

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

**ORIGINAL**

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OFFICE OF THE CLERK  
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U.S. BANKRUPTCY COURT  
ALBUQUERQUE, N.M.

In Re: ) Chapter 11  
)  
) Case No. 01-10779-SA  
FURRS SUPERMARKETS, INC., )  
)  
) No Hearing Date  
Debtor. )  
)

**FINAL FEE APPLICATION FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES TO DELOITTE CONSULTING L.P. AND DELOITTE & TOUCHE LLP, AS FINANCIAL ADVISORS AND REORGANIZATION CONSULTANTS TO THE OFFICIAL UNSECURED CREDITORS COMMITTEE FOR THE PERIOD OF SEPTEMBER 1 THROUGH OCTOBER 31, 2001 AND FEBRUARY 21, 2001 THROUGH OCTOBER 31, 2001**

Name of Applicant:	Deloitte Consulting L.P. and Deloitte & Touche LLP	
Authorized to Provide Professional Services to:	Unsecured Creditors Committee	
Date of Retention:	Effective February 21, 2001	
Period for which Compensation and Reimbursement is sought:	February 21, 2001 through October 31, 2001	
	<u>9/1/01 – 10/31/01</u>	<u>2/21/01 – 10/31/01</u>
Total Professional Service Fees sought as actual, reasonable, and necessary:	\$ 29,939.00	\$ 1,004,640.00
Total of Expense Reimbursement sought as actual, reasonable, and necessary:	\$ 0.00	\$ 39,780.88
New Mexico Gross Receipts Tax 5%	\$ 1,496.95	\$ 52,221.04
Less: Amount paid on an Interim Basis:	\$ 0.00	\$ 0.00
Net Amount requested	\$ 31,435.95	\$ 1,096,641.92

This is an: \_\_\_\_\_ interim  X  final application

This is the Applicant's (as defined herein) Final Fee Application (the "Application"). The Applicant's First Interim Fee Application, in the amount of \$1,065,205.97, was filed on October 4, 2001 and covered the period from February 21, 2001 through August 31, 2001. The Final Fee Application and Applicant's First Interim Fee Application are sometimes collectively referred to herein as the "Applications." No amounts have been awarded by this Court or paid to the Applicant pursuant to the Applications. Accordingly, the Applicant hereby requests fees, expenses, and New Mexico Gross Receipts Tax in the total amount of \$1,096,641.92. A summary of all fees, expenses, and New Mexico Gross Receipts Tax pursuant to the Applications is presented herein in Exhibit I - Application.

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In Re:	)	Chapter 11
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FURR'S SUPERMARKETS, INC.,	)	Case No. 01-10779-SA
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Debtor.	)	No Hearing Date
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THE PERIOD OF SEPTEMBER 1 THROUGH OCTOBER 31, 2001 AND  
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Name	Position	Billing Rate	Hours			Fees		
			First Fee App. (2/21 - 8/31)	Interim Period (9/1 - 10/31)	Total (2/21 - 10/31)	First Fee App. (2/21 - 8/31)	Interim Period (9/1 - 10/31)	Total (2/21 - 10/31)
Anthony Forcum	Partner	\$600	158.1	4.7	162.8	\$ 94,860.00	\$ 2,820.00	\$ 97,680.00
Ben Barnett	Partner	\$395	98.2	23.5	121.7	38,789.00	9,282.50	48,071.50
Ed Lynch	Partner	\$395	2.2	-	2.2	869.00	-	869.00
Joe Wells	Partner	\$395	29.7	-	29.7	11,731.50	-	11,731.50
John Solomon	Sr. Manager	\$350	254.8	10.0	264.8	89,180.00	3,500.00	92,680.00
John Tittle <sup>(1)</sup>	Sr. Manager	\$350	307.9	4.7	312.6	107,754.50	1,645.00	109,399.50
Julia Cunningham	Sr. Manager	\$350	0.5	-	0.5	175.00	-	175.00
John Little <sup>(1)</sup>	Manager	\$315	332.2	13.3	345.5	104,627.25	4,189.50	108,816.75
Kyle Redfean	Manager	\$315	257.7	-	257.7	81,175.50	-	81,175.50
Steve Benenson	Manager	\$315	2.0	-	2.0	630.00	-	630.00
Tom Mason <sup>(1)</sup>	Manager	\$315	276.1	-	276.1	86,955.75	-	86,955.75
Brian Convery	Sr. Consultant	\$360	495.3	-	495.3	178,308.00	-	178,308.00
Anthony Jackson	Consultant	\$180	399.2	16.4	415.6	71,856.00	2,952.00	74,808.00
Mathew Pierre	Consultant	\$180	118.5	-	118.5	21,330.00	-	21,330.00
Michael Finley	Consultant	\$180	110.9	-	110.9	19,962.00	-	19,962.00
Rachel Pack	Consultant	\$180	52.5	-	52.5	9,450.00	-	9,450.00
Ryan Miller	Consultant	\$180	15.5	-	15.5	2,790.00	-	2,790.00
Toby Ware	Consultant	\$180	195.5	-	195.5	35,190.00	-	35,190.00
Brigitte Scott	Paraprof.	\$100	188.8	55.5	244.3	18,880.00	5,550.00	24,430.00
Jeri Mailander	Proj. Coord.	\$125	1.5	-	1.5	187.50	-	187.50
<b>Total Professional Fees and Hours</b>			<b>3,297.0</b>	<b>128.1</b>	<b>3,425.1</b>	<b>\$ 974,701.00</b>	<b>\$ 29,939.00</b>	<b>\$ 1,004,640.00</b>
<b>Blended Rate per Hour</b>						<b>\$ 295.64</b>	<b>\$ 233.72</b>	<b>\$ 293.32</b>

<sup>(1)</sup> The professional fee and hour amounts reflect rounding differences of .1 hours and \$42.00. This amount has been removed from the total professional fees above, effectively reducing both the total hours and fees. This in essence creates a fee reduction for the Debtor.

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# EXHIBIT I

## Application

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Come now Deloitte Consulting L.P. and Deloitte & Touche LLP (collectively, for purposes of this Application only "Deloitte" or the "Applicant"), move pursuant to sections 330 and 331 of Title 11 of the United States Code, 11 U.S.C. §§101 et seq. (the "Bankruptcy Code") and Bankruptcy Rule 2016 and the Guidelines for Compensation and Expense Reimbursement of Professionals of the United States Bankruptcy Court for the District of New Mexico for an order awarding final compensation for professional services rendered as Financial Advisors and Reorganization Consultants to the Official Unsecured Creditors Committee (the "Committee") for the period of February 21, 2001 through October 31, 2001 (the "Application Period").

In support of this Application (the "Application"), the Applicant represents as follows:

**Background**

1. On February 8, 2001 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the Bankruptcy Code (the "Code" or the "Bankruptcy Code"). Following the Petition Date, the Debtor intends to continue in the possession of its respective properties and the management of its respective businesses as debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.
2. No trustee or examiner has been appointed in this case. The Committee was appointed by the United States Trustee under Section 1102 of the Bankruptcy Code on or about February 13, 2001. On February

21, 2001, at a scheduled meeting of the Committee, at which all members were present, and pursuant to the provisions of Section 1103 of the Bankruptcy Code, the Committee selected and authorized the retention and employment of Deloitte to serve as its Financial Advisors and Reorganization Consultants.

3. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and this Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are §§ 328 and 1103 of the Code, as supplemented by Rule 2014 of the *Federal Rules of Bankruptcy Procedure* (the “Bankruptcy Rules”).

4. A letter approving the employment application (the “Retention Letter”), dated June 14, 2001 and effective as of February 21, 2001, authorized the retention of Deloitte to render the services described in Exhibit II and herein.

#### **Overview of Services Performed by Deloitte**

5. In its capacity as financial advisors and reorganization consultants to the Committee, the Applicant rendered significant services to the Committee that were beneficial to the completion of this Chapter 11 proceeding at the time the services were rendered.<sup>1</sup> The Applicant provided analysis, observations, recommendations, and advice on many critical matters throughout its work for the Committee, as requested and directed by the Committee and its counsel, Pepper Hamilton LLP and Davis & Pierce P.C. Some of the tasks charged to the Applicant by the Committee arose from concerns by the Committee members about the ultimate cost to the Estate, and consequently, the recovery to unsecured creditors, of proposed courses of actions of the Debtor.

6. One of the first significant issues to face the Committee related to the Debtor’s final hearing on its proposed DIP financing arrangement. The Committee was primarily focused on whether the proposed facility would provide the Debtor with adequate liquidity to operate its business in a manner that would maximize the going concern value of the Debtor’s business. Working with the Debtor and certain of its advisors, the Applicant reviewed and challenged the Debtor’s DIP forecast, developed sensitivity analyses related to certain

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<sup>1</sup> In accordance with 11 U.S.C. § 330(a)(3)(C)

critical assumptions underlying the forecast, reviewed and assessed the Debtor's short term business and operating plan, and investigated alternative financing options (including a trade lien). These efforts provided the Applicant and the Committee with a baseline understanding of the Debtor's expected short term operating priorities, liquidity requirements and management challenges. Another of these issues involved the many versions of the Debtor's proposed Key Employee Retention Plans. Another issue involved the compensation schemes involving the Debtor's proposed crisis managers. The Applicant reviewed and analyzed the Key Employee Retention Plans and other proposed compensation arrangements, including Retention, Severance and Bonus Plans that were proposed initially by the Debtor's management team and subsequently the crisis management team. These analyses were used by the Committee in its attempts to gain an understanding of the Debtor's proposed compensation plans, including the perceived excessive nature of certain of these proposed arrangements. The Applicant assisted the Committee in its analysis, deliberations, and development of objections to the proposed Key Employee Retention Plans and other compensation schemes, in their various forms, in order to preserve and maximize the Estate and attempt to secure a recovery for the unsecured creditors in this case.

7. For a variety of reasons, the Committee and its advisors were concerned about the viability of the Debtor as an on-going enterprise from the beginning of the case. Healthy skepticism was voiced on numerous occasions to Debtor management regarding the Debtor's ever-changing business plans as well as the 19-week cash flow projections proffered by the Debtor at the outset of this Chapter 11 proceeding. The Committee and the Applicant and its other advisors continually assessed and evaluated the capability and probability of the Debtor's management team to successfully reorganize the affairs of the Debtor as a going concern. On numerous occasions the Committee considered potential action steps to be taken by the Committee if it was determined that the Debtor's management team was not capable of operating its business in a manner that maximized the value of the Estate for all creditors. As part of this evaluation process, the Applicant spent a significant amount of time analyzing and performing due diligence on the Debtor's financial projections,

business and operating plans, management and ongoing financial performance. This information and analysis was provided to the Committee on a frequent basis as input to decision making processes.

8. As part of this analysis, the Applicant performed a detailed valuation of the Debtor as a going concern and an estimate of liquidation value. This work included due diligence on the Debtor's operations as well as an analysis of the Debtor's industry comparables. In addition, other pertinent information and data were gathered that were useful in evaluating the Debtor's market value under a variety of scenarios. The Applicant's valuation work on the value of the Debtor as a going concern was requested by the Committee and the results of this work was delivered to the Committee prior to the retention by the Committee of investment bankers. Upon the engagement of the Committee's investment banking advisors, the results of the work performed to date was immediately shared with the investment bankers to facilitate their "getting up to speed" quickly on the case.

