

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

FILED

In re:

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FURR'S SUPERMARKETS, INC.,

U.S. BANKRUPTCY COURT  
ALBUQUERQUE, NM

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

Debtor.

**SECOND FEE APPLICATION OF JACOBVITZ, THUMA & WALKER, P.C.,  
ATTORNEYS FOR THE CHAPTER 7 TRUSTEE**

Jacobvitz, Thuma & Walker, P.C. ("JTW"), counsel for Yvette J. Gonzales, the Chapter 7 Trustee in the above-captioned bankruptcy case, (the "Trustee"), submits this second application for allowance and payment of compensation, pursuant to Bankruptcy Code §§330, 331 and 503(b)(2), for work done from July 1, 2002 through February 28, 2003 (the "Second Application Period"). In support of this fee application JTW states:

1. General. The Debtor Furr's Supermarkets, Inc. (the "Debtor") filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code on February 8, 2001 (the "Petition Date"). On December 19, 2001 (the "Conversion Date"), the Debtor converted the case to a Chapter 7 case, and the Trustee was appointed. The Trustee retained JTW to represent her as of December 19, 2001. This is the second fee application filed by JTW in this case in JTW's capacity as the Trustee's counsel (although JTW previously filed fee applications in connection with its representation of the Debtor in possession prior to JTW's withdrawal from such representation). JTW seeks allowance of compensation for the Second Application Period. In the first application, the Court awarded JTW total fees, costs, expenses, and gross receipts tax of \$164,758.03.

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2. Amount of Fees, Costs, and Gross Receipts Tax During the Second Application Period. For the Second Application Period, JTW seeks allowance of fees, costs, and applicable gross receipts tax of \$309,696.30, consisting of \$261,698 for professional fees, \$31,891.43 for reimbursable costs and expenses, and \$16,106.87 for gross receipts tax. As of February 28, 2003, JTW had received payment from the Trustee of \$189,922.55, leaving an unpaid balance, of \$119,773.75. Total fees, costs, and expenses JTW charged the Trustee each month during the Second Application Period are summarized on Exhibit A hereto. The billing rates, number of hours charged, and amount of fees that JTW billed the Trustee for each attorney during the Second Application Period are summarized on Exhibit B hereto. The fees JTW charged the Trustee during the Second Application Period, summarized by project category, are summarized on Exhibit C hereto.

3. Compensation for Legal Services not to be Borne By the Estate. The professional fees and costs set out in paragraph 2 include \$36,518.16 that, under the settlement agreement between the Trustee, on the one hand, and Heller Financial, Inc., as agent, and Metropolitan Life Insurance Company (together, the "Lenders"), on the other, was paid from the Lenders' collateral and is not a cost to be borne by the estate. The \$36,518.16 consists of: (i) \$17,910.22 for services rendered in connection with carrying costs and other amounts expended to preserve, protect or sell the Distribution Center Lease; and (ii) \$18,607.94 for maintaining and selling New Mexico liquor licenses.

4. Billing Statements; Itemization and Description of Services Rendered. The monthly billing statements JTW rendered to the Trustee for services rendered during the Second Application Period are attached hereto as Exhibit D (together, the "Billing Statements"). The Billing Statements itemize all charges for professional

services, reimbursable costs and expenses, and gross receipts tax; set forth the hourly rates for each attorney employed by JTW who rendered services to the Trustee; separately describe the services rendered and hours worked by each individual each day for each item of work during the Second Application Period, in one-tenth-of-an-hour increments; and, at the end of the Billing Statements, summarize the total hours and total charges per individual. The accounting of services, costs, and expenses set out in the Billing Statements is true and correct to the best of JTW's knowledge, information, and belief.

5. Customary Billing Rates and Other Charges. During the Second Application Period, the billing rates JTW charged for attorneys were charged at the attorneys' normal and customary billing rates in effect when JTW commenced its representation of the Trustee and as approved by the Court in the order approving the Trustee's retention of JTW. JTW, in accordance with its customary billing practices, also charged for costs and expenses, including \$.10 per page for in-house photocopying, \$.15 per page for telecopies, and actual out-of-pocket expenses for other expenses such as postage, long distance telephone, and overnight mail. JTW did not charge for hand deliveries, secretarial overtime, or filing documents with the Clerk of the Court.

6. Trustee's Employment of JTW. On the Conversion Date, the Trustee filed its application to employ JTW as her counsel. On January 22, 2002 (docket #1504), the Court entered the Order Approving Employment of Jacobvitz, Thuma & Walker, P.C. as Counsel For the Trustee (the "JTW Employment Order"), approving the Trustee's employment of JTW effective as of the Conversion Date. The Trustee retained JTW to represent the Trustee in all matters and proceedings in which the Trustee required bankruptcy counsel, and in such other matters as the Trustee may request of JTW and JTW may agree to perform outside the bankruptcy area. Pursuant to the JTW

Employment Order, the Trustee was authorized to pay JTW's billing statements, prior to the Court's determination of the allowability of JTW's compensation, up to and including 75% of fees, and up and including to 100% of reimbursable costs and applicable gross receipts tax, subject to ultimate approval of the paid compensation.

