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U.S. BANKRUPTCY COURT  
ALBUQUERQUE, N.M.

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re  
FURR'S SUPERMARKETS, INC.  
Debtor.

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

**AFCO's APPLICATION FOR PAYMENT OF  
"SUPERPRIORITY" ADMINISTRATIVE EXPENSE**  
(Bankruptcy Code §§ 507(a)(1) & (b), 726 (a)(1))

AFCO Credit Corporation ("AFCO"), hereby applies for payment of a "superpriority" administrative expense, as follows:

1. AFCO's full name, address and telephone number are as follows:

AFCO Credit Corporation  
Att'n: Ann Oeding, National Collection Manager  
P.O. Box 8440  
Kansas City, MO 64114  
(913) 327-5053

2. The claim that is the subject of this application arose from the stay (pursuant to Bankruptcy Code § 362(a)), of action by AFCO to enforce its security interest in collateral securing pre-petition loans to debtor Furr's Supermarkets, Inc. ("Debtor").

3. As stated in the Stipulated Order Regarding Adequate Protection Payments to AFCO Credit Corporation ("Order"), a copy of which is attached as Exhibit A, on February 8, 2001 ("Petition Date"), the date Debtor's petition was filed in this case, (a) Debtor owed AFCO \$1,260,777.54 on account of loans Debtor had obtained from AFCO to finance Debtor's purchase of the insurance policies described in the Order; (b) the loans made by AFCO to Debtor were secured by valid, perfected security interests in unearned return premiums payable under the insurance policies; (c) such collateral was valued at \$717,509; (d) AFCO had a contractual and state law right to cancel the policies and receive and retain the collateral, i.e., the return premiums, to the extent necessary to pay the balance owing on the loans; and (e) the automatic stay imposed in this case prevented AFCO from enforcing its contractual and state law rights to

1 recover its collateral to pay the amounts owing. The facts recited in the Order are hereby  
2 incorporated by reference into this application.

3 4. Under the Order, Debtor was to pay the sum of \$717,509 to AFCO as and for  
4 adequate protection of AFCO's security interest in return premiums. The \$717,509 was payable  
5 in one payment of \$143,501 and twelve monthly installments of \$47,834 each, due on the 30<sup>th</sup>  
6 day of each month beginning on May 30, 2001.

7 5. After paying a total of \$382,671 in adequate protection payments (consisting of the  
8 \$143,501 payment and five of the twelve monthly installments), Debtor defaulted and failed to  
9 pay the remainder of the payments owing to AFCO. In about November 2001, pursuant to the  
10 terms of the Order, AFCO received stay relief to cancel the policies and canceled the policies,  
11 and AFCO subsequently received return premiums then payable by the insurers. However, the  
12 value of the return premiums was reduced while the policies remained in force (as premiums  
13 were earned by the insurers), and AFCO received return premiums of only \$244,583.13. Thus,  
14 the sum of the adequate protection payments made to AFCO and the return premiums collected  
15 by AFCO was only \$627,254.13, or \$90,254.87 less than the \$717,509 value of AFCO's  
16 collateral on the Petition Date.

17 6. The Order provides that AFCO will have an allowed administrative claim for any  
18 deficiency between the \$717,509 and the sum of Debtor's adequate protection payments and any  
19 return premiums paid to AFCO upon cancellation of the policies. Accordingly, AFCO is entitled  
20 to an allowed administrative expense claim in the amount of \$90,254.87.

21 7. Under Bankruptcy Code § 507(b), if a creditor receives payments as adequate  
22 protection of the creditor's security interest in property of the estate and, notwithstanding such  
23 protection, the creditor has an administrative expense claim arising from the automatic stay of  
24 the exercise of such creditor's rights against such property, then the creditor's administrative  
25 expense claim is to have priority over every other allowable administrative expense claim.

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re

FURR'S SUPERMARKETS, INC.,

No. 11-01-10779 SS

Debtor

**STIPULATED ORDER REGARDING ADEQUATE PROTECTION PAYMENTS TO  
AFCO CREDIT CORPORATION**

*THIS MATTER comes before the Court on the stipulation and agreement of the debtor and debtor in possession Furr's Supermarkets, Inc. ("Debtor") and Afco Credit Corporation ("Afco"). Debtor is represented by Jacobvitz, Thuma & Walker, P.C. (David T. Thuma) and Skadden, Arps, Slate, Meagher & Flom, LLP. Afco is represented by Carlucci & Legum, LLP (Steven G. Legum).*

In accordance with stipulation and agreement of the parties, the Court FINDS:

A. On February 8, 2001 (the "Petition Date"), Debtor filed in this Court a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code. Debtor continues to operate its business and manage its properties as debtor in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

B. Afco is a partially secured creditor of the Debtor, having a valid, perfected security interest in all return and unearned premiums under certain policies of insurance, to wit: policy numbers 8601958, 8601991, 6468134, 8722157, 646-8134, 877931, 8577982, 3606612, 002784471, 2739213, 144SP0412, 144SP0976, XLV9753286, TUU357847800, 06BZ103528329BC, 06BZ103528211BC, 23210006473, 0597733, 0597576, DRE1529799, and ACI0311981 (the "Financed Policies"), issued by National Union Fire Insurance Company, Cigna Insurance Company, American International Specialty Lines, St. Paul Fire & Marine, TIG Insurance Company, AISLIC, Travelers, Wausau Underwriters, Employer's Reinsurance, United States Fidelity &

**EXHIBIT A**

Guarantee Co., Great American, and ACE Insurance (the "Insurance Companies").

