

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

FILED
12:00 MIDNIGHT

DEC 19 2001

DROP BOX

U.S. Bankruptcy Court
District of New Mexico

In re:

FURR'S SUPERMARKETS, INC.,

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

Trustee.

THE CHAPTER 7 TRUSTEE'S MOTION TO EMPLOY JACOBVITZ, THUMA & WALKER, P.C. AS COUNSEL FOR THE TRUSTEE

Yvette J. Gonzales, the interim Chapter 7 trustee in the above-captioned bankruptcy case (the "Trustee"), pursuant to 11 U.S.C. § 327(a) and 327(e), requests that the Court approve its employment of Jacobvitz, Thuma & Walker, a Professional Corporation ("JTW") to represent the Trustee as general counsel under 11 U.S.C. § 327(a), and/or as special counsel under 11 U.S.C. §§ 327(a) and (e), in such matters as the Trustee may request of JTW and JTW may agree to perform. In support of this Motion (the "Motion"), the Trustee states:

1. On February 8, 2001 (the "Petition Date"), the debtor Furr's Supermarkets, Inc. (the "Debtor") commenced this bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
2. On December 19, 2001, the Debtor converted the case to a Chapter 7 case, and the Trustee was appointed the interim Chapter 7 trustee.
3. The Trustee wishes to employ JTW as counsel for the Trustee in such matters as the Trustee may request of JTW and JTW may agree to perform, except JTW will not advise or otherwise represent the Trustee with respect to any issues specifically relating to Wells Fargo New Mexico N.A., or any other creditor of Furr's that JTW represents in any matters wholly unrelated to this bankruptcy case. JTW is qualified to represent the Trustee

Handwritten signature

as chapter 7 trustee in this case. JTW has represented in its disclosure filed pursuant to Bankruptcy Rules 2014 and 2016 (the "JTW Disclosure") that except for the matters disclosed therein, to JTW's knowledge it does not represent any creditors of the Debtor. JTW represented the Debtor as debtor in possession in the chapter 11 case (the "DIP"), and has a claim for attorneys fees incurred while representing the DIP. In addition, JTW asserts it is entitled to payment of such unpaid fees from a professional carve-out set forth in DIP financing orders, including a special carve out for JTW set forth in the first post-closing financing order.

4. In general, the professional services JTW may render to the Trustee include (but are not limited to):

(a) If JTW's retention is approved solely as special counsel under Bankruptcy Code §§ 327(a) and (e), JTW may represent the Trustee as may be mutually agreed:

(1) In adversary proceedings, including but not limited to preferential transfer actions, and actions to collect funds;

(2) With respect to the sale of assets;

(3) To negotiate and seek approval of settlements, including settlements with secured lenders;

(4) To assert claims under Bankruptcy Code §506(c);

(5) To perform any other legal services for the Trustee as the Trustee deems appropriate and JTW agrees to perform, other than to represent the Trustee in conducting the chapter 7 case.

(b) If JTW's retention also is approved as general counsel under *Bankruptcy Code* §§ 327(a), representing the Trustee as may be mutually agreed:

(1) In any or all aspects of conducting this bankruptcy case, including, without limitation, meetings of creditors, claims objections, and any or all hearings before this Court; and

(2) Performing any other legal services for the Trustee as the Trustee deems appropriate and JTW agrees to perform.

Further, the Trustee may engage JTW to represent her in aspects of conducting this bankruptcy case pending a ruling on this motion.

5. A copy of JTW's engagement letter with the Trustee, dated December 19, 2001 ("Engagement Letter"), is attached hereto as Exhibit A and incorporated herein by reference.

6. To the best of the Trustee's knowledge, information and belief, JTW has no connection with the Trustee, the estate's creditors, or any other party in interest or their respective attorneys, other than any connections set forth in the JTW Disclosure.

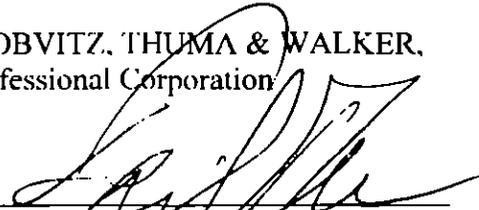
7. The fees, costs, and gross receipts tax JTW will charge the Trustee are set forth in the Engagement Letter. The Trustee and JTW, subject to further Court approval, may modify the terms of compensation for certain services.

