

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

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

Debtor.

**MOTION TO APPROVE SETTLEMENT OF ADVERSARY PROCEEDING 02-01098**

Yvette G. Gonzales, the Chapter 7 Trustee (the "Trustee"), by counsel, pursuant to Bankruptcy Rule 9019, moves the Court for an order approving the settlement of adversary proceeding No. 02-01098, captioned *Yvette J. Gonzales, Trustee v. Pinnacle Logistics, Inc. Countrywide Logistics, and Tibbett & Britten Group North America, Inc.* (the "Adversary Proceeding"), and in support hereof states:

1. Commencement and Conversion of Case. On February 8, 2001 (the "Petition Date"), Furr's Supermarkets, Inc. (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 approximately \$1,079,000.00 from the Pinnacle Logistics, Inc. and Countrywide Logistics, Inc. (the "Preference Defendants"), plus all other amounts, if any, recoverable pursuant to 11 U.S.C. § 547. If the Trustee had prevailed in its preference claim

against the Preference Defendants, the Trustee sought to impose liability for the judgment on Tibbett & Britten Group North America, Inc. (“Tibbett & Britten”), the corporate parent of the Preference Defendants, under various theories. The Preference Defendants and Tibbett & Britten are hereby referred to as the “Defendants.”

5. The Preference Defendants vigorously defended the preference claims, and Tibbett & Britten vigorously defended the claims pursuant to which the Trustee sought to impose against Tibbett & Britten any liability for any preference judgment that might be owed by the Preference Defendants.

5. The Settlement of the Adversary Proceeding. The Defendants have offered to pay the Trustee \$450,000.00 in full satisfaction of any and all claims asserted in the Adversary Proceeding (the “Settlement”). The Settlement is fair and equitable, and is in the best interests of and beneficial to the Debtor’s estate and the creditors.

6. The Settlement and Release Agreement. If the proposed settlement is approved, the parties would execute a settlement and release agreement memorializing the terms of their settlement, a copy of which is attached hereto as Exhibit A.

WHEREFORE, the Trustee requests that the Court enter an order approving the Settlement, and for all other just and proper relief.

JACOBVITZ, THUMA & WALKER  
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This certifies that a copy of the  
foregoing motion was served by mail on:

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this 4<sup>th</sup> day of May, 2004.

Filed electronically  
David T. Thuma