
330 Madison Avenue, 11th Floor
New York, NY 10017

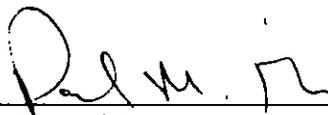
Ron Silverman
Bingham Dana
399 Park Avenue
New York, NY 10022-4689

Michael Li
Baker & Botts
2001 Ross Avenue
Dallas, TX 75201

Lori R. Fife
Weil, Gotshal & Manges, LLP
767 Fifth Avenue
New York, NY 10153

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

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

By: 
Paul M. Fish