

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779-SA
Chapter 11

Debtor.

**ORDER APPROVING EMPLOYMENT OF IRELL & MANELLA LLP. AS
SPECIAL COUNSEL FOR THE TRUSTEE**

This matter came before the Court upon the Chapter 7 Trustee's Retention Application to Employ Irell & Manella LLP as Special Counsel, filed June 16, 2003, and docketed as #2119 (the "Retention Application"). By the Retention Application the Chapter 7 Trustee Yvette J. Gonzales (the "Trustee") sought Court approval of its employment of Irell & Manella LLP ("I&M"), pursuant to Bankruptcy Code §327(e), as special counsel for the Trustee in this case.

The Court FINDS:

A. On June 16, 2003, I&M filed its disclosure pursuant to Bankruptcy Rules 2014 and 2016;

B. On June 16, 2003, Jacobvitz, Thuma & Walker, P.C. gave notice of the Retention Application to all persons on the limited mailing matrix, as shown by the certificate of service on the notice (the "Notice");

C. The Notice was sufficient and appropriate in the particular circumstances;

D. The Notice specified a deadline of twenty days, plus three days based on service of the Notice by mail, for a total of twenty-three days, in which to file objections to the Retention Application;

E. The objection deadline expired on July 10, 2003, with no objections to the Retention Application having been filed;

F. No further notice of the Retention Application or of this order is necessary in the particular circumstances, prior to entry of this order;

G. I&M's employment as special counsel for the Trustee, as set forth below, should be approved; and

H. Entry of this order is appropriate.

IT IS, THEREFORE, ORDERED:

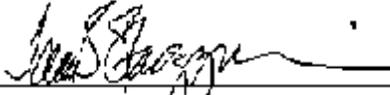
1. The Trustee's employment of I&M as special counsel, pursuant to Bankruptcy Code §327(e), is hereby approved effective as of June 16, 2003. The rates charged by billing professionals of I&M, as set forth in the engagement letter attached hereto as Exhibit A, are hereby approved. I&M is approved as special counsel in connection with any issues arising under or relating to ERISA and other applicable law concerning the Furr's Supermarkets, Inc. Pension Plan (the "Furr's Pension Plan"), or otherwise relating to the Furr's Pension Plan, including but not

limited to any issues involving the Pension Benefit Guaranty Corporation, and the duties of the Trustee relating to a distressed plan.

2. The Trustee is hereby granted authority to give I&M a \$15,000 retainer. Upon rendition of its billing statements and approval thereof by the Trustee, I&M is authorized to pay from the retainer, prior to the Court's determination of the allowability of I&M's compensation, up to and including 75% of fees, 100% of reimbursable costs, and 100% applicable gross receipts tax on fees and costs that are paid.

3. After the retainer is exhausted, the Trustee is authorized to pay I&M, upon receipt of I&M's billing statements and prior to the Court's determination of the allowability of I&M's compensation, up to and including 75% of fees, 100% of reimbursable costs, and 100% applicable gross receipts tax on fees and costs that are paid. All fees, costs, and gross receipts tax paid shall be subject to ultimate approval of the Bankruptcy Court under Bankruptcy Code §§ 330 and 331.

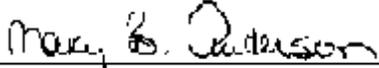
4. I&M shall file fee applications every 120-180 days, approximately.



THE HONORABLE JAMES S. STARZYNSKI
UNITED STATES BANKRUPTCY JUDGE

Submitted by:
JACOBVITZ, THUMA & WALKER,
a Professional Corporation
By: submitted by e-mail
Robert H. Jacobvitz
David T. Thuma
500 Marquette N.W., Suite 650
Albuquerque, N.M. 87102
(505) 766-9272
(505) 722-9287 (fax)
Attorneys for the Chapter 7 Trustee

I hereby certify that on August 15, 2003, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties.