9. Given the Committee's ongoing significant concerns about the Debtor's liquidity position and results of operations, the Applicant continuously monitored the financial performance of the Debtor and kept the Committee informed weekly through the dissemination of flash reports. The Applicant's work was performed to assist the Committee in making a variety of decisions at critical times during the pendency of these proceedings.

10. The Applicant worked diligently, at the direction of the Committee and its counsel, to assist the Committee in obtaining a recovery for the unsecured creditors. One area of potential recovery to the unsecured creditors at one point in the case was the value of the Debtor's real estate leases. On information and belief, these leases appeared to be unencumbered and to the extent that the market value of these leases exceeded the "cure costs" associated with these leases, would inure to the benefit of the unsecured creditors. The Application spent a significant amount of time performing a comprehensive valuation of all of the Debtor's 51 supermarket operating leases, three office operating leases, 22 capital leases, one owned property, and three industrial warehouse spaces in the El Paso area used for distribution purposes. Substantial due diligence activities and site visits were conducted as part of the Applicant's valuation approach as required by the

applicable real estate appraisal guidelines in place in both New Mexico and Texas. The Applicant concluded that the leases and real property in question had market value far greater than the sum estimated by the Debtor's financial advisors. Not only were the valuation services rendered in an expeditious and cost effective manner, but also the Applicant was asked to prepare to testify relative to its work and conclusions and/or be available by telephone at the Court's discretion. The significant market value determined by the Applicant to exist within the Debtor's real estate portfolio was very relevant to the Committee's activities and decision making processes at the point in the case at which the Applicant was directed to perform the aforementioned services.

11. As is typical at the beginning of almost all Chapter 11 cases, upon its formation, the Committee needed a great deal of information and financial analysis quickly to assist the Committee in certain immediate decision-making processes. This case was no different. Immediately upon its selection as financial advisors and reorganization consultants to the Committee, the Applicant devoted substantial resources to fulfilling this need for information during the early phases of this case. As is also the case in the early days of many Chapter 11 cases, the Committee did not initially obtain from the Debtor or its advisors the timely and accurate information needed in order to make the appropriate and necessary decisions on the part of its constituency. Accordingly, the Applicant was tasked by the Committee and its counsel to gather as much of the needed information as possible and create the desired analyses independently.

12. Throughout the pendency of this case, the Applicant added value to the work of the Committee by providing detailed analyses and insight on matters facing the Committee. Monthly Committee meetings were held during the case at which the Applicant made meaningful and valuable presentations. These presentations required a great deal of work in a limited time frame. Without the Applicant's work, the Committee would not have been able to complete its charge in representing the interests of the Debtor's unsecured creditors.

13. This Application is made by Deloitte in accordance with the United States Trustee Guidelines for *Compensation and Reimbursement of Expenses Filed under U.S.C. §330, Federal Rules of Bankruptcy Procedure, Rule 2016(a)*, the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of New Mexico, the Clerk's Practice and Procedure Guide, and this Court's February 15, 2001 Order Prescribing

notice on Debtor's Applications to retain Skadden, Arps, Slate, Meagher & Flom LLP, Jacobvitz, Thuma & Walker, and PricewaterhouseCoopers, LLP (the "February 15 Order Prescribing Notice"), the Notice of Preliminary and Final Hearings on Professional Fee Applications, and of Deadline to File Professional Fee Applications to Obtain a Final Hearing in January, 2002 (the "October 25 Notice"), and other orders of this Court. The February 15 Order Prescribing Notice provided that professionals in this case should submit their invoices on a monthly basis to the Debtor for payment. If there were no objections to such invoices, 75% of the fees, 100% of its out-of-pocket expenses, and 100% of gross receipts or use tax were to be paid by the Debtor. Although such invoices were submitted, no such invoices have been paid by the Debtor.

14. The Applicant filed its First Interim Application on October 4, 2001 for the period February 21 through August 31, 2001, and sought approval of fees of \$974,701.00, expenses of \$39,780.88, and New Mexico Gross Receipts Tax of \$50,724.09 for a total request of \$1,065,205.97.

15. This Application requests compensation for professional services, and reimbursement of expenses and New Mexico Gross Receipts Tax for the period from September 1 through October 31, 2001, which represents the period subsequent to the First Interim Application period. The Applicant requests an award of \$31,435.95 for professional services fees, expenses and New Mexico Gross Receipts Tax incurred on behalf of the Committee during the period from September 1 through October 31, 2001. In addition, the Applicant also requests payment of the total amount of the First Interim Fee Application of \$1,065,205.97. A Summary of all fees and expenses in this case is presented herein below:

	Fees Requested	Fees Paid To-Date	Expenses Requested	Expenses Paid To-Date	New Mexico Gross Receipts Tax 5%	Balance Due To Applicant
First Interim Application 2/21/01 – 8/31/01	\$974,701.00	\$0.00	\$39,780.88	\$0.00	\$50,724.09	\$1,065,205.97
Final Fee Application 9/1/01 – 10/31/01	\$29,939.00	\$0.00	\$0.00	\$0.00	\$1,496.95	\$31,435.95
<b>TOTAL</b>	<b>\$1,004,640.00</b>	<b>\$0.00</b>	<b>\$39,780.88</b>	<b>\$0.00</b>	<b>\$52,221.04</b>	<b>\$1,096,641.92</b>

**Guidelines for determining reasonable compensation**

16. The United States Court of Appeals for the Tenth Circuit In Re: *Lederman Enterprises, Inc. v. U.S. Trustee*, 997 F.2d 1321 used guidelines for determining reasonable attorney and trustee fees for services rendered in bankruptcy and reorganization cases as established by the opinion of the United States Court of Appeals for the Fifth Circuit In Re: *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5<sup>th</sup> Circuit, 1974). These guidelines were later applied to other professional's fees by the Fifth Circuit In Re: *First Colonial Corporation of America*, 544 F.2d 1291 (1977) and in subsequent opinions of the Court of Appeals for the Fifth Circuit. The application of each of these guidelines to this case is discussed as follows:

- a. The time and labor required – In rendering the services described herein between September 1 and October 31, 2001, Deloitte expended a total of 128.1 hours and a total of 3,425.1 for the period from February 21 through October 31, 2001. Deloitte has performed and completed only that work necessary during the two-month period described above to substantially finalize the tasks and activities underway on behalf of the Committee at the end of August. Each professional's time is summarized by one-tenth of an hour for work performed and is detailed in Exhibit IV. Similar detail by professional for the period February 21 to August 31, 2001 was presented as Exhibit IV to the Applicant's First Interim Fee Application and is incorporated by reference herein. A statement of the services rendered is set forth as Exhibit III. In addition to the description of services provided, Exhibit V provides a summary of the hours spent and time charges for each activity category for the Application Period. The Applicant charges on an hourly basis for these services, and there are no monthly retainers or commissions to be paid.
- b. The skills requisite to perform the accounting and consulting services properly - The professionals who worked on this case have demonstrated the skill in their respective fields required to provide the services necessary to benefit the Estate and assist throughout this proceeding. The professionals employed by the Applicant have spent considerable time over

the past several years in developing and refining bankruptcy and reorganization experience, financial analysis capabilities, broad-based business experience, and expertise in financial statement modeling and forecasting.

- c. The Customary Fees - The fees requested herein generally do not exceed those charged to our non-bankruptcy clients. Upon the Applicant's knowledge and belief, rates sought for approval herein are commensurate with, or less than, the usual and customary rates generally charged for services performed by accountants and financial advisors in bankruptcy cases of this nature.
- d. Whether the fee is fixed or contingent - The Applicant's fees for performing services on behalf of the Debtor in this case are fixed at the hourly rates noted in Exhibit VI and are not contingent on the results achieved. However, the Applicant's Fees are contingent upon approval of the Court.
- e. The amount involved and the results obtained - The following is a summary of the significant service and accomplishments the Applicant has performed and achieved for the Debtor during the Application Period. The Applicant has consulted with the Committee and its Counsel, the Debtor, its Counsel, the Secured Lender, other parties, and has made appearances or prepared to appear at hearings at this Court in connection with financial, real estate, accounting and other matters relating to reviewing the Debtor's cash flow projections under various scenarios, the DIP financing agreement, leasehold values, the Key Employee Retention Plan ("KERP"), retention of investment bankers, and valuation of the Debtor's assets. See also "Overview of Services Performed by Deloitte."
- f. The experience, reputation, and ability of the accountants - The Debtor selected Deloitte due to the experience and expertise of its professionals. The senior members of the active team on the engagement are Anthony Forcum, Ed Lynch, Ben Barnett, and John Tittle, Jr. Mr. Forcum, Mr. Lynch, Mr. Barnett, and Mr. Tittle have extensive experience in the operation and financing of public and private companies as well as business turnarounds, reorganizations, real

estate issues, bankruptcies and litigation support. (Brief biographies of certain of the Applicant's personnel involved in this engagement are included as Exhibit VIII). John Little served as manager on this engagement. Over the past several years, professionals employed by the Applicant have been involved in numerous bankruptcy cases and are extremely knowledgeable with respect to the specialized work and analyses required in a Chapter 11 proceeding, including, but not limited to, assistance with negotiations, financial analysis, forecasting, valuation, and expert witness testimony.

- g. The undesirability of the case - The Applicant believes that this factor is not material.
- h. Awards in similar cases - The fees applied for herein are based on hourly rates that are customary fees charged to all clients of the Applicant. Upon information and belief, the Applicant would show that the amount of compensation requested herein is comparable to allowances made by the Bankruptcy Courts in numerous other cases.
- i. The efficient administration of the Estate - A portion of the services in this case were rendered by consultants and other personnel, in accordance with the policy of the Applicant to assign work, whenever possible, to those persons who have the degree of experience and specialization to perform efficiently and properly the services required, under the supervision of even more experienced professionals. The average hourly billing rate charged by the Applicant reflects the utilization of senior professionals, only as required by these cases. However, every effort has been made to hold the consulting fees of this estate to a reasonable amount, given the level of work performed.
- j. The avoidance of duplicate fees or compensation for non-legal services - To the best of the Applicant's knowledge and belief, there has been no duplication of accounting or consulting services between the Applicant and any other accountants or consultants of the Bankruptcy Estate.

17. Other than as provided in section 504(b) of the Bankruptcy Code, Deloitte has not shared, or agreed to share, any compensation received as a result of this case with any person, firm, or entity. No promises concerning compensation have been made to Deloitte by any firm, person, or entity.

18. The Applicant asserts that compensation requested above is reasonable compensation for the actual and necessary services rendered based upon the time, nature, and value of such services. Deloitte further asserts that the cost of services rendered for and on behalf of the Committee is comparable to or less than the cost of similar services in matters other than under the Bankruptcy Code.

19. In accordance with the October 25 Order Prescribing Notice, Deloitte has submitted this Final Fee Application.

**Notice**

20. Notice of this Application has been given to: (a) the Court; (b) the Office of the U.S. Trustee; (c) the Debtor; (d) counsel of the Debtor; (e) counsel for the Committee and (f) the post petition DIP lenders.

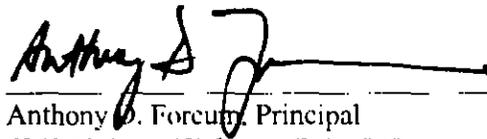
**No Prior Request**

21. Except as disclosed above relative to the First Interim Fee Application, no prior request for the compensation sought in this Application has been made to this or any other court for the period from September 1, 2001 to October 31, 2001 or the period from February 21, 2001 through October 31, 2001.