C. Afco's security interest stems from its loans to the Debtor on January 15, 1999 and January 27, 2000. Afco, at the Debtor's request, loaned the total sum of \$2,170,598.67 for the purpose of paying for the insurance coverage set forth above, for the benefit of the Debtor. The loans were made pursuant to contracts dated January 15, 1999 and January 27, 2000 (the "Contracts");

D. As of the Petition Date, the Debtor owed Afco \$1,260,777.54, of which \$717,509.00 was secured;

E. Afco has certain rights under the Contracts and pursuant to New Mexico law. Among these are the rights, upon debtor's default, to cancel the underlying Financed Policies, obtain all of the return premiums from the Insurance Companies, retain the sums due Afco, and return the excess, if any, to the Debtor;

F. The automatic stay imposed in this case stayed Afco from enforcing its rights under the Contracts and state law;

G. Afco has indicated that it intends to move this Court pursuant to 11 U.S.C. §362 to vacate the automatic stay so Afco may exercise its rights under the Contracts and state law; and

H. Afco will forbear from making said motion, subject to the terms of this Stipulated Order.

IT IS THEREFORE ORDERED that:

1. The Debtor shall pay Afco \$717,509 as and for adequate protection, in one payment of \$143,501, due on or before April 30, 2001, and 12 monthly payments of \$47,814, due on the 30th of each month starting May 30, 2001;

2. If the Debtor does not make any payment when due, Afco may send written notice to

the Debtor (by facsimile, regular mail, or overnight courier) of the Debtor's failure to make the payment, with a copy of such notice to Debtor's undersigned counsel. If the Debtor fails to make the payment within ten days of receipt of such written notice, then the automatic stay shall be vacated, without further application to the Court, and Afco shall be free to exercise all rights its rights under the Contracts and applicable law. The notice provided hereunder shall be deemed to be notice of intent to cancel as required under controlling state law, and the Debtor agrees that no additional notice shall be required to satisfy the requirements thereof. From the funds obtained upon cancellation, Afco is authorized to retain the sum of \$717,500.00, less the amount paid by the Debtor under this Stipulated Order. Afco shall pay any excess funds to the Debtor, and shall have an allowed administrative claim for any deficiency, the payment of which shall be subject to further order of the Court.

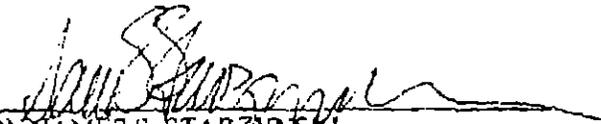
3. If any Financed Policy is canceled by an Insurance Company before its normal expiration date, or if an Insurance Company otherwise requires, the Debtor shall take reasonable steps to cooperate with any audit conducted by such Insurance Company and shall make all books and records available for such audit.

4. Afco has an allowed unsecured claim in the amount of \$543,268.54.

5. If any insurer determines that, for any reason, a policy is earning premiums at a higher or lower rate, there will be a concomitant decrease or increase in the unearned premiums that constitute Afco's collateral. To the extent of any change in the unearned premium amount, the amount Debtor shall pay Afco hereunder shall be adjusted accordingly, and Afco's unsecured claim shall be similarly adjusted.

6. This Stipulated Order contains the entire agreement between the parties with respect to the subject matter herein, and may not be changed, amended, modified, or altered except by

written agreement signed by each party and approved by the Court, or as otherwise ordered by the Court. No representations have been made or relied on by the parties, except as set forth herein.

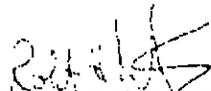
  
HON. JAMES S. STARZYNSKI  
United States Bankruptcy Judge

Submitted and Agreed to:

CARLUCCI & LEGUM, LLP

By: Telephonic Approval 4-18-01  
Steven G. Legum  
170 Old Country Road  
Mineola, New York 11501-4307  
(516) 742-0571  
Attorneys for Aico Credit Corporation

JACOBVITZ, THUMA & WALKER, P.C.