Mary B. Anderson

IRELL & MANELLA LLP

A REGISTERED LIMITED LIABILITY LAW PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

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NEWPORT BEACH, CA 92660-8334
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1800 AVENUE OF THE STARS, SUITE 900
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WRITER'S DIRECT
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June 16, 2003

Ms. Yvette J. Gonzales
P. O. Box 1037
Placitas, New Mexico 87043

Dear Ms. Gonzales:

We thank you for affording us the opportunity of representing you in your capacity as chapter 7 trustee of Furr's Supermarkets, Inc., a Delaware corporation ("Furr's"). This letter, and the attached Standard Terms of Retention, will serve to confirm the principal terms of our engagement. Please note that our agreement provides that, with one exception, any disputes between us shall be determined by mandatory, binding arbitration; the only exception is disputes over fees or costs, because under California Business & Professions Code Section 6204(a) you and we can only agree to binding arbitration of fee and costs disputes after such dispute has arisen.

Needless to say, we do not expect such disputes. Moreover, we apologize for the formal and even cold tone of this letter and the attached Standard Terms of Retention. We trust that this will not be the mark of our relationship. But the laws and professional rules under which we operate encourage, and in some instances require, that we articulate in a clear and formal document the terms relevant to our retention. Nor can we give you legal advice with respect to our retention; for this, if you think it appropriate, you must seek legal advice elsewhere.

We understand that you, in your capacity as chapter 7 trustee of Furr's, will be petitioning the United States Bankruptcy Court for the District of New Mexico (the "Court") to retain our firm under Bankruptcy Code Section 327(e) to act as special counsel or co-counsel to you in connection with issues arising under the Employee Retirement Income Security Act of 1974 ("ERISA") and other applicable laws concerning the Furr's Supermarkets, Inc. Pension Plan (the "Plan"). In particular, we would act as your special counsel or co-counsel in connection with any potential or actual claim by the Pension Benefit Guaranty Corporation (the "PBG") against the Furr's bankruptcy estate arising out of the Plan. Unless otherwise confirmed in writing or as otherwise ordered by the Court, the terms of this letter, and its attachment, will govern the present representation and any other representations as to which we are engaged by you.

671897

EXHIBIT

A

IRELL & MANELLA LLP
A REGISTERED LIMITED LIABILITY LAW PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

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The standard hourly rates of our professional staff generally range (typically on the basis of seniority) from \$395 to \$550 in the case of partners, \$195 to \$380 in the case of associates, \$335 to \$550 for of-counsel and senior counsel, and \$40 to \$340 in the case of legal assistants and other professional staff. Legal assistants and non-attorney professional staff will not be used in this matter unless we become actively involved in litigation on your behalf. My own rate is currently \$530 per hour. I presently anticipate that my ERISA associate, Zoila Villacorta, will also be working on this matter; her current hourly rate is \$345. We may be assisted by other members of our professional staff, as needed, during the course of our engagement. Our firm's hourly rates may change from time to time, and the applicable rates will be those in effect at the time the particular services are rendered, subject to prior approval of any increase by the Court.

You have agreed to petition the Court to permit you to pay us at this time an initial post-petition retainer in the amount of \$15,000. Such retainer will be held in a trust account; the interest with respect to that account will be paid to the State Bar of California. At the end of our engagement, and after the payment of all of our statements as approved by the Court, any balance in the trust account held on your behalf will be refunded to you, in your capacity as chapter 7 trustee of Furr's. You will agree not to invade the retainer.

We will render monthly periodic billings for fees and costs. We will bill our time in increments of tenths (1/10ths) of an hour, recording separately the time billed for each task with an appropriate narrative. You will petition the Court for authorization to make interim payments to us on a monthly basis of 75% of our fees and 100% of our costs upon receipt of our billing statements and before the Court's determination of the allowability of our compensation. Absent an objection by you or the Court to a particular bill, we will deduct from the retainer, held in our client trust account, the interim amount of such billing within 20 days of the rendering thereof.