WHEREFORE, Deloitte respectfully requests that the Court grant allowance of compensation for professional services rendered by Deloitte Consulting L.P. and Deloitte & Touche LLP as Reorganization Consultants, and Financial Advisors to the Committee during the pendency of this Chapter 11 proceeding to-date in the amount of \$1,096,641.92 less amounts paid on an interim basis of \$0.00, and that the Debtor is authorized to pay the Applicant the balance due of \$1,096,641.92, and for such other and further relief as is just.

Dated: 11/12/01

Respectfully submitted,  
DELOITTE CONSULTING L.P.



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on counsel as indicated on the attached Service List on this \_\_\_\_\_ day of November, 2001.

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# EXHIBIT II

Motion to Retain Deloitte  
Consulting L.P. and Deloitte &  
Touche LLP, Affidavits, and The  
Retention Letter

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

FILED

01 MAR 14 PM 3:39

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In Re:	)	Chapter 11
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Debtor.	)	No Hearing Date
	)	

**APPLICATION OF CHAIRPERSON OF THE OFFICIAL UNSECURED CREDITORS' COMMITTEE FOR ORDER PURSUANT TO 11 U.S.C. § 327(a) AUTHORIZING THE RETENTION AND EMPLOYMENT OF DELOITTE CONSULTING L.P. AND DELOITTE & TOUCHE LLP NUNC PRO TUNC TO SERVE AS FINANCIAL ADVISORS AND REORGANIZATION CONSULTANTS**

RICK REHN, Vice-Chairperson of The Official Unsecured Creditors' Committee (the "Committee") of the Debtor herein, for his Application (the "Application") For Order Pursuant to 11 U.S.C. § 327(a) Authorizing the Retention and Employment of Deloitte Consulting L.P. and Deloitte & Touche LLP (collectively, for purposes of this Application only, "Deloitte") to serve as Financial Advisors and Reorganization Consultants to the Committee nunc pro tunc to February 21, 2001, states as follows:

**BACKGROUND**

1. On February 8, 2001 (the "Petition Date"), Furr's Supermarkets, Inc. (the "Debtor") filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "Code"). Following the Petition Date, the Debtor intends to continue in the possession of its respective properties and the management of its respective businesses as debtor in possession pursuant to Sections 1107 and 1108 of the Code.

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2. On or about February 13, 2001, the United States Trustee appointed the Committee under Section 1102 of the Code.

3. On February 21, 2001, at a scheduled meeting of the Committee, at which all of its members were present, and pursuant to the provisions of Section 1103 of the Code, the Committee selected and authorized the retention and employment of Deloitte to serve as its *Financial Advisors and Reorganization Consultants*.

4. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and this Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are §§ 328 and 1103 of the Code, as supplemented by Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

#### RELIEF REQUESTED

5. By this Application, the Committee seeks authority to retain and employ Deloitte as financial advisors and reorganization consultants during this chapter 11 case, pursuant to sections 328 and 1103 of the Code, effective as of the date of its selection of Deloitte, February 21, 2001.

6. The Committee has requested that Deloitte immediately commence work on this case in order for Deloitte to assist the Committee in: (i) the Committee's evaluation of the Debtor's proposed debtor in possession ("DIP") financing arrangements; (ii) the Committee's analysis of the Debtor's proposed key employee retention plans; (iii) the Committee's negotiations with the Debtor to employ Trade Liens as a mechanism of financing the Debtor's operations in addition to the DIP; and (iv) as requested by the Committee and as agreed to by Deloitte, consulting/advising in other pending matters in which the Committee has an interest.

As such, it is imperative that the Application be considered by the Court as expeditiously as possible.

7. The Committee believes that the size of the Debtor's operations and the complexity of its attendant financial difficulties required the Committee to employ a financial advisor and reorganization consultant to assist the Committee in gathering and analyzing financial information and to perform other services as set forth herein. The Committee hereby requests this Court's approval of its employment and retention of Deloitte in this chapter 11 case. The Committee believes that the employment of Deloitte will be essential to the resolution of this chapter 11 case.

8. The Committee has reviewed the qualifications and experience of Deloitte's personnel and believes that Deloitte has considerable experience in advising creditors and assisting restructuring companies both inside and outside of chapter 11 cases. For example, Deloitte has assisted debtors in addressing issues related to amendments of prepetition secured financing facilities and restructuring of balance sheets, and has assisted a number of prominent companies in bankruptcy and out-of-court restructurings. Furthermore, Deloitte has assisted secured creditors, unsecured creditors, bondholders, and equity holders in numerous bankruptcy cases and out-of-court restructurings. Deloitte is a highly qualified reorganization consultant and professional services firm whose professionals have substantial experience in projects of this type. Deloitte's depth of experience renders it particularly well qualified and uniquely able to provide services to the Committee during the pendency of this case. Personnel from both Deloitte Consulting L.P. and Deloitte & Touche LLP will perform services pursuant to Deloitte's retention and employment as described in this Application. All of Deloitte's work will be supervised by Anthony D. Forcum, a highly experienced Principal of Deloitte Consulting L.P.

9. The Committee proposes that Deloitte be retained as its financial advisors and reorganization consultants in connection with this chapter 11 case on the terms set forth herein.

**SCOPE OF RETENTION**

10. The Committee contemplates that Deloitte will provide advisory services and assistance in connection with the restructuring and reorganization of the Debtor's affairs throughout the course of this chapter 11 case as the Committee or its counsel may request and as agreed to by Deloitte. Certain of the advisory services and assistance that Deloitte may render to the Committee may be summarized as follows:

- a) Assist the Committee in connection with assessing the Debtor's cash and liquidity requirements, as well as its future financing requirements;
- b) Assist the Committee in connection with monitoring the Debtor's financial and operating performance, including its statements of financial affairs, monthly operating reports, etc.;
- c) Assist the Committee in connection with evaluating the Debtor's businesses and operation, including stability plans, management retention, business outlook, etc.;
- d) Assist the Committee in connection with evaluating the Debtor's business, operational, and financial plans, both short-term and long-term;
- e) Assist the Committee in connection with evaluating the Debtor's current operations, executory contracts, capital expenditures, and cost reduction opportunities;
- f) Assist the Committee in connection with evaluating the Debtor's business configuration, and operational alternatives;
- g) Assist the Committee in connection with evaluating restructuring-related alternatives, including tax implications;

- h) Assist the Committee in connection with restructuring-related negotiations and negotiations concerning plan or plans of reorganization;
- i) Advise the Committee concerning the Debtor's claims;
- j) Consistent with the scope of services set forth herein, attending and participating in appearances before the United States Bankruptcy Court;
- k) Assist the Committee, where appropriate, in reviewing the books and records of the Debtor for related party transactions and unenforceable claims; and
- l) Provide such other related services as may be requested by the Committee or its counsel and as agreed to by Deloitte.

**DISINTERESTEDNESS AND LACK OF ADVERSE INTEREST**

11. To the best of the Committee's knowledge, and based upon the affidavit of Anthony D. Forcum (the "Forcum Affidavit") and the affidavit of Ed J. Lynch (the "Lynch Affidavit," the Forcum Affidavit and the Lynch Affidavit being hereinafter known collectively as the "Affidavits"), neither Deloitte Consulting L.P. nor Deloitte & Touche LLP hold, or represent any other entity having an interest adverse to the Debtor or its estate in connection with this case. Furthermore, to the best of the Committee's knowledge, neither Deloitte Consulting L.P. nor Deloitte & Touche LLP has any connection with the Debtor, or its significant creditors, the United States Trustee's office, or another party in interest in this chapter 11 case, or with the Debtor's attorneys or accountants, except as stated herein or in the Affidavit of Ed J. Lynch of Deloitte & Touche LLP or the Affidavit of Anthony D. Forcum of Deloitte Consulting L.P., as is fully disclosed in the attached.

(a) As is discussed in more detail in the Affidavits, from time to time Deloitte or its affiliates have provided, may currently provide, and may in the future continue to provide professional services to certain of the Debtor's creditors or other parties in interest in

matters unrelated to this chapter 11 case. A listing of such parties is shown on Exhibit A hereto. Deloitte provides or has provided audit, tax and consulting services to or involving: (i) certain of the Debtor's current financing sources or affiliates, including Bank of America, Credit Suisse Group, Finova Group, Fleet Bank (now FleetBoston, "Fleet"), Heller Financial, and Wells Fargo; (ii) certain of the Debtor's major creditors or its affiliates, including Anderson News Company, The Boeing Company, ConAgra Inc. (both of which are major Deloitte clients), Edison Source, Fleming Companies, Inc. ("Fleming"), General Mills, Pepsico Inc., Procter & Gamble, Quaker Oats, Southern Wine & Spirits, and United Food & Commercial Workers Union; (iii) certain of the Debtor's professionals, including Skadden, Arps, Slate, Meagher & Flom LLP which also provides services to Deloitte; and (iv) certain of the Debtor's current financing sources provide financing to Deloitte or its individual partners or principals, including Bank of America and Fleet. Fleet provides financing to Deloitte or its individual partners or principals. Bank of America is a significant lender to Deloitte or its members. Metropolitan Life Insurance Company ("MetLife"), an equity holder and lender to the Debtor, is a significant client of Deloitte to whom Deloitte provides audit, tax, and certain other services. Fleming, a former equity holder and creditor of the Debtor, is a significant client of Deloitte to whom Deloitte provides audit, tax, and certain other services. Deloitte provides Woodward Capital Partners, including its related funds (collectively, "Woodward"), transaction support/merger and acquisition advisory services. MetLife is an investor in Woodward. Deloitte has advised the Committee that it has not provided services to any of these entities related to the Furr's Supermarkets, Inc. If this Application is approved by this Court, Deloitte will perform such services requested by the Committee relative to matters in this chapter 11 case involving MetLife, Woodward, and Fleming, save and except providing expert testimony at trial in any

adversary proceeding brought by the Committee against MetLife, Windward, and/or Fleming. Deloitte has from time to time been involved with certain of the Debtor's and Committee's professionals in matters unrelated to this case, including Cohen Weiss & Simon, Pepper Hamilton LLP, and Pryor, Cashman, Sherman & Flynn.

(b) Deloitte believes that the relationships described herein or in the Affidavit do not cause Deloitte to lack "disinterestedness" or to represent an entity having an adverse interest in connection with this case. Should the Court approve its retention, Deloitte will maintain its customary confidentiality procedures in connection with services it provides in this case, and will not, unless specifically authorized by the Court, represent any other party in connection with this case. Because Deloitte is a nationwide firm with many client relationships, and because the Debtor is a very large enterprise, Deloitte is unable to state with certainty that every client relationship or other connection has been disclosed. In this regard if Deloitte discovers additional information that it determines requires disclosure, it will file a supplemental disclosure with the Court promptly.

#### TERMS OF RETENTION

12. Subject to allowance and approval by this Court, in exchange for the services summarized above, Deloitte will charge its regular hourly rates in performing the aforementioned services. These hourly rates at present range from \$325 to \$600 for partners, principals and directors, \$275 to \$550 for senior managers, \$225 to \$480 for managers, \$175 to \$360 for senior consultants, and \$140 to \$250 for consultants, analysts and staff. In the normal course of business, Deloitte revises its regular hourly rates periodically to reflect changes in responsibilities, increased experience, and increased costs of doing business, and Deloitte

requests that the aforementioned rates be revised to the regular hourly rates that will be in effect from time to time. Changes in regular hourly rates will be noted on the invoices for the first time period in which the revised rates become effective.

