

FILED
12:00 MIDNIGHT

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

MAR 5 2001

DROP BOX
United States Bankruptcy Court
Albuquerque, New Mexico

In re

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

FURR'S SUPERMARKETS, INC.,

Debtor.

**DEBTOR'S APPLICATION FOR ORDER
AUTHORIZING EMPLOYMENT AND RETENTION OF
PETER J. SOLOMON COMPANY LIMITED AS ITS INVESTMENT BANK**

Furr's Supermarkets, Inc., debtor and debtor-in-possession in the above-captioned case (the "Debtor"), applies for an order under section 327(a) and 328(a) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014 and 2016, authorizing the Debtor's employment and retention of Peter J. Solomon Company Limited ("PJSC") as its investment bank. In support of this Application, the Debtor represents as follows:

Background

A. The Chapter 11 Filing

1. On February 8, 2001 (the "Petition Date"), the Debtor filed a voluntary petition in this Court for reorganization relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended, "Bankruptcy Code").

The Debtor continues to operate its business and manage its properties as debtor-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2).

B. The Debtor's Business

3. The Debtor is a leading regional supermarket chain, with operations in New Mexico and Western Texas. The Debtor employs approximately 4,900 individuals, operates seventy-one stores, and has a leading market share in this region.

4. The Debtor's stores offer a broad selection of grocery, meat, poultry, seafood, dairy, fresh fruits, vegetables and frozen food products. The stores also offer an extended line of non-food products, health and beauty care products, housewares, general merchandise and, in many instances, in-store pharmacies.

5. In recent years, the Debtor has generated annual revenues of \$700 to \$800 million. The Debtor is one of New Mexico's largest private employers, with approximately 4,900 employees, the majority of which are unionized.

6. There are more than 13,000 creditors in this case. The Debtor's secured creditors, including the lenders under the proposed debtor-in-possession credit facility, are among the nation's largest and most sophisticated financial institutions.

Retention of PJSC

7. By this Application, the Debtor seeks an order under 11 U.S.C. §§ 327(a) and 328(a) and Bankruptcy Rules 2014 and 2016 authorizing the employment and retention of PJSC as investment banker to the Debtor.

8. The Debtor requires the services of an investment banker experienced in Chapter 11 reorganization and in complex corporate transactions to advise the Debtor with respect to its strategic alternatives. Specifically, the Debtor will seek advice from PJSC regarding potential transactions that it may consider during its case, including restructuring its existing indebtedness, obtaining new debt or equity financing, a business combination with one or more entities, or a sale of part or all of its assets.

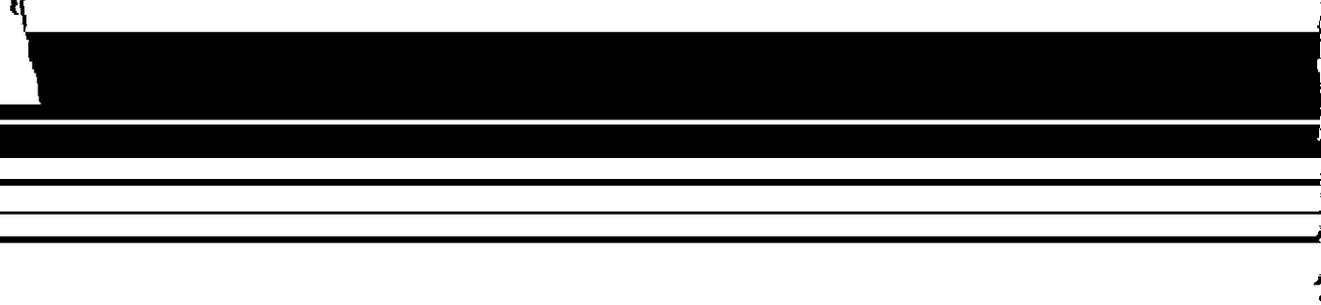
9. PJSC is well-qualified to perform these services. As set forth in the Declaration of Peter J. Solomon, submitted herewith (the "Solomon Declaration"), PJSC professionals have served as an investment bank to debtors, creditors and trustees in numerous Chapter 11 proceedings including many large restructurings over the last few years. Some of these engagements include Barney's, Inc, National Convenience Stores, Inc., R.H. Macy & Co., Inc., Service Merchandise Company, Inc., and Zenith Electronics Corporation. PJSC has also provided investment banking services to retail supermarket chains including Albertson's, Big V, Ralph's, and Supervalu.

