

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

FILED  
12:00 MIDNIGHT  
DEC 19 2001

DROP BOX  
U.S. Bankruptcy Court  
ALBUQUERQUE, NM 87102

In re:

FURR'S SUPERMARKETS, INC.,  
a Delaware corporation.

Case No. 11-01-10779 SA  
Chapter 11

Debtor.

**ATTORNEY DISCLOSURE OF JACOBVITZ, THUMA & WALKER, P.C.  
PURSUANT TO BANKRUPTCY RULES 2014 AND 2016**

Jacobvitz, Thuma & Walker, a Professional Corporation ("JTW"), hereby states, in connection with the motion of Yvette Gonzales, the interim chapter 7 trustee (the "Trustee") to employ JTW as her counsel in or in connection this bankruptcy case and on such other matters as the Trustee may request of JTW and JTW may agree to perform:

1. The undersigned is a shareholder, director and officer of JTW, and is employed by JTW as an attorney. The undersigned is admitted to the bar in the State of New Mexico and to practice before this Court.

2. To the best of the undersigned's knowledge, information and belief, after making reasonable inquiry, JTW has no connection with Furr's Supermarkets, Inc. (the "Debtor" or "Furr's"), Furr's creditors, or any other party in interest in this case, or their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee, except as follows:

(a) Employees of JTW, including attorneys, have professional relationships with other counsel and professionals representing one or more parties in interest in the case, and with persons employed in the office of the United States Trustee.

*HTA*

Further, employees of JTW, including attorneys, may have social relationships with other counsel and professionals representing one or more parties in interest in the case;

(b) JTW and its employees may subscribe to telephone and other utility services from vendors who furnish such services to Debtor, and may purchase products or services from, or that are manufactured or distributed by, trade vendors of the Debtor who have claims in the case;

(c) JTW may represent clients who are adverse to creditors of Debtor, or who are parties in interest in cases in which creditors of Debtor also are parties in interest, in matters wholly unrelated to the Debtor's bankruptcy case;

(d) JTW does not represent any creditors or equity security holders of Debtor in any matters related to Furr's or to this bankruptcy case;

(e) JTW represents Wells Fargo Bank N.A. ("Wells Fargo") in matters wholly unrelated to Furr's that currently include at least five matters wholly unrelated to Furr's. JTW will not advise or otherwise represent the Trustee, as bankruptcy counsel or otherwise, with respect to any issues involving Wells Fargo. The Trustee will engage separate counsel to represent and advise her with respect to such matters;

(f) JTW at one time represented the following persons that are listed as creditors of Furr's or parties in interest:

- (i) Computer Corner;
- (ii) Construction Systems West;
- (iii) General Electric Capital;
- (iv) Sun Graphics; and
- (v) CII Group.

JTW no longer represents such persons.

(g) JTW at one time represented the unsecured creditors' committee in the Banes Construction Company Chapter 11 bankruptcy case, which was filed in the District of New Mexico. Banes is listed as a creditor of Furr's. JTW has not longer represented the unsecured creditors' committee since 1998, when the Banes case was converted to a Chapter 7 liquidation case. JTW has a Chapter 11 administrative claim against the Chapter 7 estate of Banes for unpaid attorney fees, in the approximate amount of \$9,500;

(h) JTW currently represents the Enchantment Inn, a hotel in Ruidoso, New Mexico that is a debtor in possession in a Chapter 11 bankruptcy case currently pending before Judge McFeeley in the District of New Mexico. Furr's shows that the Enchantment Inn is a creditor of Furr's in connection with lodging provided to Furr's employees pre-petition. JTW understands that the amount of the claim is small. JTW's representation of Enchantment Inn is unrelated to any claim the Enchantment Inn may have against Furr's, as JTW's co-counsel in the case, Barney Given, will represent Enchantment Inn with respect to any such claim;

(i) JTW represented the Chapter 7 Trustee of Espinosa Cartage Company, Inc., a defunct common carrier. Espinosa Cartage is a Chapter 7 debtor in a pending case before Judge McFeeley in the District of New Mexico. Espinosa Cartage is listed as a creditor of Furr's. JTW's representation of the Chapter 7 Trustee was limited to representation in an adversary proceeding that was unrelated to any claim Espinosa may have against Furr's;

(j) Except for its representation of Wells Fargo in matters wholly unrelated to Furr's or this bankruptcy case, to JTW's knowledge it does not represent any

creditors of Furr's. However, because the matrix in this case contains more than 20,000 names, JTW will supplement this disclosure, if appropriate, upon further review;

(k) JTW represented Debtor as debtor in possession in the chapter 11 case (the "DIP"), and has an unpaid claim in excess of \$125,000 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. Further, Metropolitan Life Insurance Company ("Met Life") has agreed subject to Court approval to pay JTW out of Met Life's collateral, up to \$15,000, for services JTW rendered to the Debtor between December 1, 2001 and December 15, 2001. Such \$15,000 is on deposit in JTW's attorney trust account. As of the date of this Disclosure, a motion to approve such arrangement is on notice to creditors. Approval of JTW's fees incurred in the chapter 11 case after October 30, 2001 has not been sought or obtained; and

(l) When the chapter 11 case was commenced, the estate had a potential preferential transfer claim against JTW. JTW believes such potential claim was fully resolved by JTW giving the estate a credit in the amount of \$37,795.55 against post-petition attorneys fees pursuant to an order of the Court. The payments made by Furr's to JTW within the 90-day period prior to the commencement of the chapter 11 case are set forth in an amended disclosure, filed February 14, 2001 (Docket No. 70). Such amended disclosure in its entirety is incorporated herein by reference.