13. The Committee believes Deloitte's fees are comparable with or lower than those of Deloitte's competitors. In addition to its fees, subject to Court approval, Deloitte shall be entitled to reimbursement of all reasonable out-of-pocket costs and disbursements, including, but not limited to, telephone and telecopier charges, mail and express mail charges, special or hand delivery charges, computer usage, document processing, photocopying charges, travel expenses, and computerized research as well as any applicable New Mexico gross receipts or use tax.

14. The Committee has been informed that Deloitte intends to apply for compensation for professional services to be rendered in connection with this chapter 11 case and for reimbursement of expenses incurred, in accordance with applicable provisions of the Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of New Mexico, the Clerk's Practice and Procedure Guide, the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under § 330, the Application (if entered), this Court's February 15, 2001 Order Prescribing Notice on Debtor's Applications to Retain Skadden, Arps, Slate, Meagher & Flom I.L.P., Jacobvitz, Thuma & Walker, and PricewaterhouseCoopers, LLP (the "February 15 Order Prescribing Notice"), and other applicable Orders of this Court.

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<sup>1</sup> The Order directed that the Debtor, on twenty day's notice, serve a copy of each of its professional's retention applications on the following parties: (a) the United States Trustee; (b) the Debtor's creditors set forth on the list filed pursuant to Bankruptcy Rule 1007(d); (c) the lenders entitled to notice under this Court's Interim Order

15. The February 15 Order Prescribing Notice also stated that the Debtor may supplement each retention application to seek Court approval that the retained professional may invoice the Debtor monthly and propose that the Debtor may pay, on a monthly basis, 75% of each professional's time charges and 100% of its out-of-pocket expenses, and 100% of gross receipts or use tax (if applicable) on fees and expenses that are payable, all payments to be subject to the Court's approval pursuant to 11 U.S.C. §§ 330 and 331 (the "Interim Fee Motion").

16. In accordance with the Court's suggestion as set forth in the February 15 Order Prescribing Notice, and in recognition of the Debtor's Interim Fee Motion filed on February 20, the Committee requests that the following procedures for compensating and reimbursing its court-approved professionals on a monthly basis be established, in accordance with the regular procedures of this Court. The procedures requested by the Committee are as follows:

(a) Each Committee professional will submit to the Debtor, on a monthly basis, a detailed statement (a "Fee Statement") of services rendered and expenses incurred by such professional during the prior month. The Debtor shall have until the fifteenth calendar day of the following month after the submission of the Fee Statement to review it (although the Debtor is not required to wait the full fifteen days). In the event there are no objections, the Debtor would be

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authorizing debtor in possession financing, entered on February 9, 2001. (d) all parties in interest who have requested special notice in this case, and (e) all other persons who commented on the Applications at the February 8 hearings thereon.

authorized to immediately pay 75% of the amount in fees billed each month and 100% of the expenses billed for each month. In the event there are objections raised with regard to specific items, subject to paragraph (b) infra, the Debtor would still be authorized to immediately pay 75% of the amount in uncontested fees billed each month and 100% of the uncontested expenses billed for each month. These payments would be subject to the Court's subsequent approval as part of the normal interim fee application process.

(b) In the event the Debtor determines that the compensation and or reimbursement sought in a particular statement is inappropriate or unreasonable, or that the numbers and calculations are incorrect, the Debtor shall, on or before the fifteenth day of the calendar month after the submission of the Fee Statement, serve upon the professional whose statement is objected to a "Notice of Objection" with an affidavit setting forth the precise nature of the objection and amount at issue. Thereafter, the Debtor and the professional whose Fee Statement is objected to shall meet or confer to attempt to reach an agreement regarding the correct payment to be made. If an agreement cannot be reached or if no meeting takes place, the professional whose Fee Statement is objected to shall have the option of (i) filing the Notice of Objection, the Fee Statement and a request for payment with the Court, or (ii) foregoing payment of the disputed amount until the next interim fee application hearing, at which time the Court will consider and dispose of the objection if payment of the disputed amount is requested. As set forth in paragraph (a) supra, the Debtor shall still be required to pay promptly that

percentage set forth above of any portion of the fees and expenses requested that are not the subject of a Notice of Objection.

17. The procedures outlined in ¶16(a) above are consistent with the procedures requested by the Debtor pursuant to its February 20, 2001 Interim Fee Motion, and are appropriate given the size and complexity of this reorganization case. While the Debtor did not specify any type of procedure to resolve disputes, the Committee believes the procedures detailed in ¶16(b) are reasonable and consistent with similar procedures implemented in comparable bankruptcy cases. The procedures suggested in this Application will enable all parties to closely monitor costs of administration, maintain a level cash flow, and implement efficient cash management procedures.

18. The Committee believes that the prompt retention of Deloitte as its financial advisors and reorganization consultants on the terms described above effective as of February 21, 2001, is in the best interest of this estate.

#### PROCEDURE

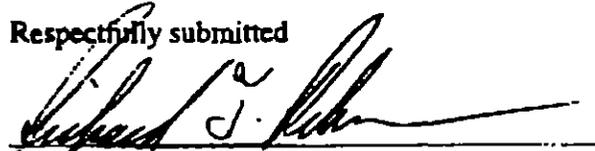
19. No trustee or examiner has been appointed to date in this case. The Committee has served copies of this Application on all parties required to be served pursuant to the February 15 Order Prescribing Notice.

20. No previous application or other request for the relief sought herein has been made to this or any other court.

**CONCLUSION**

WHEREFORE, the Committee respectfully requests that the Court enter an order approving its selection of Deloitte as financial advisors and reorganization consultants to the Committee in these proceedings, said appointment to be effective as of February 21, 2001.

Respectfully submitted



**RICK REHN, Vice-Chairperson**  
Procter & Gamble  
8500 Governor's Hill Drive  
Cincinnati, OH 45239  
513.774.1993

Dated: March 13, 2001

I certify that on March 13, 2001, I mailed a copy of this document to:

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**EXHIBIT A**

**Parties in Interest**

<b>Current or Former Clients of Deloitte &amp; Touche and/or Deloitte Consulting</b>	<b>Relationship to the Debtors</b>
Anderson News Company	Unsecured Creditor
Bank of America, N.A.	Secured Lender
Boeing Company	Affiliate McDonnell Douglas Finance is an Unsecured Creditor
Cohen Weiss & Simon	Outside Counsel for United Food & Commercial Workers (an unsecured creditor)
ConAgra, Inc.	Affiliate ConAgra Beef Co. is an Unsecured Creditor
Credit Suisse Group	Affiliate Credit Suisse First Boston Private Equity is a Secured Lender and Equity Investor
Edison Source	Unsecured Creditor
Finova Group, Inc.	Affiliate Finova Capital Corporation is an Unsecured Creditor
Fleet Capital Corporation	Secured Lender
Fleming Companies	Creditor
General Mills	Unsecured Creditor
Heller Financial	Secured Lender
Metropolitan Life Insurance Company	Secured Lender, Unsecured Creditor, and Equity Investor
Pepper Hamilton LLP	Counsel to the Unsecured Creditors' Committee
Pepsico, Inc.	Affiliates Pepsi-Cola and Frito Lay are

<b>Current or Former Clients of Deloitte &amp; Touche and/or Deloitte Consulting</b>	<b>Relationship to the Debtors</b>
	Unsecured Creditors
Philip Morris	Affiliate Kraft is an Unsecured Creditor
Procter & Gamble	Unsecured Creditor
Pryor, Cashman, Sherman & Flynn	Outside Counsel for Countrywide Logistics
Quaker Oats Company	Unsecured Creditor
Skadden, Arps, Slate, Meagher & Flom LLP	Debtor's bankruptcy counsel
Southern Wine & Spirits	Unsecured Creditor
United Food & Comm Workers Union	Unsecured Creditor
Wells Fargo & Company	Creditor
Windward Capital Partners	Secured Lender and Equity Investor

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

01 MAR 14 PM 3:38  
U.S. BANKRUPTCY COURT  
ALBUQUERQUE, NM

In Re: ) Chapter 11  
)  
FURR'S SUPERMARKETS, INC., ) Case No. 01-10779-SA  
)  
) No Hearing Date  
Debtor. )  
)

**AFFIDAVIT OF ANTHONY D. FORCUM IN SUPPORT OF  
APPLICATION OF OFFICIAL UNSECURED CREDITORS'  
COMMITTEE FOR ORDER PURSUANT TO 11 U.S.C. § 327(a)  
AUTHORIZING THE RETENTION AND EMPLOYMENT OF  
DELOITTE CONSULTING L.P. TO NUNC PRO TUNC SERVE AS  
FINANCIAL ADVISORS AND REORGANIZATION CONSULTANTS**

ANTHONY D. FORCUM, being duly sworn, deposes and says:

1. I am a Principal of Deloitte Consulting L.P., which has an office at 6363 N. State Highway 161, Suite 800, Irving, Texas, 75038.

2. I am duly authorized to make this Affidavit on behalf of Deloitte Consulting L.P. ("Deloitte Consulting") in connection with the proposed retention of Deloitte Consulting as financial advisors and reorganization consultants to the Official Unsecured Creditors' Committee (the "Committee") to perform services in conjunction with Deloitte & Touche LLP (together with Deloitte Consulting, "Deloitte") as set forth in the Committee's application (the "Application") to employ and retain Deloitte effective as of February 21, 2001.

3. Deloitte Consulting is well qualified to act as financial advisors and reorganization consultants to the Committee in this chapter 11 case. Deloitte Consulting has assisted debtors and creditors in addressing issues related to amendments of pre-petition secured

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financing facilities and restructuring of balance sheets, and has assisted a number of prominent companies in bankruptcy and out-of-court restructurings. Deloitte Consulting is a highly qualified reorganization consulting and professional services firm whose professionals have substantial experience in projects of this type.

4. To the best of my information, knowledge and belief, neither I, Deloitte Consulting nor any principal or employee of Deloitte Consulting that is anticipated to provide the services for which Deloitte Consulting is to be retained in this chapter 11 case has any connection with the Debtor, its significant creditors, the United States Trustee's office, certain other parties in interest herein, or the Debtor's attorneys or accountants in this case, except as stated herein or on any attachment hereto or in the Affidavit of Ed J. Lynch of Deloitte & Touche LLP (together with Anthony D. Forcum's Affidavit, being hereinafter known collectively as the "Affidavits") submitted with the Application and any attachment thereto.