10. This Court's Second Interim Order (1) Authorizing Debtor to Obtain Secured Financing, (2) Granting Adequate Protection and (3) Granting Other Relief, requires the Debtor to file appropriate pleadings with this Court seeking authority to engage an investment bank reasonably acceptable to the Lenders (as defined in the Order) on or before March 9, 2001. PJSC is acceptable to the Lenders.

Services To Be Performed

11. PJSC and the Debtor have entered into a Letter Agreement, dated as of February 26, 2001 (the "Letter Agreement"), a copy of which is attached to the Solomon Declaration as Exhibit A. Under the Letter Agreement, PJSC will perform the following services, among others, as necessary:

(a) PJSC will assist the Debtor in assessing the operating and financial strategies for its business;



(b) PJSC will review and analyze the business plans and financial projections prepared by the Debtor, including but not limited to testing assumptions and comparing those assumptions to historical Debtor and industry trends;

(c) PJSC will assist the Debtor and its other professionals in formulating and negotiating a plan of reorganization;

(d) PJSC will value the Debtor in connection with a plan of reorganization;

(e) To the extent requested by the Debtor, PJSC will advise the Debtor in connection with one or more possible transactions (each, a "Transaction") or series or combination of Transactions, whereby, directly or indirectly, an ownership interest in the Debtor, in its business or in all or any portion of its assets is transferred for consideration, including, without limitation, one or more transactions involving a sale or exchange of capital stock or assets with or without a purchase option, a merger or consolidation, a tender or exchange offer, a leveraged

buy-out, the formation of a joint venture or partnership or any other business combination or similar transaction;

(f) PJSC will advise the Debtor in restructuring existing indebtedness and, to the extent requested by the Debtor, arrange new or additional financing;

(g) PJSC will review and analyze any proposals the Debtor receives from third parties regarding any Transaction;

(h) PJSC will assist or participate in negotiations with the Debtor and/or any other parties in interest regarding any Transaction;

(i) PJSC will assist in the plan of reorganization confirmation process, including preparation of expert testimony relating to financial matters, if required; and,

(j) PJSC will render such other financial advisory and investment banking services as may be agreed upon by PJSC and the Debtor in connection with the foregoing.

Connection with Parties in Interest on Unrelated Matters

12. The Solomon Declaration contains information available to date on PJSC's connections with other parties in interest. Based on the information in that Declaration, the Debtor submits that PJSC and its professionals are "disinterested persons" as that term is used in Bankruptcy Code § 101(14), and hold no interest adverse to the Debtor.

Compensation

13. Under the Letter Agreement, if approved by the Court, PJSC will be entitled to:

(a) A Monthly Fee equal to \$150,000 for a minimum of three months. One hundred percent of all Monthly Fees paid for the engagement, excluding the first two Monthly Fees, will be credited to the Reorganization Fee or the Transaction Fee.

(b) A Transaction Fee, with a minimum of \$500,000 per Transaction, equal to a percentage of the amount of the Transaction, as provided in Attachment A to the Letter Agreement. The aggregate Transaction Fees shall not be less than \$1,500,000.

(c) A Reorganization Fee may be paid. The Reorganization Fee is equal to \$1,500,000, based on a reorganization of the Debtor under Chapter 11 of the Bankruptcy Code, that represents no less than 40% of the trailing twelve months' revenue of the Debtor measured on March 31, 2001. The Reorganization Fee is payable on the date of consummation of the plan of reorganization.