3. The arrangement for compensating the JTW, if the Court approves Debtor's employment of JTW, is described in the Engagement Letter attached hereto as Exhibit A.

4. Within one year of the commencement of the chapter 11 bankruptcy case, the Debtor paid JTW, for services rendered or to be rendered in contemplation of or in connection with the case, a total amount of \$11,692.91, consisting of \$9,727.50 for attorney fees, \$1,400.00 for reimbursable costs, and \$565.41 for applicable taxes. In addition, within one year of the commencement of this bankruptcy case, the Debtor has paid JTW, for services rendered that were not in contemplation of or in connection with the case, a total amount of \$57,014.41, consisting of \$53,095.00 for attorney fees, \$814.69 for reimbursable costs, and \$3,104.72 for applicable taxes.

5. On February 5, 2001, JTW received a retainer from Debtor in the amount of \$50,000.00. On February 8, 2001, JTW applied \$44,451.81 of such retainer to Debtor's outstanding account with JTW, leaving a retainer balance in the amount of \$5,548.19, which has been applied to JTW's bills for post-petition services.

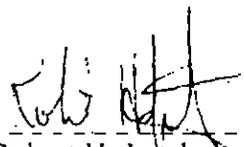
6. JTW is informed and believes the source of all monies it has received from the Debtor was the Debtor's funds.

7. JTW has received no transfer, assignment or pledge of property for post-petition legal services, except the Retainer and the \$15,000 held in trust disclosed in paragraph 2(~~X~~) above.

8. JTW has not shared or agreed to share with any other person or entity, other than with members or regular associates or employees of JTW, or any persons retained by JTW on a contract basis to perform legal work who may be paid by JTW on

an hourly basis, any compensation paid or to be paid by Debtor in or in connection with this bankruptcy case.

JACOBVITZ THUMA & WALKER  
a Professional Corporation

By: -----

Robert H. Jacobvitz

David T. Thuma

500 Marquette N.W., Suite 650

Albuquerque, New Mexico 87102

(505) 766-9272

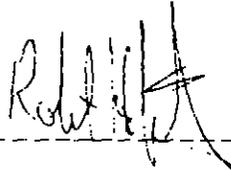
(505) 766-9287 (fax)

Attorneys for the Debtor and  
Debtor In Possession

This certifies that a copy  
of the foregoing document  
was served by mail on:

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

this 9<sup>th</sup> day of December, 2001.

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JACOBVITZ, THUMA & WALKER  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

ROBERT H. JACOBVITZ  
DAVID T. THUMA  
THOMAS D. WALKER

500 MARQUETTE N.W., SUITE 650  
ALBUQUERQUE, NM 87102

TELEPHONE  
(505) 766-9272  
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

We itemize and charge separately for certain costs and expenses, such as postage, long distance telephone charges, travel, filing fees, court fees, deposition expenses, computerized legal research, and expert witness fees, all at cost, and telecopy charges (\$.15 per page) and photocopying (\$.10 per page). We do not charge separately for word processing or secretarial overtime, all of which we include as part of our overhead. We generally ask the client to pay for certain third party costs directly, such as charges for deposition transcripts, airfare, and expert witness fees.

3. Billing and Payment

Our Firm bills monthly for fees and expenses, and any applicable gross receipts taxes, which are due and payable on receipt. We expect to receive payment within 30 days after our bills are rendered. Any course of conduct in accepting late payments does not modify the date payments are due.

4. No Individual or Affiliate Representation.

The Firm is being engaged by you on behalf of the Chapter 7 estate. Our employment does not include the representation of any other individual employee, agent, representative, or affiliate. We encourage each of them to consult independent counsel if and as necessary.

5. Representation of creditors in unrelated matters.

The Firm has disclosed to you that the Firm represents one or more creditors of Furr's in matters wholly unrelated to the Furr's bankruptcy case. We understand you consent to the Firm representing the Chapter 7 estate while at the same time representing one or more such creditors in matters wholly unrelated to the Furr's bankruptcy case. The Firm will not advise or otherwise represent you on any issues involving any creditors of Furr's that the Firm represents. You acknowledge that the Firm has disclosed that it represents Wells Fargo Bank New Mexico, N.A. in various matters wholly unrelated to Furr's, and that the above consent applies to the Firm's representation of Wells Fargo.

6. Termination of the Engagement.

You have the right to terminate our representation of the Chapter 7 estate at any time upon notice to us, with the understanding that the estate will remain responsible for payment of our accrued fees and expenses, and applicable gross receipts taxes thereon. The Firm reserves the right to withdraw from representation for cause or if the terms of our engagement are not met, including timely payment of our bills. If our representation of the estate is terminated at your request, we will send our files to you or to your new counsel, at your request, subject to our right (if any) to hold the files pending payment of any outstanding balance the estate owes us.

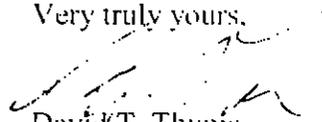
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7. No Other Agreements.

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 E. Thuma  
For the Firm

DTT/mlh