(a) From time to time Deloitte Consulting or its affiliates have provided, may currently provide, and may in the future continue to provide services to certain of the Debtor's creditors or other parties in interest in matters unrelated to this chapter 11 case. A listing of such parties is shown on Exhibit A hereto. Deloitte Consulting believes that these connections have no bearing on the services for which Deloitte Consulting's retention is being sought in this case. In particular, Deloitte Consulting or its affiliates provides or has provided consulting services to or involving: (i) certain of the Debtor's current financing sources or affiliates, including Bank of America, Credit Suisse Group, Finova Group, Fleet Bank (now FleetBoston, "Fleet"), Heller Financial, and Wells Fargo; (ii) certain of the Debtor's major creditors or their affiliates, including Anderson News Company, The Boeing Company, ConAgra

Inc. (both of which are major Deloitte clients), Edison Source, Fleming Companies, Inc. ("Fleming"), General Mills, Pepsico Inc., Procter & Gamble, Quaker Oats, Southern Wine & Spirits, and United Food & Commercial Workers Union; (iii) certain of the Debtor's professionals, including Skadden, Arps, Slate, Meagher & Flom LLP which also provides services to Deloitte; and (iv) certain of the Debtor's current financing sources provide financing to Deloitte or its individual partners or principals, including Bank of America and Fleet. Fleet provides financing to Deloitte or its individual partners or principals. Bank of America is a significant lender to Deloitte or its members. Metropolitan Life Insurance Company ("MetLife"), an equity holder and lender to the Debtor, is a significant client of Deloitte to whom Deloitte provides audit, tax, and certain other services. Fleming, a former equity holder and creditor of the Debtor, is a significant client of Deloitte to whom Deloitte provides audit, tax, and certain other services. Deloitte provides Windward Capital Partners, including its related funds (collectively, "Windward"), transaction support/merger and acquisition advisory services. MetLife is an investor in Windward. Deloitte has advised the Committee that it has not provided services to any of these entities related to Furr's Supermarkets, Inc. If this Application is approved by this Court, Deloitte will perform such services requested by the Committee relative to matters in this chapter 11 case involving MetLife, Windward, and Fleming, save and except providing expert testimony at trial in any adversary proceeding brought by the Committee against MetLife, Windward, and/or Fleming. Deloitte has from time to time been involved with certain of the Debtor's and Committee's professionals in matters unrelated to this case, including Cohen Weiss & Simon, Pepper Hamilton LLP, and Pryor, Cashman, Sherman & Flynn.

5. Deloitte Consulting believes that the relationships described herein or in the Affidavits do not cause Deloitte Consulting to lack "disinterestedness" or to represent an

entity having an adverse interest in connection with this case. Should the Court approve its retention, *Deloitte Consulting will maintain its customary confidentiality procedures in connection with services it provides in this case in order to preserve the confidentiality of confidential client information.*

6. As one of the largest professional services firms in the United States, Deloitte Consulting and its affiliates have relationships with tens of thousands of clients, some of which may be creditors of the Debtor or other parties in interest, and Deloitte Consulting and its affiliates from time to time have or may have provided professional services to, currently provide or may currently provide professional services to, and may in the future be engaged to provide professional services by entities that are creditors or are currently, or will, become parties in interest in these cases in matters unrelated to this case. However, to the best of my knowledge after reasonable inquiry, the Deloitte Consulting personnel anticipated to serve the Committee have not served and will not serve any party in interest in any matter relating to this chapter 11 case without prior Court approval. Certain of the Debtor's creditors, other parties in interest, or the Debtor's attorneys or accountants, have or may have provided goods or services to, currently provide or may provide goods or services to, and may in the future provide goods or services to Deloitte Consulting or its affiliates or to the engagement partners/principals in matters unrelated to this chapter 11 case. In the ordinary course of its business, Deloitte Consulting has business relationships in unrelated matters with its principal competitors, the other "Big Five" accounting firms, including Arthur Andersen LLP, the Debtor's accountants. For example, from time to time, Deloitte Consulting and one or more of such entities may work jointly on assignments for the same client or may otherwise engage each other for various purposes. *Deloitte Consulting*

has also been involved in other bankruptcy cases in which PricewaterhouseCoopers LLP has been engaged as professionals, as here.

7. In connection with its proposed retention by the Committee in this case, Deloitte Consulting has undertaken a search to determine and to disclose whether it has any relationships with the following entities:

- (a) the Debtor;
- (b) the Debtor's officers and directors;
- (c) the 20 largest unsecured creditors of the Debtor;
- (d) the attorneys, and other professionals that the Debtor have sought authority to employ in this chapter 11 case, pursuant to applications filed on the date hereof;
- (e) lenders under the Debtor's senior and subordinated debt facilities;
- (f) the Debtor's equity investors; and
- (g) the attorneys that the Committee has sought authority to employ in this chapter 11 case, pursuant to applications filed on the date hereof.

Despite the effort described above to identify and disclose Deloitte Consulting's connections with parties in interest in this case, because Deloitte Consulting and its affiliates are nationwide firms with tens of thousands of employees, and because the Debtor is a large enterprise, Deloitte Consulting is unable to state with certainty that every client relationship or other connection has been disclosed. In this regard, if Deloitte Consulting discovers additional information that it determines requires disclosure, it will file a supplemental disclosure with the Court promptly.

8. To the best of my knowledge, the connections of Deloitte Consulting or its affiliates with any of the foregoing entities in matters unrelated to this chapter 11 case are set forth herein or on the Exhibit A attached hereto. In light of the extensive number of creditors

and other parties in interest. neither Deloitte Consulting nor I are able to identify conclusively all such potential relationships. I am, however, presently aware of no such connections, except as set forth herein or on Exhibit A.

9. Subject to the foregoing, neither I, Deloitte Consulting, nor any member or employee of Deloitte Consulting who is anticipated to work on this engagement, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtor or its estate with respect to the matters on which Deloitte Consulting is to be retained.

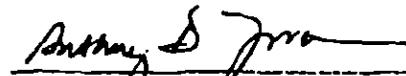
10. Subject to the foregoing, to the best of my knowledge, neither I, Deloitte Consulting nor any member or employee of Deloitte Consulting is anticipated to work on this engagement has any other connection with the Debtor, their creditors, the United States Trustee's office, any other party in interest, or the Debtor's attorneys or accountants in this chapter 11 case.

11. The services to be rendered include all those services set forth as may be provided by Deloitte Consulting in the Application for authorization to employ and retain Deloitte Consulting in this case at paragraph 10.

12. Subject to allowance and approval this Court, Deloitte Consulting will charge its regular hourly rates in performing the aforementioned services. Deloitte Consulting's hourly rates at present range from \$565 to \$600 for principals and directors, \$505 to \$550 for senior managers, \$435 to \$480 for managers, \$300 to \$360 for senior consultants and \$100 to \$250 for consultants and analysts. In the normal course of business, Deloitte Consulting revises its regular hourly rates periodically and Deloitte Consulting requests that the aforementioned rates be revised to the regular hourly rates that will be in effect from time to time. Changes in regular hourly rates will be noted on the invoices for the first time period in which the revised

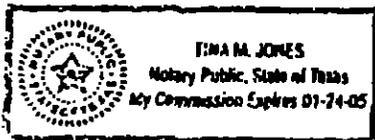
including travel, delivery service and other costs including the New Mexico gross receipts or use tax on the total amount of fees and expenses (if applicable), incurred in providing the services are included at actual cost, in the total amount billed.

13. Deloitte Consulting intends to apply for compensation for professional services to be rendered in connection with this chapter 11 case and for reimbursement of expenses incurred, in accordance with applicable provisions of the Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of New Mexico, the Clerk's Practice and Procedure Guide, the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under § 330, the Application (if entered) and other applicable Orders of this Court. Deloitte Consulting has not shared or agreed to share any of its compensation from the Committee with any other external person.

  
\_\_\_\_\_  
Anthony D. Forcum

Sworn to before me this  
14 day of March, 2001

  
\_\_\_\_\_  
Notary Public



**EXHIBIT A**

**Parties in Interest**

<b>Current or Former Clients of Deloitte &amp; Touche and/or Deloitte Consulting</b>	<b>Relationship to the Debtors</b>
Anderson News Company	Unsecured Creditor
Bank of America, N.A.	Secured Lender
Boeing Company	Affiliate McDonnell Douglas Finance is an Unsecured Creditor
Cohen Weiss & Simon	Outside Counsel for United Food & Commercial Workers (an unsecured creditor)
ConAgra, Inc.	Affiliate ConAgra Beef Co. is an Unsecured Creditor
Credit Suisse Group	Affiliate Credit Suisse First Boston Private Equity is a Secured Lender and Equity Investor
Edison Source	Unsecured Creditor
Finova Group, Inc.	Affiliate Finova Capital Corporation is an Unsecured Creditor
Fleet Capital Corporation	Secured Lender
Fleming Companies	Creditor
General Mills	Unsecured Creditor
Heller Financial	Secured Lender
Metropolitan Life Insurance Company	Secured Lender, Unsecured Creditor, and Equity Investor
Pepper Hamilton LLP	Counsel to the Unsecured Creditors' Committee
Pepsico, Inc.	Affiliates Pepsi-Cola and Frito Lay are

<b>Current or Former Clients of Deloitte &amp; Touche and/or Deloitte Consulting</b>	<b>Relationship to the Debtors</b>
	Unsecured Creditors
Philip Morris	Affiliate Kraft is an Unsecured Creditor
Procter & Gamble	Unsecured Creditor
Pryor, Cashman, Sherman & Flynn	Outside Counsel for Countrywide Logistics
Quaker Oats Company	Unsecured Creditor
Skadden, Arps, Slate, Meagher & Flom L.P.	Debtor's bankruptcy counsel
Southern Wine & Spirits	Unsecured Creditor
United Food & Comm Workers Union	Unsecured Creditor
Wells Fargo & Company	Creditor
Windward Capital Partners	Secured Lender and Equity Investor

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

ED  
MAY 14 PM 3:33  
U.S. BANKRUPTCY COURT  
ALBUQUERQUE, NM

In Re: ) Chapter 11  
)  
) Case No. 01-10779-SA  
FURR'S SUPERMARKETS, INC., )  
)  
) No Hearing Date  
Debtor. )  
)  
)

**AFFIDAVIT OF ED J. LYNCH IN SUPPORT OF APPLICATION OF  
OFFICIAL UNSECURED CREDITORS' COMMITTEE FOR ORDER  
PURSUANT TO 11 U.S.C. § 327(a) AUTHORIZING  
THE RETENTION AND EMPLOYMENT OF  
DELOITTE & TOUCHE LLP NUNC PRO TUNC TO SERVE AS  
FINANCIAL ADVISORS AND REORGANIZATION CONSULTANTS**

ED J. LYNCH, being duly sworn, deposes and says:

1. I am a Partner of Deloitte & Touche LLP, which has an office at 2200 Ross Avenue, Suite 1600, Dallas, Texas, 75201.
2. I am duly authorized to make this Affidavit on behalf of Deloitte & Touche LLP ("Deloitte & Touche") in connection with the proposed retention of Deloitte & Touche as financial advisors and reorganization consultants to the Official Unsecured Creditors' Committee (the "Committee") to perform services in conjunction with Deloitte & Consulting (together with Deloitte & Touche, "Deloitte") as set forth in the Committee's application (the "Application") to employ and retain Deloitte effective as of February 21, 2001.
3. Deloitte & Touche is well qualified to act as financial advisors and reorganization consultants to the Committee in this chapter 11 case. Deloitte & Touche has assisted debtors and creditors in addressing issues related to amendments of pre-petition secured

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financing facilities and restructuring of balance sheets, and has assisted a number of prominent companies in bankruptcy and out-of-court restructurings. Deloitte & Touche is a highly qualified reorganization consulting and professional services firm whose professionals have substantial experience in projects of this type.

4. To the best of my information, knowledge and belief, neither I, Deloitte & Touche nor any principal or employee of Deloitte & Touche that is anticipated to provide the services for which Deloitte & Touche is to be retained in this chapter 11 case has any connection with the Debtor, its significant creditors, the United States Trustee's office, certain other parties in interest herein, or the Debtor's attorneys or accountants in this case, except as stated herein or on any attachment hereto or in the Affidavit of Anthony D. Forcum of Deloitte Consulting L.P. (together with Ed J. Lynch's Affidavit, being hereinafter known collectively as the "Affidavits") submitted with the Application and any attachment thereto.