I have previously informed you, and I hereby confirm, that this firm has not represented any creditors of the bankruptcy estate of Furr's on any matters related to the matter on which this firm is to be employed by you, or otherwise related to the Furr's bankruptcy case.

We are attaching our Standard Terms of Retention, which, as modified by the foregoing provisions of this letter, are an integral part of our retention agreement. If this letter, including the attached Standard Terms of Retention, accurately reflects your understanding of our relationship, please acknowledge your approval and acceptance of these terms by signing and returning the enclosed copy of this letter. I would be pleased to answer any questions you might have.

IRELL & MANELLA LLP
A REGISTERED LIMITED LIABILITY LAW CORPORATION
INCLUDING PROFESSIONAL CORPORATION

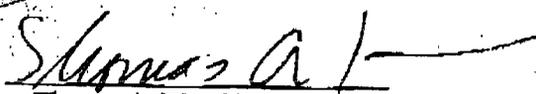
Ms. Yvette J. Gonzales
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BY SIGNING THIS AGREEMENT, AND AS FURTHER SET FORTH IN THE ATTACHED TERMS OF RETENTION, YVETTE J. GONZALES, AS CHAPTER 7 TRUSTEE OF FURR'S SUPERMARKETS, INC., IS AGREEING TO BINDING ARBITRATION OF DISPUTES (EXCEPT DISPUTES OVER FEES AND COSTS), WHETHER AS TO QUALITY OF SERVICES RENDERED, THE ARBITRABILITY OF THE DISPUTE, OR OTHERWISE, AND YVETTE J. GONZALES, AS CHAPTER 7 TRUSTEE OF FURR'S SUPERMARKETS, INC., IS GIVING UP HER RIGHT TO A JURY OR COURT TRIAL. IF YVETTE J. GONZALES, AS CHAPTER 7 TRUSTEE OF FURR'S SUPERMARKETS, INC., SO DESIRES, WE ENCOURAGE YVETTE J. GONZALES, AS CHAPTER 7 TRUSTEE OF FURR'S SUPERMARKETS, INC., TO HAVE THIS AGREEMENT REVIEWED BEFORE EXECUTION BY INDEPENDENT COUNSEL ACTING ON HER BEHALF.

The undersigned hereby agrees that the terms and conditions in this letter and the accompanying Standard Terms of Retention shall apply to services rendered by Irell & Manella LLP on behalf of the undersigned.

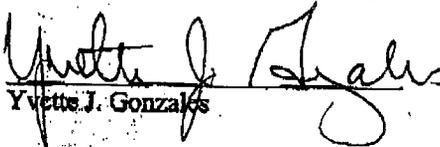
Very truly yours,

IRELL & MANELLA LLP

By: 
Thomas A. Kirschbaum

The undersigned hereby agrees that the terms and conditions in this letter and the accompanying Standard Terms of Retention shall apply to services rendered by Irell & Manella LLP on behalf of the undersigned.

Dated: 6-16-03


Yvette J. Gonzales

TAK:jvt
Enclosures

cc: Robert H. Jacobvitz, Esq.

**STANDARD TERMS OF RETENTION
OF IRELL & MANELLA LLP**

Except as modified in writing, the following provisions will apply to the relationship between Irell & Manella LLP, and you:

1. **Fees.** Fees for our services will be based primarily on time spent and our hourly billing rates current (subject to Bankruptcy Court approval) at the time that the services are performed. The billing rates of our attorneys and legal assistants vary, depending generally on the experience and capabilities of the attorney or legal assistant involved, and we adjust these rates from time to time (subject to Bankruptcy Court approval). The time for which you will be charged will include, but will not be limited to, time spent in telephone and office conferences with you and with other counsel, witnesses, consultants, court personnel and others; conferences among our legal personnel; factual investigation; legal research; responding to your requests for us to provide information to auditors in connection with reviews or audits of financial statements; drafting of letters, agreements, pleadings, briefs and other documents; traveling; waiting in court; and depositions and other discovery proceedings. Moreover, Irell & Manella LLP may, in its good faith discretion,

