

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT  
ALBUQUERQUE, N.M.

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779-SA

Debtor.

**FIRST INTERIM APPLICATION BY ATTORNEYS FOR  
THE UNSECURED CREDITORS' COMMITTEE FOR ALLOWANCE AND PAYMENT OF  
COMPENSATION FOR FEBRUARY 14, 2001 TO JUNE 30, 2001**

The law firm of Davis & Pierce., P.C. ("Attorneys"), local Counsel for the Unsecured Creditors' Committee ("UCC"), submits this application for allowance and payment of compensation pursuant to Bankruptcy Code §§330 and 503.

In support of this Motion, Attorneys state:

1. First Application Period, Amount of Compensation Sought and Already Paid. In this First Fee Application, Attorneys seek allowance and payment of compensation for services rendered and costs incurred between February 14, 2001 through June 30, 2001 (the "First Application Period") in the total amount of \$164,423.09, consisting of \$146,439.00 for fees, \$9,472.32 for reimbursable costs and \$8,511.77 for gross receipts tax. As authorized by the Order Approving the UCC's Motion to Employ Attorneys, the Debtor has paid Attorneys' invoices for services rendered in February and March of the First Application Period in the total amount of \$34,949.70

2. Commencement of the Bankruptcy Case. On February 8, 2001, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. An order for relief on the petition was entered the same date as a matter of course. The Attorneys began representing interests of unsecured creditors on February 8, 2001 but have not billed the estate, or any other creditors, for services performed from February 8 through February 13, 2001, totaling 37.95 hours for a fee of \$9,028.75. This was in accordance with an agreement between the U.S. Trustee and the Attorneys.

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3. UCC's Employment of Attorneys. The Official Unsecured Creditors' Committee was formed on February 14, 2001, local counsel's employment was approved on April 6, 2001, effective as of February 14, 2001 (the "Order Authorizing Attorneys' Employment"). The UCC employed Attorneys to represent the UCC in all aspects of this bankruptcy case. No retainer was received by the Attorneys.

4. Prior Fee Applications by the UCC's Counsel; Prior Compensation Received. This is Attorneys' first application for compensation in this case. Attorneys have received \$34,949.70 during this First Period which is reflected in the Application and has been credited to the amounts sought herein. Pursuant to Bankruptcy Code §331, Attorneys have not applied for allowance of compensation in the preceding 120 days.

5. Services Rendered Were Actual and Necessary; Fees Charged are Reasonable. Following its employment by the UCC, Attorneys have represented the UCC during the pendency of this bankruptcy case. The services rendered and the costs and expenses incurred by Attorneys on behalf of the UCC during the First Application Period, for which compensation is sought, were actual and necessary. The amount charged for fees is reasonable based on the nature, extent and value of the services and the amount of time spent providing the services.

6. Itemization of Fees and Costs and Description of Services Rendered. The services provided by Attorneys in the First Application Period are set forth in detail on the billing statements attached hereto as Exhibit "A", which is incorporated herein by reference (the "Billing Statement"). The attached Billing Statement itemizes all charges for professional services, reimbursable costs and expenses and gross receipts tax; sets out the hourly rates for each attorney and legal assistant employed by Attorneys who rendered services to the UCC; separately describes the services rendered and hours worked by each individual each day for each specific task performed during the First Application Period; itemizes all expense charges; and, at the end of the Billing Statement, summarizes the total hours and total charges

per individual. The accounting services, costs and expenses as set out in the Billing Statement are true and correct to the best of Attorneys' knowledge, information and belief.

7. General Description of Services Rendered on Behalf of the UCC. As more fully set out in the attached Billing Statement, in general, Attorneys' services rendered for the UCC during the First Application Period have included, among other things:

- A. The Attorneys have provided general case administration services for the UCC, including without limitation the initial meeting with the UCC to review records, and preparation of the Motion for Employment of Counsel, and other initial UCC formation requirements. The Attorneys also prepared for and attended the §341 Meeting of Creditors for the UCC. As the case has continued, the Attorneys have continued to provide significant case administration services, including communication with debtor, employment of other UCC professionals, and general advice concerning the duties of the UCC. The Attorneys have represented the UCC at all hearings. The Attorneys have helped numerous unsecured creditors to understand the proceedings and contributed to the successful auction and sale of assets.
- B. The Attorneys have greatly reduced the expense to the estate by representing the UCC at every hearing in this case and by staying fully informed on all aspects of this case. This has greatly reduced the need for out-of-state counsel for the UCC to travel to New Mexico for hearings.
- C. The Attorneys have participated in UCC meetings in person and by phone. The Attorneys have kept the UCC and out-of-state counsel for the UCC informed on matters as they progressed and local procedures in the District of New Mexico.

8. Time Charged for Multiple Attorneys and Allocation of Responsibility. During the First Application Period, Attorneys worked a total of 552 hours of attorney time and 6.4 hours of legal assistant time for professional services rendered on behalf of the UCC. In billing time for multiple attorneys and allocating responsibility, the Attorneys attempted to minimize duplication of effort and overlap of responsibilities.

9. Billing Rates, Time Billed and Rates for Other Charges. During the First Application Period, the billing rates charged for attorneys and legal assistants were charged at Attorneys' normal and customary billing rates also charged to clients other than the UCC, as follows:

Mr. Davis' rate was approved by the Court at the time the employment Application was approved.