(a) From time to time Deloitte & Touche or its affiliates have provided, may currently provide, and may in the future continue to provide services to certain of the Debtor's creditors or other parties in interest in matters unrelated to this chapter 11 case. A listing of such parties is shown on Exhibit A hereto. Deloitte & Touche believes that these connections have no bearing on the services for which Deloitte & Touche's retention is being sought in this case. In particular, Deloitte & Touche or its affiliates provides or has provided audit, tax and consulting services to or involving: (i) certain of the Debtor's current financing sources or affiliates, including Bank of America, Credit Suisse Group, Finova Group, Fleet Bank (now FleetBoston, "Fleet"), Heller Financial, and Wells Fargo; (ii) certain of the Debtor's major creditors or its affiliates, including Anderson News Company, The Boeing Company, ConAgra

Inc. (both of which are major Deloitte clients), Edison Source, Fleming Companies, Inc. ("Fleming"), General Mills, Pepsico Inc., Procter & Gamble, Quaker Oats, Southern Wine & Spirits, and United Food & Commercial Workers Union; (iii) certain of the Debtor's professionals, including Skadden, Arps, Slate, Meagher & Flom LLP which also provides services to Deloitte; and (iv) certain of the Debtor's current financing sources provide financing to Deloitte or its individual partners or principals, including Bank of America and Fleet. Fleet provides financing to Deloitte or its individual partners or principals. Bank of America is a significant lender to Deloitte or its members. Metropolitan Life Insurance Company ("MetLife"), an equity holder and lender to the Debtor, is a significant client of Deloitte to whom Deloitte provides audit, tax, and certain other services. Fleming, a former equity holder and creditor of the Debtor, is a significant client of Deloitte to whom Deloitte provides audit, tax, and certain other services. Deloitte provides Windward Capital Partners, including its related funds (collectively, "Windward"), transaction support/merger and acquisition advisory services. MetLife is an investor in Windward. Deloitte has advised the Committee that it has not provided services to any of these entities related to Furr's Supermarkets, Inc. If this Application is approved by this Court, Deloitte will perform such services requested by the Committee relative to matters in this chapter 11 case involving MetLife, Windward, and Fleming save and except providing expert testimony at trial in any adversary proceeding brought by the Committee against MetLife, Windward, and/or Fleming. Deloitte has from time to time been involved with certain of the Debtor's and Committee's professionals in matters unrelated to this case, including Cohen Weiss & Simon, Pepper Hamilton LLP, and Pryor, Cashman, Sherman & Flynn.

5. Deloitte & Touche believes that the relationships described herein or in the Affidavits do not cause Deloitte & Touche to lack "disinterestedness" or to represent an entity

having an adverse interest in connection with this case. Should the Court approve its retention, Deloitte & Touche will maintain its customary confidentiality procedures in connection with services it provides in this case in order to preserve the confidentiality of confidential client information.

6. As one of the largest professional services firms in the United States, Deloitte & Touche and its affiliates have relationships with tens of thousands of clients, some of which may be creditors of the Debtor or other parties in interest, and Deloitte & Touche and its affiliates from time to time have or may have provided professional services to, currently provide or may currently provide professional services to, and may in the future be engaged to provide professional services by entities that are creditors or are currently, or will, become parties in interest in these cases in matters unrelated to this case. However, to the best of my knowledge after reasonable inquiry, the Deloitte & Touche personnel anticipated to serve the Committee have not served and will not serve any party in interest in any matter relating to this chapter 11 case without prior Court approval. Certain of the Debtor's creditors, other parties in interest, or the Debtor's attorneys or accountants, have or may have provided goods or services to, currently provide or may provide goods or services to, and may in the future provide goods or services to Deloitte & Touche or its affiliates or to the engagement partners/principals in matters unrelated to this chapter 11 case. In the ordinary course of its business, Deloitte & Touche has business relationships in unrelated matters with its principal competitors, the other "Big Five" accounting firms, including Arthur Andersen LLP, the Debtor's accountants. For example, from time to time, Deloitte & Touche and one or more of such entities may work jointly on assignments for the same client or may otherwise engage each other for various purposes. Deloitte & Touche

has also been involved in other bankruptcy cases in which PricewaterhouseCoopers L.L.P. has been engaged as professionals, as here.

7. In connection with its proposed retention by the Committee in this case, Deloitte & Touche has undertaken a search to determine and to disclose whether it has any relationships with the following entities:

- (a) the Debtor;
- (b) the Debtor's officers and directors;
- (c) the 20 largest unsecured creditors of the Debtor;
- (d) the attorneys, and other professionals that the Debtor have sought authority to employ in this chapter 11 case, pursuant to applications filed on the date hereof;
- (e) lenders under the Debtor's senior and subordinated debt facilities;
- (f) the Debtor's equity investors; and
- (g) the attorneys that the Committee has sought authority to employ in this chapter 11 case, pursuant to applications filed on the date hereof.

Despite the effort described above to identify and disclose Deloitte & Touche's connections with parties in interest in this case, because Deloitte & Touche and its affiliates are nationwide firms with tens of thousands of employees, and because the Debtor is a large enterprise, Deloitte & Touche is unable to state with certainty that every client relationship or other connection has been disclosed. In this regard, if Deloitte & Touche discovers additional information that it determines requires disclosure, it will file a supplemental disclosure with the Court promptly.

8. To the best of my knowledge, the connections of Deloitte & Touche or its affiliates with any of the foregoing entities in matters unrelated to this chapter 11 case are set forth herein or on the Exhibit A attached hereto. In light of the extensive number of creditors

and other parties in interest, neither Deloitte & Touche nor I are able to identify conclusively all such potential relationships. I am, however, presently aware of no such connections, except as set forth herein or on Exhibit A.

9. Subject to the foregoing, neither I, Deloitte & Touche, nor any member or employee of Deloitte & Touche who is anticipated to work on this engagement, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtor or its estate with respect to the matters on which Deloitte & Touche is to be retained.

10. Subject to the foregoing, to the best of my knowledge, neither I, Deloitte & Touche nor any member or employee of Deloitte & Touche is anticipated to work on this engagement has any other connection with the Debtor, its creditors, the United States Trustee's office, any other party in interest, or the Debtor's attorneys or accountants in this chapter 11 case.

11. The services to be rendered include all those services set forth as may be provided by Deloitte & Touche in the Application for authorization to employ and retain Deloitte & Touche in this case at paragraph 10.

12. Subject to allowance and approval by this Court, Deloitte & Touche will charge its regular hourly rates in performing the aforementioned services. Deloitte & Touche's hourly rates at present range from \$325 to \$395 for partners, principals and directors, \$275 to \$350 for senior managers, \$225 to \$275 for managers, \$175 to \$225 for senior consultants and \$140 to \$180 for consultants and staff. In the normal course of business, Deloitte & Touche revises its regular hourly rates periodically and Deloitte & Touche requests that the aforementioned rates be revised to the regular hourly rates that will be in effect from time to time. Changes in regular hourly rates will be noted on the invoices for the first time period in

of-pocket expenses, including travel, delivery service and other costs including the New Mexico gross receipts or use tax on the total amount of fees and expenses (if applicable), incurred in providing the services are included at actual cost, in the total amount billed.

13. Deloitte intends to apply for compensation for professional services to be rendered in connection with this chapter 11 case and for reimbursement of expenses incurred, in accordance with applicable provisions of the Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of New Mexico, the Clerk's Practice and Procedure Guide, the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under § 330, the Application (if entered) and other applicable Orders of this Court. Deloitte & Touche has not shared or agreed to share any of its compensation from the Committee with any other external person.

*Ed J. Lynch*  
Ed J. Lynch

Sworn to before me this  
13 day of March, 2001

*Beth Minton*  
Notary Public



**EXHIBIT A**

**Parties in Interest**

<b>Current or Former Clients of Deloitte &amp; Touche and/or Deloitte Consulting</b>	<b>Relationship to the Debtors</b>
Anderson News Company	Unsecured Creditor
Bank of America, N.A.	Secured Lender
Boeing Company	Affiliate McDonnell Douglas Finance is an Unsecured Creditor
Cohen Weiss & Simon	Outside Counsel for United Food & Commercial Workers (an unsecured creditor)
ConAgra, Inc.	Affiliate ConAgra Beef Co. is an Unsecured Creditor
Credit Suisse Group	Affiliate Credit Suisse First Boston Private Equity is a Secured Lender and Equity Investor
Edison Source	Unsecured Creditor
Finova Group, Inc.	Affiliate Finova Capital Corporation is an Unsecured Creditor
Fleet Capital Corporation	Secured Lender
Fleming Companies	Creditor
General Mills	Unsecured Creditor
Heller Financial	Secured Lender
Metropolitan Life Insurance Company	Secured Lender, Unsecured Creditor, and Equity Investor
Pepper Hamilton LLP	Counsel to the Unsecured Creditors' Committee
Pepsico, Inc.	Affiliates Pepsi-Cola and Frito Lay are

<b>Current or Former Clients of Deloitte &amp; Touche and/or Deloitte Consulting</b>	<b>Relationship to the Debtors</b>
	Unsecured Creditors
Philip Morris	Affiliate Kraft is an Unsecured Creditor
Procter & Gamble	Unsecured Creditor
Pryor, Cashman, Sherman & Flynn	Outside Counsel for Countrywide Logistics
Quaker Oats Company	Unsecured Creditor
Skadden, Arps, Slate, Meagher & Flom LLP	Debtor's bankruptcy counsel
Southern Wine & Spirits	Unsecured Creditor
United Food & Comm Workers Union	Unsecured Creditor
Wells Fargo & Company	Creditor
Windward Capital Partners	Secured Lender and Equity Investor

**United States Bankruptcy Court  
District of New Mexico**

Second Floor, Federal Building and United States Courthouse  
421 Gold Avenue SW  
Albuquerque, New Mexico 87102

Mailing Address:  
P.O. Box 546  
Albuquerque, NM 87103-0546  
Telephone:  
(505) 348 - 2420

**JAMES S. STARZYNSKI**  
Chief Bankruptcy Judge

June 14, 2001

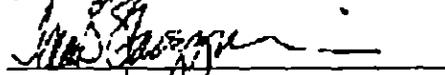
Mr. Robert Jacobvitz, Esq. (FAX 505-766-9287)  
Mr. William Davis, Esq. (FAX 505-247-3185)  
Mr. Leonard Martinez-Metzgar Esq. (FAX 505-248-6558)  
Mr. Thomas Schuchert, Esq. (FAX 412-264-2658)  
Mr. Michael Li, Esq. (FAX 214-953-6503)  
Mr. Paul Fish, Esq. (FAX 505-848-1882)

Re: In re Furr's Supermarkets, Inc., No. 11-01-10779 SA  
Decision concerning employment application of Deloitte & Touche

Dear Counsel:

After reviewing again the exhibits and filings submitted by all parties, together with the notes that my staff attorney and I took at the final hearing on these applications, I have determined to grant the employment application. However, I still have to think further about and decide the issues of the *post facto* employment and the rates. The issue of overlap with Chanin Capital Partners, LLC, assuming Chanin is employed, is a matter to be dealt with in a fee application process. The reason for sending this letter beforehand, of course, is to let the parties know as soon as possible what the Court's decision is, so that parties can make decisions and plan accordingly.