(a) consistent with a "team approach," use multiple personnel, including multiple attorneys, where reasonable and appropriate, on the same or similar activities and may charge for each such personnel involved in such activities, including but not limited to (i) preparing for and attending depositions, (ii) preparing for and attending court hearings, (iii) preparing for and attending meetings with the client or others, or in conversations with the client or others, (iv) engaging in intra-office conferences between and amongst lawyers, paralegals, and others;

(b) perform and charge for legal research, as well as for subsequently performed additional legal research on the same topic; and

(c) engage in and charge for summarization of transcripts of depositions and court appearances by personnel or lawyers of the choice of Irell & Manella LLP.

2. **Costs and In-House Services.** In addition to our fees, we will bill you, typically monthly, for costs and expenses incurred and ancillary services provided such as photocopying at \$.15 per page, messenger and delivery service, computerized research, travel (including mileage, parking, airfare, lodging, meals and ground transportation), long-distance telephone, telecopying at \$.25 per page, court costs and filing fees. Such items will be charged so as to reimburse us for our actual, necessary expenses. Unless special arrangements are made, we do not take responsibility for paying fees and expenses of others, which will be the responsibility of, and may be billed directly to, you.

3. **Retainer.** In addition to any retainer to which you and we have presently agreed, this firm reserves the right, subject to further approval by the Bankruptcy Court, as a condition to the provision of further services, to require an increase in the retainer in the event that the amount of work which we are called upon to perform, or expenses we are

required to incur or advance, in connection with our representation of you, exceeds this firm's current expectation.

4. **Estimates Not Binding.** Although we may furnish estimates of fees or costs that we anticipate will be incurred, these estimates are not intended to be binding, are subject to unforeseen circumstances, and are by their nature inexact.
5. **Billing and Payment.** Fees and expenses will generally be billed monthly and interim payments are payable upon presentation. We expect prompt payment. We reserve the right to postpone or defer providing additional services or to discontinue our representation if billed amounts are not paid when due. We will be entitled to assume that you have raised any questions you have about a bill within 20 days of receipt.
6. **Cooperation.** You will cooperate fully in our efforts on your behalf.
7. **Termination By You.** You have the right at any time, in your sole discretion, to terminate our services and representation. Upon our termination, you will remain obligated to pay for all services rendered and costs or expenses paid or incurred on your behalf prior to the date of such termination or which are reasonably necessary thereafter.
8. **Termination By Us.** We reserve the absolute right to withdraw from representing you if, among other things, you fail to honor the terms of our engagement letter agreement, you fail to make payment of any of our statements in a timely manner, you fail to cooperate or follow our advice on a material matter, or any fact or circumstance occurs that would, in our view, render our continuing representation unlawful or unethical. If we elect to withdraw, you will take all steps necessary to free us of any obligation to perform further services, including the execution of any documents necessary to complete our withdrawal, and we will be entitled to be paid at the time of withdrawal for all services rendered and costs and expenses paid or incurred on your behalf.
9. **Date Of Termination.** Our representation of you will be considered terminated at the earlier of (i) your termination of our representation, (ii) our withdrawal from our representation of you, or (iii) the substantial completion of our substantive work for you.
10. **Related Activities.** If any claim or action is brought against us or any personnel of the firm based on your negligence or misconduct, or if we are asked to testify as a result of our representation of you or must defend the confidentiality of your communications in any proceeding, you agree to pay us for any resulting costs or damages, including our time, even if our representation of you has ended.
11. **No Guarantee of Outcome.** We do not and cannot guarantee any outcome in a matter.
12. **Client.** This firm's client for the purpose of our representation is only the person or entity identified in the letter agreement accompanying these Terms of Retention. Unless expressly agreed, we are not undertaking the representation of any related or

affiliated person or entity, nor any parent, brother-sister, subsidiary, or affiliated corporation or entity, nor any of your or their officers, directors, agents, partners, or employees.