<u>ATTORNEYS</u>	<u>HOURS BILLED</u>	<u>BILLING RATE (PER HOUR)</u>	<u>AMOUNT BILLED</u>	<u>TOTAL</u>
William F. Davis	495.60	\$275.00	\$136,290.00	
Chris W. Pierce	56.40	\$175.00	\$ 9,765.00	
				\$146,055.00

<u>LEGAL ASSISTANTS</u>	<u>HOURS BILLED</u>	<u>BILLING RATE (PER HOUR)</u>	<u>AMOUNT BILLED</u>	<u>TOTAL</u>
Accounting Services	0.00	\$80.00	\$ 0.00	
Paralegal Assistance	6.4	\$60.00	\$384.00	
				\$384.00

Attorneys, in accordance with its customary billing practices, also charged for costs and expenses, including \$0.25 per page for in-house photocopying, \$0.25 per mile for hand deliveries, \$1.00 per page for telecopies (outgoing only), and actual out-of-pocket expenses for other expenses such as travel and meals while traveling, hotels, taxis, tips, deposition transcripts, computer aided legal research, postage, long distance telephone and overnight mail.

10. Other Factors. Attorneys also support this First Fee Application with discussion of various other factors, as follows:

(a) Expertise and experience in the area of bankruptcy of the Attorneys rendering services to the UCC. The Attorneys have extensive expertise and experience in Chapter 11 bankruptcies, and enjoy a respected reputation in the legal community for their work in both bankruptcy matters and in general commercial litigation. Mr. Davis has a Certificate of Specialization from the New Mexico Board of Legal Specialization in Bankruptcy (Business) Law and a Masters in Business Administration. The Attorneys have unique experience in the Debtor's history due to their representation of the Debtor in the Rubus Realty (f/ k/a Furr's, Inc.) bankruptcy.

(b) Method used to compute time charges. Applicant billed hourly for its services

for representation of client at normal, set, hourly rates for each attorney and timekeeper in the firm. The number of hours and hourly rates for each timekeeper who worked on representation of the client in this proceeding are itemized in this application. The billing invoices reflect contemporaneous time entries which set forth the services performed, the dates on which such services were performed, the identity of the individual performing the work, and the time spent in tenth of one hour increments.

(c) Relative billing rates of Attorneys for in-court and out-of-court hours. The Attorneys bill the same rates for in-court and out-of-court hours. Travel time is billed at the normal hourly rate because Attorneys use travel time for review of pleadings, files and preparation for hearings or meetings. Layover time between flights is not billed unless specific legal work is being performed during the layover.

(d) Difficulty of case dealt with by Attorneys. This case is an unusually difficult and complex bankruptcy compared to the normal Chapter 11 bankruptcy case filed in the District of New Mexico. At the time of filing, Debtor operated 71 retail supermarket stores with over 4,000 employees and 10,000 creditors. The case involves a corporation with a complex history and a series of banking transactions which the UCC is reviewing. The case involves dealings with sophisticated creditors and parties in interest, and has been subject to significant litigation with regard to almost every aspect of the case.

(e) Results Achieved and Benefit of the Results to the Estate. The Attorneys, as stated above, have dealt with varied aspects of this Chapter 11 proceeding. The Attorneys have assisted the UCC and other UCC professionals in the performance of the duties of the UCC including independent analysis of Debtor's plans, proposals, motions and pleadings in the case. Attorneys' participation in this case has reduced the overall administrative expenses of the estate. The Attorneys identified a possible preference in the Debtor's payments to its local and out-of-state counsel and

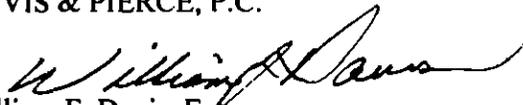
achieved a total recovery for the estate in excess of \$100,000.

11. Services Rendered Solely for the UCC; No Fee Sharing Arrangement. All professional services for which allowance and payment of compensation is requested were performed by Attorneys for the UCC and not on behalf of the debtor or any other committee or person. Attorneys have not shared or agreed to share any compensation received or to be received by it for services rendered in or in connection with this case with any person except with employees of Attorneys in the ordinary course of business.

WHEREFORE, Attorneys respectfully request that the Court allow, as a priority, administrative expense, the sum of \$164,423.09 for the First Application Period, consisting of fees for professional services rendered in the amount of \$146,439.00, compensation for expenses and costs in the amount of \$9,472.32 and gross receipts taxes in the amount of \$8,511.77. After application of the amount received of \$34,949.70, Attorneys are still owed \$129,473.39. Attorneys further request that the Court approve the prior payment and authorize the Debtor to pay Attorneys the entire unpaid balance for the First Application Period of \$129,473.39.

Respectfully submitted:

DAVIS & PIERCE, P.C.

  
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The undersigned hereby certifies that a true and accurate copy of the foregoing was mailed to the following parties as indicated below this 12<sup>th</sup> day of July, 2001.

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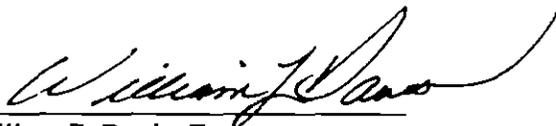
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