Sincerely,



Honorable James S. Starzynski  
United States Bankruptcy Judge

# EXHIBIT III

## Statement of Services Rendered

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In Re: ) Chapter 11  
)  
) Case No. 01-10779-SA  
FURR'S SUPERMARKETS, INC., )  
) No Hearing Date  
Debtor. )  
)

**FINAL FEE APPLICATION FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES TO DELOITTE CONSULTING L.P. AND DELOITTE & TOUCHE LLP, AS FINANCIAL ADVISORS AND REORGANIZATION CONSULTANTS TO THE OFFICIAL UNSECURED CREDITORS COMMITTEE FOR THE PERIOD OF SEPTEMBER 1 THROUGH OCTOBER 31, 2001 AND FEBRUARY 21, 2001 THROUGH OCTOBER 31, 2001**

*Category 101 – Asset analysis and recovery* – The Applicant conducted significant analysis regarding the Debtor's asset and liability structure and details during the course of these proceedings. These analyses were used by the Unsecured Creditors' Committee ("UCC") in a variety of decision-making situations including the Debtor's proposed DIP financing, assessment of reorganization options, the employment of crisis managers, decisions on operational matters, and negotiations related to the substantial sale of assets to Fleming. In addition, these analyses were provided to the Committee's investment bankers upon their engagement by the Committee in order to help minimize the investment bankers' up-front due diligence of the Debtor.

*Category 102 – Asset disposition* – The Applicant participated in the auction process of the Debtor's assets and related selected obligations. The Applicant also conducted an analysis to attempt to estimate the realizable value of the estate's assets excluded from the sale to Fleming.

*Category 115 – Business analysis* – The Applicant consulted frequently with Debtor's representatives, advisors and members of the Creditors' Committee regarding issues related to the Debtor operating in Chapter 11. One of the most significant and time consuming analysis efforts regarded the Debtor's cash flow projections and the Debtor's actual results as compared to those projections. The Applicant initially addressed the sensitivity of these projections to changes in expenses and revenues.

conducted break-even analysis of the Debtor's business operations based on these projections, discussed assumptions regarding these projections with the Debtor's financial advisors, and prepared summary results of this analysis for presentation to the UCC. In addition, the Applicant prepared weekly "Flash Report" information for members of the UCC based on raw data provided by the Debtor.

***Category 24 – Case Administration*** – The Applicant spent approximately four percent of the total time expended during the case working with the Debtor and its professionals to obtain documents from the Debtor and the Debtor's advisors that were essential to conducting the various analyses completed during the case. The Applicant also invested time in planning and coordinating work among the Applicant's professionals and the Debtor's professionals in order to most efficiently perform the myriad of financial analysis tasks requested and minimize any potential duplication of effort.

***Category 117 – Data Analysis*** – The Applicant reviewed and analyzed in significant detail, documents received from the Debtor including financial statements, statements of financial affairs and schedules, court filings, proposed retention agreements, weekly data regarding current operations, and other items. The Applicant also obtained and reviewed documents generated through independent research regarding state of the supermarket industry and economic data regarding the Debtor's market area, and other items. The analysis of this data was essential to conducting studies that would apprise the UCC of the current financial status of the Debtor, potential avenues of recovery, valuation, and other items of importance to the Committee members during the case.

***Category 106 – Employee benefits/pensions*** – The Applicant conducted analysis, prepared presentations, and prepared for planned court hearings regarding the Debtor's Key Employee Retention Plan ("KERP"). The analysis included research of comparable retention plans, extensive comparison with these plans, development of alternatives to Debtor's proposed KERP, and discussions with UCC representatives explaining the original KERP and its proposed subsequent changes. This analysis and related discussions with UCC and Debtor representatives resulted in significant changes to the Debtor's initially proposed KERP. In addition, the Applicant conducted substantial research and analysis on comparable compensation agreements for interim and crisis management teams to assist the UCC in

assessing the reasonableness of the proposed compensation for the Debtor's interim management team. In addition, the Applicant provided testimony on behalf of the Committee regarding such arrangements.

***Category 107 – Fee/Expense Application*** – The Applicant expended necessary time and effort during the case on conflict clearing, retention, and billing matters. Moreover, the amount of time represented by this task category also includes the preparation of the First Interim and Final Fee Applications.

***Category 108 – Fee/employment objections*** – The Applicant expended a small amount of time responding to objections to its retention by Debtor's counsel and others.

***Category 109 – Financing*** - The Applicant prepared an in-depth analysis of the proposed Debtor-in-Possession financing ("DIP") arrangement and performed research of comparable DIPs and trade liens in conjunction with this analysis. The analysis included assessing and challenging the Debtor's projections to estimate the sufficiency of the proposed financing and the Debtor's ability to remain within the covenant terms of the financing agreement proposed. The analysis also entailed an assessment of whether the terms of the proposed financing agreement were reasonable in relation to those other lenders might provide. In addition to the proposed Debtor-in-Possession financing, the Applicant also analyzed and discussed with the Debtors the potential effect of the trade lien financing on the Debtor's operations and cash flow. These activities required a significant amount of financial modeling based on the Debtor's cash flow projections. The findings of these analyses were presented to the Debtor's advisors and the UCC for use in discussions regarding the Debtor's financing options.

***Category 118 – Litigation Consulting*** – The Applicant prepared for and testified in Court during the proceedings related to the retention and compensation of the Debtor's proposed crisis management team (Golleher and Mays), to the retention and fees proposed for the Debtor's investment bankers (PJ Solomon), and to valuation of the Debtor's real estate leases and certain real property as noted herein below.

***Category 111 – Meeting of Creditors*** – The Applicant participated in numerous discussions and meetings with the UCC, its counsel, and subcommittees of the UCC. Topics of these meetings varied

widely but included the financing of the Debtor, the KERP, valuation and liquidation analysis, interim management retention, real estate issues, investment banker retention, and other items. Significant preparation time was required for each meeting or discussion, and several reports were prepared to document analysis that had been performed and to facilitate presentations.

*Category 121 – Valuation* – The Applicant performed a significant amount of work in order to inform the UCC on significant valuation issues. These issues first included an in-depth valuation of the Debtor's business enterprise as a going concern, and secondly the Debtor's real estate assets, including leases. The Applicant developed values by using the cost, market, and income approaches to value. To accomplish these approaches with respect to the value of the business enterprise, the Applicant conducted extensive research into the liquidation value of certain assets to assist with its cost approach, developed its market approach by researching publicly-traded pricing multiples and transactions of supermarkets, and developed its income approach by developing projections of Furr's operations over several years. The business valuation analyses were used by the UCC for various decision-making purposes.

The Applicant also performed substantial analysis regarding the leasehold valuation and analysis of each of the Debtor's 51 supermarket operating leases, three office operating leases, capital leases, one owned property, and three industrial warehouse spaces in the El Paso area used for distribution purposes. Aspects of these valuation analyses included a market rent survey to apply a market rent estimate to the operating supermarket and industrial leases, a sales comparison approach and income capitalization approach for the 22 capital leases and one owned property, and an inspection of a sampling of the properties located in the El Paso and Albuquerque areas. The report generated through this real estate valuation analysis was used to estimate the market value of the Debtor's equity position in the operating and capital leases.

# EXHIBIT IV

## Complete Accounting of Time Expended by Category by Date

FURR'S SUPERMARKET  
 Deloitte Consulting L.P. and Deloitte & Touche LLP  
 Complete Accounting of Time Expended  
 By Category by Day

RATE HOURS DOLLARS

**September**

**Data analysis - 117**

**Ben Barnett**

9/25/2001	Analysis of leaseholds	\$395	3.0	1,185.00
		<b><u>Data analysis</u></b>	<b>3.0</b>	<b>\$1,185.00</b>

**Fee/employment applications - 107**

**Anthony Jackson**

9/24/2001	Work on Fee Application, Exhibits I, VIII, IV and Summary Schedule	\$180	2.9	522.00
9/24/2001	Continue work on Fee Application, Exhibits I, VIII, IV and Summary Schedule	\$180	2.2	396.00
9/25/2001	Work on Exhibit III of Fee Application	\$180	0.5	90.00

**Brigitte Scott**

9/4/2001	Prepare documents in order to reconcile invoices to D&T billing system	\$100	0.2	20.00
9/5/2001	Begin preparation of August portion of First Interim Fee Application	\$100	2.0	200.00
9/6/2001	Continue preparation of August portion of First Interim Fee Application	\$100	1.2	120.00
9/14/2001	Gather data to estimate billable hours for September to-date	\$100	0.4	40.00
9/17/2001	Search New Mexico Local Bankruptcy Rules in preparation for First Interim Fee Application document	\$100	1.5	150.00
9/17/2001	Review and revise August portion of First Interim Fee Application	\$100	3.0	300.00
9/17/2001	Work on First Interim Fee Application document	\$100	3.0	300.00
9/17/2001	Continue work on First Interim Fee Application document	\$100	0.7	70.00
9/18/2001	Continue to review and revise August portion of First Interim Fee Application	\$100	1.8	180.00
9/20/2001	Continue to review and revise August portion of First Interim Fee Application	\$100	1.9	190.00
9/24/2001	Research on-line for legal documents	\$100	0.2	20.00
9/25/2001	Review and revise First Interim Fee Application	\$100	0.8	80.00
9/26/2001	Continue to review and revise First Interim Fee Application	\$100	1.8	180.00
9/26/2001	Continue to review and revise First Interim Fee Application	\$100	3.0	300.00

Professionals

AF	Anthony Forcum	EJL	Ed Lynch	JT	John Tittle	RP	Rachel Pack
AJJ	Anthony Jackson	IJW	Joe Wells	KDR	Kyle Redfearn	RTM	Ryan Miller
BEB	Ben Barnett	JWL	John Little	MF	Michael Finley	TGM	Tom Mason
BC	Brian Convery	JS	John Solomon	MP	Mathew Pierre	TW	Toby Ware
BDS	Brigitte Scott						

FURR'S SUPERMARKET  
 Deloitte Consulting L.P. and Deloitte & Touche LLP  
 Complete Accounting of Time Expended  
 By Category by Day

	<u>RATE</u>	<u>HOURS</u>	<u>DOLLARS</u>
9/26/2001 Continue to review and revise First Interim Fee Application	\$100	3.0	300.00
9/26/2001 Continue to review and revise First Interim Fee Application	\$100	2.5	250.00
<b><u>John Little</u></b>			
9/18/2001 Work on Exhibit III of fee application	\$315	2.5	787.50
9/20/2001 Continue to work on Exhibit III of fee application	\$315	3.5	1,102.50
9/24/2001 Continue to work on Exhibit III of fee application	\$315	1.9	598.50
9/26/2001 Continue to work on Exhibit III of fee application	\$315	1.0	315.00
9/26/2001 Continue to work on Exhibit III of fee application	\$315	0.8	252.00
9/27/2001 Continue to work on Exhibit III of fee application	\$315	0.7	220.50
9/28/2001 Continue to work on Exhibit III of fee application	\$315	2.1	661.50
<b><u>John Tittle</u></b>			
9/28/2001 Review and Revise First Interim Fee Application	\$350	2.7	945.00
	<b><u>Fee/employment applications</u></b>	<b>47.8</b>	<b>\$8,590.50</b>

**Litigation consulting - 118**

<b><u>Ben Barnett</u></b>			
9/4/2001 Prepare for testimony	\$395	2.5	987.50
9/4/2001 Continue preparation for testimony	\$395	2.5	987.50
9/18/2001 Preparation for testimony	\$395	2.0	790.00
9/18/2001 Continue preparation for testimony	\$395	2.0	790.00
9/24/2001 Continue preparation for testimony	\$395	1.5	592.50
9/24/2001 Continue preparation for testimony	\$395	2.0	790.00
	<b><u>Litigation consulting</u></b>	<b>12.5</b>	<b>\$4,937.50</b>

