

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779 SA
Chapter 11

Debtor.

**MOTION TO APPROVE COMPROMISE OF
CONTROVERSY BETWEEN THE TRUSTEE
AND METROPOLITAN LIFE INSURANCE COMPANY**

Yvette J. Gonzales, Chapter 7 Trustee, in her capacity as representative of the estate in this case (the "Trustee"), pursuant to Bankruptcy Rule 9019, moves for an order approving a settlement between the Trustee and Metropolitan Life Insurance Company ("Met Life") that resolves, as more fully set forth below, the total remaining amount owed by the Trustee to Met Life that is secured by the Avoidance Actions (defined below) to be \$16,538.81, which amount would be paid upon Court approval of this Motion.

1. Commencement and Conversion of Case. On February 8, 2001, 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. Jurisdiction And Venue. This 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.

3. The Debtor's Business. Prior to its sale of substantially all of its assets to Fleming Companies, Inc. ("Fleming"), the Debtor's business consisted of operating supermarkets located throughout New Mexico and western Texas.

4. The Sale to Fleming. On July 3, 2001, this Court entered an order approving the sale of substantially all of Debtor's assets to Fleming (the "Sale Order"). The closing of the sale approved by the Sale Order (the "Fleming Sale") took place on August 31, 2001.

5. Post-Closing DIP Loans. After the closing of the Fleming Sale, Debtor and Heller Financial, Inc. ("Heller"), as agent for Fleet Capital Corporation, Bank of America N.A., Heller and Met Life, with Court approval, made certain loans to Furr's Supermarkets, Inc. as debtor in possession (together the "Post-Closing DIP Loans").

6. July 2002 Settlement. The Trustee, Heller and Met Life reached a settlement set forth in an Order entered July 26, 2002 (docketed as no. 1766) (the "Global Settlement Order"). Under the terms of the Global Settlement Order, the balance of the Post-Closing DIP Loans, as of the date of entry of the Global Settlement Order, was stipulated to be the principal amount of \$4,297,109, plus interest, less a credit of \$2 million to be applied as set forth in the Global Settlement Order. Under the Global Settlement Order, and the Third Post-Closing DIP Order entered October 29, 2001 (the "Third Post-Closing DIP Order"), Heller's and Met Life's security interest in Avoidance Actions (as defined in the Global Settlement Order) and their super-priority and administrative claims, were limited to the unpaid balance owing under the Post-Closing DIP Loans, after application of a \$2 million credit, and as limited by the Third Post-Closing DIP Order for advances made under that Order. Further, all amounts (as Met Life contends) or certain amounts (as the Trustee contends) expended by the Debtor-in Possession after the closing of the Fleming Sale, were deemed to be draws on the Post-Closing DIP Loans for purposes of determining the amount of interest accrual.

7. MetLife Is Now the Holder of the Post-Closing DIP Loans. After the Global Settlement was reached, Heller for itself and as agent for Fleet Capital Corporation and Bank of America N.A., reached an agreement with Met Life under which Met Life now holds all unpaid claims of Heller and Met Life against the estate the Trustee is administering in this case.

8. Nature of the Dispute Over Amount Owing Under the Post-Closing DIP Loans. After extensive analysis on the part of both the Trustee and Met Life, with assistance from their professionals, the Trustee determined the total amount owing by the Trustee to Met Life secured by the Avoidance Actions to be the principal amount of \$4,297,109 pursuant to the Global Settlement Order (representing the aggregate principal amount of the Post-Closing DIP Loans), less a credit of \$2 million pursuant to the Global Settlement Order, less a credit of \$175,408.08 pursuant to the Third Post-Closing DIP Order, plus interest accrual of \$341,756.91, for a total of \$2,463,457.83, which amount the Trustee has paid in full from proceeds of Avoidance Actions. Met Life, on the other hand, after conceding for settlement purposes certain of the calculations made by the Trustee, computed interest accrual of an additional \$33,077.61 as a result of a good faith difference between Met Life and the Trustee as to the date as of which the \$2 million credit is to be applied under the terms of the Global Settlement Order.

9. The Compromised Reached. The Trustee and Met Life have agreed, subject to approval of the Court, that the total amount owing by the Trustee to Met Life secured by the Avoidance Actions, less amounts already paid, is \$16,538.81, to be paid upon Court approval of this Motion.

10. MetLife's Remaining Unpaid Claim Under the Post-Closing DIP Loans. In addition, the Trustee and Met Life agree that, under the Global Settlement Order and Third

Post-Closing DIP Order, if this Motion is approved and the Trustee pays Met Life the sum of \$16,538.81 pursuant to the settlement, then the total remaining balance owing by the Trustee to Met Life under the Post-Closing DIP Loans would be \$175,408.08, plus interest thereon (which represents the amount of advances made by Heller and MetLife pursuant to the Third Post-Closing DIP Order not secured by Avoidance Actions), but such amount is not secured by the Avoidance Actions or proceeds thereof.

11. The Compromise Should Be Approved. The compromise reached between the Trustee and Met Life is fair and equitable, and in the best interests of and beneficial to the estate and the creditors, given the uncertainty, risks and expense of litigating, and the benefits to be gained by the compromise.

WHEREFORE, the Trustee requests that the Court approve the settlement reached between the Trustee and Met Life that the total amount owing by the Trustee to Met Life secured by the Avoidance Actions, less amounts already paid, is \$16,538.81, to be paid upon Court approval of this Motion. The Trustee further requests such additional relief that is appropriate.

JACOBVITZ, THUMA & WALKER
A Professional Corporation

By: filed electronically
Robert H. Jacobvitz
500 Marquette N.W., Suite 650
Albuquerque, New Mexico 87102
(505) 766-9272
(505) 766-9287 (fax)
Attorneys for the Trustee

This will certify that a copy
of the foregoing Motion was mailed to:

Ronald J. Silverman
Alexis Freeman
Bingham McCutchen LLP
399 Park Avenue
New York, New York 10022-4689

Jennie D. Behles
Behles Law Firm
P.O. Box 7070
Albuquerque NM 87194-7070

Mr. Ronald E. Andazola
Assistant United States Trustee
P.O. Box 608
Albuquerque, New Mexico 87103

David S. Heller
Latham & Watkins
233 South Wacker Drive
Sears Tower, Suite 5800
Chicago, Illinois 60606-6401

Paul M. Fish
Modrall Sperling Roehl Harris & Sisk, P.A.
500 4th St., N.W., #1000
Albuquerque, New Mexico 87103-2168

this 7th day of October 2004.

filed electronically
Robert H. Jacobvitz