

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re:

FURR'S SUPERMARKETS, INC.,
Debtor.

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

**MOTION TO APPROVE SETTLEMENT OF
ADVERSARY PROCEEDING 02-1186-S
(BCI of Los Angeles, Inc., d/b/a Phoenix Coca-Cola Bottling Company and Coca-Cola
Enterprises Inc. d/b/a Magnolia Coca-Cola Bottling Company, Coca-Cola Bottling
Company of North Texas, Coca-Cola Bottling Company of The Southwest, and Big Bend
Coca-Cola Bottling Company)**

Yvette Gonzales, the Chapter 7 Trustee (the "Trustee"), by counsel, moves the Court for an order approving the settlement of all claims the estate has against BCI of Los Angeles, Inc., d/b/a Phoenix Coca-Cola Bottling Company and Coca-Cola Enterprises Inc. d/b/a Magnolia Coca-Cola Bottling Company, Coca-Cola Bottling Company of North Texas, Coca-Cola Bottling Company of The Southwest, and Big Bend Coca-Cola Bottling Company ("Coca-Cola Companies"), as set forth in the adversary proceeding No. 02-1186-S, captioned *Yvette J. Gonzales, Trustee v. BCI of Los Angeles, Inc., d/b/a Phoenix Coca-Cola Bottling Company and Coca-Cola Enterprises Inc. d/b/a Magnolia Coca-Cola Bottling Company, Coca-Cola Bottling Company of North Texas, Coca-Cola Bottling Company of The Southwest, and Big Bend Coca-Cola Bottling Company* (the "Adversary Proceeding"), pursuant to F.R.Bankr.P.9019, and in support hereof 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 One Million Three Hundred Fifty Thousand Eight Hundred Eighty Five Dollars and 72/100 (\$1,350,885.72) from Coca-Cola Companies, plus all other amounts, if any, recoverable pursuant to 11 U.S.C. §547. The Defendants alleged, inter alia, payment of \$851,980.29 in new value based on payments under a Marketing Agreement, which the Trustee disputes, and further alleged that Defendants were not liable under other defenses.

5. **The Settlement.** Coca-Cola Companies has offered to pay the Trustee Eight Hundred Two Thousand Eight Hundred Eighty-Nine Dollars and 68/100 (\$802,889.68) in full satisfaction of any and all pre-petition and post-petition claims, including without limitation claims asserted in the Adversary Proceeding (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 Defendants, and by the Defendants against the Trustee, and, upon approval of the Settlement, the Trustee and the Defendants shall mutually release each other from any and all such claims, with the exception of the Defendants' pre-petition unsecured claim in this matter and their U.S.C. §502(h) claim. The Defendants specifically reserves their rights with regard to their pre-petition unsecured claim and their U.S.C. §502(h) claim in Case No. 7-01-10779-SA, including without limitation their rights to receive payment on such claims 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. The full terms of the Settlement will be contained in a Settlement Agreement and Release, in substantially the form as the Settlement Agreement attached hereto. 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.
/s/ Electronically filed 08/26/04
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I hereby certify that on August 26, 2004,
a true and correct copy of the foregoing
was either electronically transmitted,
faxed, delivered or mailed to:

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/s 08/26/04
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