By   
For David T. Thuma  
500 Marquette, NW  
Suite 650  
Albuquerque, NM 87102  
(505) 766-9272

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

and

Skadden, Arps, Slate, Meagher & Flom, LLP  
Richard Levin  
300 South Grand Avenue, Suite 3400  
Los Angeles, California 90071-3104  
(213) 687-5000

Attorneys for the Debtor

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Mary B. Anderson

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PROOF OF SERVICE

I am over the age of 18, not a party to the case or legal proceeding with respect to which this document is prepared, and do business at 1981 N. Broadway, Suite 340, Walnut Creek, California 94596.

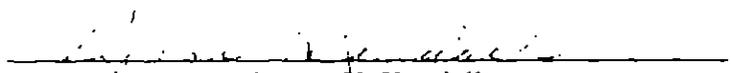
On October 7, 2003, I served the foregoing **AFCO's Application for Payment of "Superpriority" Administrative Expense** by delivering true and correct copies thereof, at Walnut Creek, California, to a United Parcel Service courier or driver authorized to receive documents, in an envelope or packet designated by United Parcel Service, with delivery fees for overnight delivery paid or provided for, addressed as follows::

David I. Thuma  
Jacobvitz, Thuma & Walker  
500 Marquette Ave., Suite 650  
Albuquerque, New Mexico 87102  
[Counsel for Chapter 7 Trustee]

United States Trustee  
421 Gold Avenue, SW  
Room 112  
Albuquerque, New Mexico 87102

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: October 7, 2003

  
Lynne H. Kendall

Pleading Separator Sheet USBC NM

jackie Case Number: 01-10779

Furr's Supermarkets, Inc.,

Document #: 2226



01-10779+2226+2003-10-08

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Debtor.

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

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BANKRUPTCY COURT  
ALBUQUERQUE, N.M.

**MOTION TO APPROVE SETTLEMENT OF  
ADVERSARY PROCEEDING 02-1169-S**

Yvette Gonzales, the Chapter 7 Trustee (the "Trustee"), by counsel, moves the Court for an order approving the settlement of all claims against Hormel Foods Corporation, including without limitation the preferential transfer claims the estate has against Hormel Foods Corporation as set forth in the adversary proceeding No. 02-1169-S, captioned *Yvette J. Gonzales, Trustee v. Hormel Foods Corporation* (the "Adversary Proceeding"), pursuant to F.R.Bankr.P.9019, and STATES:

1. **Commencement and Conversion of Case.** On February 8, 2001, (the "Petition Date"), the Debtor filed a Voluntary Petition in this Court under Chapter 11 of the Bankruptcy Code. On December 19, 2001, this Court entered an Order converting the Chapter 11 case to a case under Chapter 7.

2. **Appointment of Chapter 7 Trustee.** On December 19, 2001, the United States Trustee appointed Yvette Gonzales as the Trustee for the Debtor's bankruptcy estate, in which capacity she continues to serve.

3. **Jurisdiction and Venue.** The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§1408 and 1409.

4. **The Adversary Proceeding.** In the Adversary Proceeding, the Trustee sought to recover Two Hundred Seventy Thousand Six Hundred Twenty-Nine Dollars and 30/100

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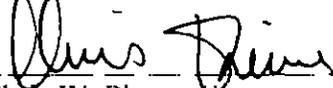
(\$270,629.30) from Hormel Foods Corporation, plus all other amounts, if any, recoverable pursuant to 11 U.S.C. §547.

5. **The Settlement.** Hormel Foods Corporation has offered to pay the Trustee Two Hundred Thirty Thousand Thirty Four Dollars and 90/100 Dollars (\$230,034.90) in full satisfaction of any and all claims which the parties have against each other (the "Settlement"). No party admits or acknowledges any liability to any other party and specifically denies the existence of such liability. The Settlement resolves all claims, counterclaims and causes of action held by the Trustee against the Defendant, and by the Defendant against the Trustee, and, upon approval of the Settlement, the Trustee and the Defendant shall mutually release each other from any and all such claims, with the exception of the Defendant's pre-petition unsecured claim in this matter. The Defendant specifically reserves its rights with regard to its pre-petition unsecured claim in Case No. 7-01-10779-SA, including without limitation its rights to receive payment on such claim to the extent permitted by applicable bankruptcy law, and to the extent that there is a distribution to holders of allowed pre-petition unsecured claims.

6. The Settlement is fair and equitable, and in the best interests of and beneficial to the Debtor's estate and the creditors.

WHEREFORE, the Trustee requests that the Court enter an Order approving the Settlement and for such other relief as may be just.

**DAVIS & PIERCE, P.C.**

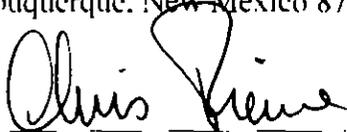
  
Chris W. Pierce, Esq.  
Post Office Box 6  
Albuquerque, New Mexico 87103  
(505) 243-6129

I hereby certify that a true and correct copy of the foregoing was served on counsel and parties as indicated below this 8<sup>th</sup> day of October, 2003.

Ronald F. Andazola  
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Albuquerque, New Mexico 87103

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Chris W. Pierce, Esq.