13. **Payment Notwithstanding Dispute.** In the event of any dispute that relates to our entitlement to any payment from you, all interim amounts and other amounts approved by the Bankruptcy Court shall be paid by you. Any amounts in any client trust account held on your behalf, sufficient to pay the disputed amounts, shall continue to be held in such trust account until the final disposition of the dispute.

14. **Document Retention and Destruction.** In the course of our representation of you, we are likely to come into possession of copies or originals of documents or other materials belonging to you or others (collectively, "materials"). Once the particular matter to which those materials relate has been concluded, this firm will have no further responsibility to maintain such materials. If you have not sought the return of such materials within one year of the closing of the matter to which such materials relate, we will thereupon have the right to destroy such materials.

15. **Application To Subsequent Matters.** The agreement reflected in these Terms of Retention, and in the accompanying letter, apply to our present representation of you and to any subsequent matters which we agree to undertake on your behalf.

16. **Arbitration.** CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 6204(a) PROVIDES THAT AN ATTORNEY AND HIS OR HER CLIENT CANNOT, PRIOR TO A DISPUTE HAVING ARISEN, AGREE TO THE MANDATORY AND BINDING ARBITRATION OF FEES OR COSTS. EXCEPT FOR FEES AND COSTS, YOU AND WE AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN YOU AND US REGARDING ANY MATTER RELATED TO OR ARISING OUT OF OUR ENGAGEMENT BY YOU, OR YOUR OR OUR PERFORMANCE OF THE AGREEMENT PURSUANT TO WHICH OUR SERVICES ARE PERFORMED, INCLUDING THE QUALITY OF THE SERVICES WHICH WE RENDER, THE DISPUTE SHALL BE DETERMINED, SETTLED AND RESOLVED BY CONFIDENTIAL ARBITRATION IN ALBUQUERQUE, NEW MEXICO. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE PARTIES EXPRESSLY AGREE THAT ANY AND ALL QUESTIONS AS TO WHETHER OR NOT AN ISSUE CONSTITUTES A DISPUTE OR OTHER MATTER ARBITRABLE UNDER THIS SECTION 16 SHALL THEMSELVES BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THIS SECTION 16. ANY AWARD SHALL BE FINAL, BINDING AND CONCLUSIVE UPON THE PARTIES, AND A JUDGMENT RENDERED THEREON MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THE PREVAILING PARTY IN ANY ARBITRATION, OR IN ANY LITIGATION BETWEEN US, SHALL BE ENTITLED TO REASONABLE ATTORNEYS' FEES AND COSTS.

Arbitration may be demanded by the sending of written notice to the other party. If arbitration is demanded, within twenty (20) days of the demand you shall present a list of five (5) qualified individuals who would be willing to serve that you would find acceptable to act as arbitrator. To serve as arbitrator, the individual must be a retired judge having served on any federal court or the California Superior Court or higher court in the

State of California, or an equivalent court in New Mexico. Within twenty (20) days of receiving your list, we may at our sole discretion (i) select any individual from that list and that individual shall serve as the arbitrator, or (ii) propose our own list of five (5) individuals for arbitrator. If we choose to present a separate list, you may within twenty (20) days select any individual from that list and that person shall serve as arbitrator. If no arbitrator can be agreed upon at the end of this process, each of us shall select one individual from our own respective list and those two persons shall jointly select the arbitrator. The arbitration shall be conducted pursuant to the procedures set forth in the California Code of Civil Procedure §§ 1280, et seq., and in that connection you and we agree that Section 1283.05 thereof is applicable to any such arbitration. Unless inconsistent with California Code of Civil Procedure §§ 1280, et seq. (in which case §§ 1280, et seq. shall prevail), the arbitration will be conducted by the American Arbitration Association pursuant to its then current rules.