7. Services Rendered During the Second Application Period were Actual and Necessary; Fees Charged are Reasonable. During the Second Application Period JTW represented the Trustee in this case. The amount charged for fees is reasonable based on the nature, extent, and value of the services and the amount of time spent providing the services. The services rendered were actual and necessary.

8. General Description of Services Rendered. As more fully set forth in the attached Billing Statements, in general the services JTW rendered for the Trustee during the Second Application Period have included, among other things:

- (a) Assisting in the sale of certain liquor licenses, equipment, and other assets;
- (b) Filing and prosecuting motions necessary to sell other estate assets;
- (c) Filing and defending adversary proceedings as necessary;
- (d) Assisting the Trustee in conducting preference screens, and filing a large number of preference actions;
- (e) Working on the assumption and assignment of the El Paso warehouse lease;
- (f) Filing a number of adversary proceeding to recover accounts receivable and prepaid open accounts;
- (g) Assist the Trustee in retaining professionals and independent contractors.

9. Efforts to Avoid Unnecessary Duplication of Services. The attorneys within JTW endeavored to avoid duplication of services as much as reasonably possible. Intra-office conferences were kept to a minimum. In general, one JTW attorney took the lead and performed most of the work on each matter, unless the matter justified or necessitated more than one attorney. Unless the hearing was of particular significance, or required the assistance of more than one attorney in Court, one attorney attended the hearing. JTW attorneys did not draft any intra-office memoranda or legal research memoranda. A portion of the time spent discussing the case was not billed.

10. Other Factors. JTW also supports this Application with a discussion of various other factors, as follows:

(a) Expertise and experience in the area of bankruptcy of the attorneys rendering services to the Trustee. Robert H. Jacobvitz, David T. Thuma, and Thomas D. Walker all played substantial roles in representing the Trustee in this bankruptcy case. These attorneys have substantial experience representing clients in chapter 11 cases, including debtors, creditors, trustees, and committees.

(b) Method used to compute time charges. JTW attorneys billed their time in six-minute increments.

(c) Relative billing rates of attorneys for in-court and out-of-court hours. JTW attorneys charged the same rates for in-court and out-of-court work.

(d) Billing rates. JTW charged the estate its hourly rates in effect on the Conversion Date. JTW's billing rates charged to the estate are less, and often substantially less, than the Court-approved rates for other professionals retained under Code §327 that performed substantial work in this case prior to conversion.

(e) Method used for determining hours to be actually billed for services and for making billing adjustments. JTW attorneys kept daily time records in the ordinary course of business, from which JTW prepared the Billing Statements. Draft bills were adjusted downward from time to time before being rendered, based on perceived inefficiencies or for other reasons. No time was billed for preparing, reviewing or adjusting bills.

(f) Difficulty of Case. This case continues to be large, complex, and difficult. Representation of the Trustee has made substantial demands upon the time and skills of JTW's attorneys. JTW has turned away other work, and narrowed its client base, to have adequate time to represent the Trustee.

(g) Results Achieved and Benefit to the Estate. During the Second Application Period, the Trustee and JTW worked to sell liquor licenses and other estate assets, respond to creditor motions, prepare a comprehensive accounting of funds collected, retain needed professionals and independent contractors, bring or prepare a large number of adversary proceedings, and otherwise assist the Trustee in the administration of the estate.

11. Services Rendered Solely for the Trustee; No Fee Sharing Arrangement. JTW performed all professional services for which JTW seeks allowance and payment of compensation for the Trustee, and not on behalf of any creditor or any committee or other person. JTW has not shared or agreed to share any compensation received or to be received by it for services rendered in or in connection with this case with any person except with employees of JTW in the ordinary course of business.

12. Certification of Review by the Trustee. JTW hereby certifies that the Trustee has received, reviewed, and approved this Fee Application.

WHEREFORE, JTW respectfully requests that the Court allow compensation to JTW for the Second Application Period, as a priority, administrative expense, of \$309,696.30, consisting of \$261,698 for professional fees, \$31,891.43 for reimbursable costs and expenses, and \$16,106.87 for gross receipts tax, and authorize the Trustee to pay to JTW the unpaid balance of the allowed compensation.

JACOBVITZ, THUMA & WALKER, P.C.

By: 

Robert H. Jacobvitz

David T. Thuma

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Attorneys for the Trustee

I hereby certify that a copy of  
the foregoing Fee Application  
was mailed to:

United States Trustee  
P.O. Box 608  
Albuquerque, New Mexico 87103

William F. Davis  
P.O. Box 6  
Albuquerque, New Mexico 87103

Paul M. Fish  
Modrall Law Firm  
P.O. Box 2168  
Albuquerque, New Mexico 87102

Jennie D. Behles  
P.O. Box 849  
Albuquerque, New Mexico 87103

this 19<sup>th</sup> day of March, 2003.