8. JTW requests that the Trustee be authorized to make interim payments to JTW on a monthly basis (75% of fees and 100% of costs) upon receipt of JTW's billing statements and prior to the Court's determination of the allowability of JTW's compensation.

9. JTW's employment should be made effective as of the date hereof.

WHEREFORE the Trustee requests approval of the Court to employ JTW as her counsel pursuant to 11 U.S.C. § 327(a) and (e) under the terms of the Engagement Letter and this Motion, effective as of the date hereof; and to make interim payments to JTW prior to allowance of compensation, as described above.

JACOBVITZ, THUMA & WALKER,
a Professional Corporation

By: 

Robert H. Jacobvitz

David T. Thuma

500 Marquette N.W., Suite 650

Albuquerque, N.M. 87102

(505) 766-9272

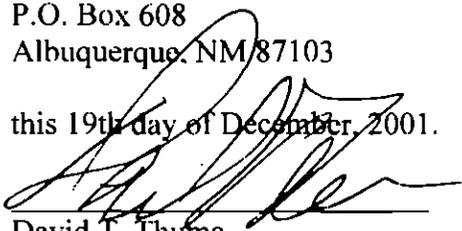
(505) 722-9287 (fax)

Attorneys for the Chapter 7 Trustee

This certifies that a copy of
the foregoing document was
served by first class mailed on:

United States Trustee
P.O. Box 608
Albuquerque, NM 87103

this 19th day of December, 2001.


David T. Thuma

JACOBVITZ, THUMA & WALKER

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

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FACSIMILE
(505) 766-9287

December 19, 2001

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

Re: Engagement Letter

Dear Yvette:

This letter confirms the terms and conditions under which Jacobvitz, Thuma & Walker, a Professional Corporation (the "Firm") will represent you, in your capacity as the interim (and permanent, if applicable) chapter 7 trustee of Furr's Supermarkets, Inc., a Delaware corporation ("Furr's"), as either special and/or general counsel.

1. Scope of Engagement

The scope of our engagement will be to represent you as the interim (and permanent, if applicable) Chapter 7 trustee of the Furr's bankruptcy estate, on such matters as you may request of JTW and JTW may agree to perform. JTW would represent you as special counsel and/or as general counsel, depending upon the Court approval of your application to employ JTW. JTW reserves the right in consultation with the Trustee to limit the scope of the matters in which it undertakes to represent the Trustee. Further, this confirms the parties contemplate that JTW's representation of the Trustee in certain matters may be under a mutually agreed compensation arrangement different from that set forth below, which would be subject to further Court approval.

2. Fees and Expenses

On behalf of the Chapter 7 estate, you have agreed to pay the Firm for attorney's services at the Firm's regular hourly rates. The amount the Firm bills the estate will depend on the time spent on the estate's work and the amount of reimbursable costs and expenses incurred on the estate's behalf. The billing rates of attorneys currently employed by the Firm are Robert H. Jacobvitz, \$190 per hour; David T. Thuma, \$170 per hour; and Thomas D. Walker, \$170 per hour. Any other attorneys who may be employed by JTW will be billed at their regular hourly rates. Legal assistants will be charged at \$50.00 per hour. Legal work performed on a contract basis for JTW will be charged at \$125.00 per hour. The Firm will bill in one tenth of an hour increments. All rates are subject to change, although changes are infrequent. We will notify you in writing before any rate increases go into effect.

EXHIBIT

A

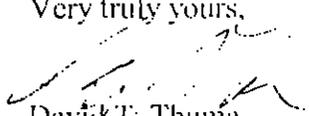
Ms. Yvette J. Gonzales
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7. No Other Agreements.

This constitutes the entire understanding between you and the Firm regarding our employment. The agreement cannot be modified except by mutual agreement and Court approval.

We appreciate your allowing our Firm to represent the Chapter 7 estate. Please let me know if you have any questions.

Very truly yours,



David F. Thumia
For the Firm

DTT/mlh