

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT
ALBUQUERQUE, NM

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779-SA
Chapter 11

Debtor.

**DEBTOR'S OBJECTION TO MOTION FOR ORDER AUTHORIZING AND
COMPELLING DEBTOR TO PAY PROFESSIONAL FEES AND EXPENSES
DUE AND OWING TO PETER J. SOLOMON COMPANY PURSUANT TO
SECTIONS 328(a) AND 105(a) OF THE BANKRUPTCY CODE**

The Debtor, by counsel, objects to the Motion for Order Authorizing and Compelling Debtor to Pay Professional Fees and Expenses Due and Owing to Peter J. Solomon Company Pursuant to Sections 328(a) And 105(a) of the Bankruptcy Code, filed October 5, 2001 as Docket No. 1174. as follows:

1. The Debtor does not object to payment of \$1.5 million to Peter J. Solomon Company ("PJSC") on the conditions that (a) the payment is made from the reserve established under the final first post-closing financing order for payment to PJSC (the "PJSC Reserve"); (b) the amount paid is in addition to, and is not paid from, the carve-out for professionals under any of the financing orders entered in this case; and (c) either the amount paid is not considered an advance secured by a lien against avoidance actions and other estate assets, or else such issue is reserved for later determination.

2. If any of the three conditions specified in paragraph 1 is not satisfied, the Debtor objects to payment of the \$1.5 million on the grounds that (a) there are no funds in the estate to make the payment; (b) there is a significant risk that the estate will be *administratively insolvent*; (c) *payment from the professional carve-out for the claimed*

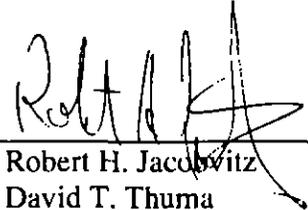
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fees should be ordered only in connection with an order that determines how the carve-out will be divided among professionals generally; (d) payment from funds available to administrative creditors generally (there are none currently) should not be ordered at this time; and (e) payment of the transaction fee owed to PJSC is a claim prior to the lien of the secured lenders, and should not be deemed an advance secured by avoidance actions or other estate assets.

3. The Debtor objects to payment of any amounts to PJSC in addition to the \$1.5 million in the PJSC Reserve because (a) the Debtor believes there are substantial issues concerning whether the entire amount claimed is owed; (b) there are no funds in the estate to pay such amounts; (c) there is a significant risk that the estate will be administratively insolvent; (d) payment from the professional carve-out for the claimed fees should be ordered only in connection with an order that determines how the carve-out will be divided among professionals generally; and (e) payment from funds available to administrative creditors generally (there are none currently) should not be ordered at this time.

WHEREFORE, the Debtor objects to payment to PJSC, to the extent set forth above.

JACOBVITZ, THUMA & WALKER,
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this 23rd day of October, 2001.