(d) A Financing Fee shall be negotiated between PJSC and the Debtor, if the Debtor requests PJSC to arrange financing for any secured or unsecured debt, equity or other hybrid security.

14. PJSC will also seek reimbursement for reasonable out-of-pocket expenses incurred and indemnification/contribution, as needed, in connection with this engagement.

15. The overall compensation structure described above is comparable to compensation generally charged by investment banking firms of similar stature to PJSC for comparable engagements, both in and out of court. The hours worked, the results achieved and the ultimate benefit to the estate of the work performed by PJSC in connection with this engagement may vary and the Debtor and PJSC have taken this into account in setting the above fees. The Debtor believes that

a per-hour fee calculation is not representative of the amount or quality of the work performed by PJSC.

16. The fees were set considering the difficulty of the assignment and the potential for failure, and the Debtor believes that the rates and charges described above are reasonable and appropriate. PJSC believes that these provisions are customary and reasonable for a financial advisory engagement.

**Approval of the Terms of PJSC's
Engagement Under Section 328(a) Bankruptcy Code**

17. The Debtor requests approval of the terms of PJSC's engagement, including (i) the terms of the Letter Agreement and (ii) the indemnification provisions contained therein, subject to the standard of review provided in section 328(a) of the Bankruptcy Code. Section 328(a) of the Bankruptcy Code provides, in part, that a debtor may employ or authorize the employment of a professional person under section 327 "on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis."

18. As recognized by numerous courts, Congress intended 328(a) to enable debtors to retain professionals under specific fee arrangements to be determined at the time of the court's approval of the retention, subject to reversal only if the terms are found to be improvident in light of "developments not capable of being anticipated at the time of the fixing of such terms and conditions." 11 U.S.C. § 328(a). See In re Nat'l Gypsum Co., 123 F.3d 861, 862-3 (5th Cir. 1997) ("If the

most competent professionals are to be available for complicated capital restructuring and the development of successful corporate reorganization, they must know what they will receive for their expertise and commitment").

19. The Debtor believes that the fee structure and indemnification provisions set forth in the Letter Agreement are reasonable terms and conditions of employment and should be approved under section 328(a) of the Bankruptcy Code. These provisions appropriately reflect (i) the nature of the services to be provided by PJSC and (ii) the fee structures and indemnification provisions typically utilized by PJSC and other leading financial advisory and investment banking firms, which do not bill their clients on an hourly basis and generally are compensated on a transactional basis. In sum, the Debtor believes that the fee structure and indemnification provisions are reasonable terms and conditions of employment in light of (a) industry practice, (b) market rates charged for comparable services both in and out of the Chapter 11 context, (c) PJSC's substantial experience with respect to financial advisory services, and (d) the nature and scope of work to be performed by PJSC in this chapter 11 case.

20. If the Court approves PJSC's employment as Debtor's investment bank, PJSC will render statements to the Debtor on a monthly basis. The Debtor seeks authority, before the Court's determination of the allowability of PJSC's compensation, to pay the Monthly Fee in advance on the first of each month, the Reorganization Fee on the date of consummation of a plan of reorganization, and the

Transaction Fees upon receipt of the aggregate consideration for the individual transaction, 100% of billed costs, and 100% of gross receipts or use tax (if applicable) on fees and expenses that are payable.

WHEREFORE, the Debtor requests that the Court enter an order under Bankruptcy Code §§ 327(a) and 328(a) and Bankruptcy Rule 2014: (i) approving this Application in all respects; (ii) approving the Debtor's employment of PJSC as its investment bank, and (iii) granting the Debtor such other relief as is just and appropriate.

**Dated: Albuquerque, New Mexico
March 5, 2001**

FURR'S SUPERMARKETS, INC.

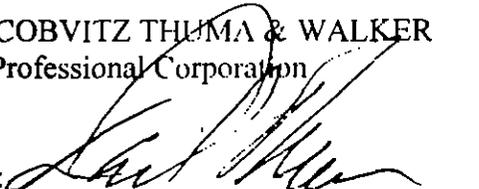
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