

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

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FEDERAL BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

11-01-10729 SA

Debtor

**OBJECTION TO FIRST INTERIM APPLICATION FOR FEES  
BY DAVIS & PIERCE, P.C.**

Heller Financial, Inc., as agent for itself, Bank of America, N.A., Fleet Capital Corporation and Metropolitan Life Insurance Company ("Heller") objects to the First Interim Application By Attorneys For The Unsecured Creditors' Committee For Allowance And Payment Of Compensation For February 14, 2001 To June 30, 2001 ("Fee Application") and states:

1. Heller objects to the consideration of the Fee Application by "local counsel" separate from consideration of the fee application of other counsel of the Unsecured Creditors' Committee ("UCC") because of the inability to determine whether there was duplication of services and, if so, the appropriate resolution of such duplication. It appears that in this case there has been substantial duplication. For example, at the auction held on June 27, 2001, the UCC's participation was merely to monitor the process. The UCC had four lawyers, William Davis, Chris Pierce, William Cohen and Stuart Hertzberg, two accountants from Deloitte & Touche and three representatives from Chanin Capital Corporation for a total presence of nine professionals. Further, it is apparent from the Fee Application that despite professing concern over whether this case is administratively insolvent and despite the urgent need of the Debtor to conserve cash, the Unsecured Creditors Committee chose to have in-person meetings (as opposed to conference calls) in

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Chicago, Dallas and New York. It is unknown from merely viewing of the Fee Application whether the other counsel for the UCC also will be expecting reimbursement for such travel. Further, if the Fee Application is filed by attorneys whose only function was "local counsel" as indicated in the summary total sheet and the description of the matter on the invoices, then their attendance which resulted in thousands of dollars of travel expense as well as very significant numbers of hours of travel time at \$275 per hour was not reasonably and necessarily incurred. On the other hand, if their services to the UCC were beyond the scope of mere "local counsel" and their presence was justified, it may well be that the presence of the other attorneys was unnecessary. However, the Court cannot make that determination without the review of the fee application by those other attorneys.

2. The time spent in travel to and from UCC meetings in Chicago, New York and Dallas and the expenses incurred for airfare and hotels in attending those meetings should be disallowed. Those expenditures are not reasonable or necessary given the financial condition of this Debtor and the likelihood in this case of a distribution to unsecured creditors.

3. The Fee Application states the benefit provided the estate was the recovery of a preference of over \$100,000. The amount of the recovery was substantially less than that, but the Fee Application is also in excess of \$100,000. The results obtained do not justify the fee sought to be allowed.

4. The Fee Application fails to categorize services so that a review of the Fee Application does not disclose total services for each category of work performed. The failure to do so renders it impossible (without substantial unnecessary work by other interested parties) to determine the reasonableness of the charges for the particular services performed.

5. There are numerous failures to disclose the subject matter of conferences or discussions.

6. There is some degree of lumping services together so that the actual amount of time spent on a particular matter cannot be ascertained.

7. The photocopy charge of \$.25 per page is excessive.

8. The fax charge which appears to be \$1.00 per page is excessive.

9. In June of 2001, it appears that William F. Davis flew to New York for the deposition of R. Lambert. That deposition was taken telephonically by the Debtor's counsel. Mr. Lambert is supposedly a highly experienced investment banker who did not need the physical presence of Mr. Davis at such enormous expense to the estate. Mr. Davis should have used a telephone conference to prepare Mr. Lambert and attended the deposition by telephone. Instead, Mr. Davis spent ten hours traveling to and from the deposition for requested fees of \$2,750 plus tax, and incurred travel and hotel expenses, all for a deposition that, according to the Fee Application, lasted one hour and twelve minutes.

10. The Fee Application purports to separate services performed in the adversary proceeding against Heller and others separate from other services provided.<sup>1</sup> However, the Fee Application is remarkable in what is not included in the services listed for the DIP Adversary. For example, despite the fact that the DIP Adversary was served on a number of parties, there are no expenses either for fax or copying charges related to DIP Adversary. Obviously, those charges are included in the other portion of the Fee Application, the one for

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<sup>1</sup> Pursuant to the DIP Financing Order of March 14, 2001, the Debtor is prohibited from using cash collateral to pay professionals for actions brought contesting the claims of the DIP Lenders. The adversary was specifically brought for that purpose, so the Debtor is prohibited from using cash collateral of Heller and the other Lenders to pay for services by UCC counsel for what the Fee Application and invoices call the DIP Adversary.

which counsel expect to be paid using Heller's cash collateral. In fact, the only expense listed for the DIP Adversary is the \$150 filing fee. Despite the fact that the Fee Application discloses attendance at UCC meetings in New York in April and Dallas in May, there is no allocation of the very significant expenditures of time for both travel and attendance at the UCC meetings nor is there any allocation of the very significant expenses incurred to the DIP Adversary. It would appear from the Fee Application that the attorneys never spoke to the UCC with regard to the DIP Adversary. Either the DIP Adversary was not authorized by the UCC and should be dismissed or, as is more likely, if the DIP Adversary was discussed at UCC meetings, such expenses should be *pro rated to the appropriate time spent on the action* by the UCC against Heller and the other Lenders (assuming any of the exorbitant expenditures for attendance of those meetings are allowed). Further, the Fee Application discloses various discussions with regard to the security documents of Heller and the other Lenders and of an analysis of the value of the leases which are the subject of the adversary proceeding against Heller and the other Lenders, all of which should be included in the charges for the DIP Adversary and thus not payable from cash collateral.

WHEREFORE, Heller Financial, Inc. agent for itself, Bank of America, N.A., Fleet Capital Corporation and Metropolitan Life Insurance Company objects to the Fee Application filed by Davis & Pierce, P.C. and prays the following:

1. This application should not be considered until the application for the comparable period of time is filed by the other counsel for the UCC so that the Court can determine whether there is duplication of services and fashion the appropriate remedy.
2. The fees requested are far in excess of the negligible benefit obtained by the estate for these services.

3. The Fcc Application should be rejected because of the failure to categorize services, because of the failures to disclose the subject matter of conferences or discussions and because of lumping.

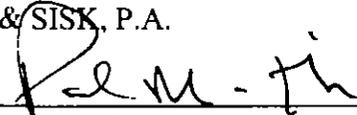
4. The charges for photocopies and faxes should be reduced to a reasonable amount.

5. Unnecessary travel and expenses should not be reimbursed.

6. Counsel should be ordered to properly allocate all services rendered in the action against Heller and the other Lenders under the category of the DIP adversary in order to avoid the Debtor inadvertently violating the Order of this Court with regard to use of cash collateral for such purpose.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS  
& SISK, P.A.

By: 

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WE HEREBY CERTIFY that a true and correct copy of the foregoing pleading was mailed to the following counsel of record this 23<sup>rd</sup> day of July, 2001.

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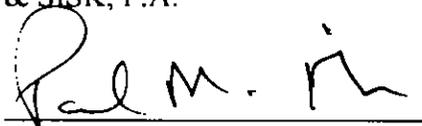
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