**Meeting of Creditors - 111**

<b><u>Anthony Forcum</u></b>			
9/14/2001 Participate in conference call with UCC members	\$600	1.2	720.00
	<b><u>Meeting of Creditors</u></b>	<b>1.2</b>	<b>\$720.00</b>

**Valuation - 121**

<b><u>John Solomon</u></b>			
9/25/2001 Final draft report review	\$350	2.5	875.00
9/25/2001 Final draft report review	\$350	1.8	630.00
9/25/2001 Final draft report review	\$350	1.7	595.00

Professionals

AF	Anthony Forcum	E.L.	Ed Lynch	JT	John Tittle	RP	Rachel Pack
AJJ	Anthony Jackson	HJW	Joe Wells	KDR	Kyle Redtearn	RTM	Ryan Miller
BEB	Ben Barnett	JWL	John Little	MF	Michael Finley	TGM	Tom Mason
BC	Brian Convery	JS	John Solomon	MP	Mathew Pierre	TW	Toby Ware
BDS	Brigitte Scott						

FURR'S SUPERMARKET  
 Deloitte Consulting L.P. and Deloitte & Touche LLP  
 Complete Accounting of Time Expended  
 By Category by Day

	<u>RATE</u>	<u>HOURS</u>	<u>DOLLARS</u>
9/26/2001 Final draft report review	\$350	2.0	700.00
9/26/2001 Final draft report review	\$350	2.0	700.00
	<u>Valuation</u>	<u>10.0</u>	<u>\$3,500.00</u>
<b>September</b>			<b>\$18,933.00</b>

**October**

**Fee/employment applications - 107**

**Anthony Forcum**

10/3/2001 Review draft of First Interim Fee Application	\$600	1.5	900.00
10/12/2001 Prepare draft of Notice document	\$600	0.5	300.00
10/15/2001 Make changes to Notice document based on input from counsel	\$600	0.5	300.00
10/16/2001 Discuss Notice document with counsel	\$600	0.5	300.00
10/19/2001 Finalize Notice document with counsel	\$600	0.5	300.00

**Anthony Jackson**

10/1/2001 Work on September Invoice	\$180	3.0	540.00
10/1/2001 Continue work on September Invoice	\$180	3.0	540.00
10/1/2001 Continue work on September Invoice	\$180	0.3	54.00
10/3/2001 Review Fee Application	\$180	1.3	234.00
10/3/2001 Continue to review Fee Application	\$180	2.2	396.00
10/22/2001 Continue work on Fee Application	\$180	1.0	180.00

**Ben Barnett**

10/29/2001 Review and revise fee application	\$395	2.5	987.50
10/30/2001 Continue review and revision of fee application	\$395	3.5	1,382.50
10/31/2001 Continue review and revision of fee application	\$395	2.0	790.00

**Brigitte Scott**

10/1/2001 Review and revise First Interim Fee Application	\$100	1.3	130.00
10/1/2001 Continue to review and revise First Interim Fee Application	\$100	2.3	230.00
10/3/2001 Continue to review and revise First Interim Fee Application	\$100	2.7	270.00
10/17/2001 Amend July and August invoices	\$100	0.3	30.00
10/22/2001 Begin gathering data for September and October portion of Second Interim Fee Application	\$100	1.3	130.00
10/22/2001 Continue to gather data for September and October portion of Second Interim Fee Application	\$100	2.0	200.00
10/22/2001 Work on Notice of Filing First Fee Application	\$100	1.6	160.00
10/23/2001 Reconcile time analyses for September in preparation for Second Interim Fee Application	\$100	1.9	190.00

Professionals

AF	Anthony Forcum	EJL	Ed Lynch	JT	John Little	RP	Rachel Paek
AJJ	Anthony Jackson	HJW	Joe Wells	KDR	Kyle Redfearn	RTM	Ryan Miller
BEB	Ben Barnett	JWL	John Little	MF	Michael Finley	TGM	Tom Mason
BC	Brian Convery	JS	John Solomon	MP	Mathew Pierre	TW	Toby Ware
BDS	Brigitte Scott						

FURR'S SUPERMARKET  
 Deloitte Consulting L.P. and Deloitte & Touche LLP  
 Complete Accounting of Time Expended  
 By Category by Day

	<u>RATE</u>	<u>HOURS</u>	<u>DOLLARS</u>
10/23/2001 Continue work on Notice of Filing First Fee Application	\$100	2.3	230.00
10/30/2001 Work on Final Fee Application	\$100	2.3	230.00
10/30/2001 Continue work on Final Fee Application	\$100	3.0	300.00
10/30/2001 Continue work on Final Fee Application	\$100	2.0	200.00
10/31/2001 Continue work on Final Fee Application	\$100	2.5	250.00
10/31/2001 Continue work on Final Fee Application	\$100	3.0	300.00
<b><u>John Little</u></b>			
10/3/2001 Final preparation of fee application for distribution to service list	\$315	0.8	252.00
<b><u>John Tittle</u></b>			
10/3/2001 Work on Interim Fee Application, including Notice to Interested Parties	\$350	2.0	700.00
	<b><u>Fee/employment applications</u></b>	<b>53.6</b>	<b>\$11,006.00</b>
	<b>October</b>		<b>\$11,006.00</b>
	<b><i>For Current Services Rendered</i></b>	<b>128.1</b>	<b>\$29,939.00</b>

Professionals

AF	Anthony Forcum	EJL	Ed Lynch	JT	John Tittle	RP	Rachel Pack
AJJ	Anthony Jackson	HJW	Joe Wells	KDR	Kyle Redfearn	RTM	Ryan Miller
BEB	Ben Barnett	JWL	John Little	MF	Michael Finley	TGM	Tom Mason
BC	Brian Convery	JS	John Solomon	MP	Mathew Pierre	TW	Toby Ware
BDS	Brigitte Scott						

# EXHIBIT V

## Summary of Professional Fees and Hours by Activity Category

**FURR'S SUPERMARKETS**

Deloitte &amp; Touche

**Summary of Professional Fees and Hours by Activity Category****September 1, 2001 through October 31, 2001**

<b>CATEGORY</b>		<b>HOURS</b>	<b>FEEES</b>
117	Data analysis	3.0	\$1,185.00
107	Fee/employment applications	101.4	\$19,596.50
118	Litigation consulting	12.5	\$4,937.50
111	Meeting of Creditors	1.2	\$720.00
121	Valuation	10.0	\$3,500.00
	<b>TOTAL</b>	<b>128.1</b>	<b>\$29,939.00</b>

**Blended Rate Per Hour****\$233.72****February 21, 2001 through October 31, 2001**

<b>CATEGORY</b>		<b>HOURS</b>	<b>FEEES</b>
101	Asset analysis and recovery	31.1	\$11,289.50
102	Asset disposition	28.1	\$7,494.00
115	Business analysis	120.9	\$40,024.50
104	Case administration	142.2	\$48,686.25
117	Data analysis	514.0	\$138,006.50
106	Employee benefits/pensions	188.7	\$63,601.00
107	Fee/employment applications	429.5	\$82,638.00
108	Fee/employment objections	11.0	\$3,854.00
109	Financing	191.2	\$57,543.50
118	Litigation consulting	22.3	\$9,905.50
111	Meeting of Creditors	328.1	\$125,188.00
121	Valuation	1,418.1	\$416,409.25
	<b>TOTAL</b>	<b>3,425.2</b>	<b>\$1,004,640.00</b>

**Blended Rate Per Hour****\$293.31**

# EXHIBIT VI

## Summary of Professional Fees and Hours by Professional

**FURR'S SUPERMARKETS  
UNSECURED CREDITORS COMMITTEE  
Summary of Professional Fees and Hours by Professional**

**September 1, 2001 through October 31, 2001**

<b>Name</b>	<b>Position</b>	<b>Billing Rate</b>	<b>Hours</b>	<b>Fees</b>
Anthony Forcum	Partner	\$600	4.7	\$ 2,820.00
Ben Barnett	Partner	\$395	23.5	9,282.50
John Solomon	Manager	\$350	10.0	3,500.00
John Tittle	Senior Manager	\$350	4.7	1,645.00
John Little	Manager	\$315	13.3	4,189.50
Anthony Jackson	Consultant	\$180	16.4	2,952.00
Brigitte Scott	Paraprofessional	\$100	55.5	5,550.00
<b>Total Professional Fees and Hours</b>			<b>128.1</b>	<b>\$ 29,939.00</b>
			<b>Blended Rate per Hour:</b>	<b>\$ 233.72</b>

**February 21, 2001 through October 31, 2001**

<b>Name</b>	<b>Position</b>	<b>Billing Rate</b>	<b>Hours</b>	<b>Fees</b>
Anthony Forcum	Partner	\$600	162.8	\$ 97,680.00
Ben Barnett	Partner	\$395	121.7	48,071.50
Ed Lynch	Partner	\$395	2.2	869.00
Joe Wells	Partner	\$395	29.7	11,731.50
John Solomon	Senior Manager	\$350	264.8	92,680.00
John Tittle <sup>(1)</sup>	Senior Manager	\$350	312.6	109,399.50
Julia Cunningham	Senior Manager	\$350	0.5	175.00
John Little <sup>(1)</sup>	Manager	\$315	345.5	108,816.75
Kyle Redfearn	Manager	\$315	257.7	81,175.50
Steve Benenson	Manager	\$315	2.0	630.00
Tom Mason <sup>(1)</sup>	Manager	\$315	276.1	86,955.75
Brian Convery	Senior Consultant	\$360	495.3	178,308.00
Anthony Jackson	Consultant	\$180	415.6	74,808.00
Mathew Pierre	Consultant	\$180	118.5	21,330.00
Michael Finley	Consultant	\$180	110.9	19,962.00
Rachel Pack	Consultant	\$180	52.5	9,450.00
Ryan Miller	Consultant	\$180	15.5	2,790.00
Toby Ware	Consultant	\$180	195.5	35,190.00
Brigitte Scott	Paraprofessional	\$100	244.3	24,430.00
Jeri Mailander	Project Coordinator	\$125	1.5	187.50
<b>Total Professional Fees and Hours</b>			<b>3,425.1</b>	<b>\$1,004,640.00</b>
			<b>Blended Rate per Hour</b>	<b>\$293.32</b>

<sup>(1)</sup> The professional fee and hour amounts reflect rounding differences of .1 hours and \$42.00. This amount has been removed from the total professional fees above, effectively reducing both the total hours and fees. This in essence creates a fee reduction for the Debtor.

**FURR'S SUPERMARKETS**  
**UNSECURED CREDITORS COMMITTEE**  
**Summary of Professional Fees and Hours by Professional**

Name	Position	Billing Rate	Hours			Fees		
			First Fee App. (2/21 - 8/31)	Interim Period (9/1 - 10/31)	Total (2/21 - 10/31)	First Fee App. (2/21 - 8/31)	Interim Period (9/1 - 10/31)	Total (2/21 - 10/31)
Anthony Forcum	Partner	\$600	158.1	4.7	162.8	\$ 94,860.00	\$ 2,820.00	\$ 97,680.00
Ben Barnett	Partner	\$395	98.2	23.5	121.7	38,789.00	9,282.50	48,071.50
Ed Lynch	Partner	\$395	2.2	-	2.2	869.00	-	869.00
Joe Wells	Partner	\$395	29.7	-	29.7	11,731.50	-	11,731.50
John Solomon	Sr. Manager	\$350	254.8	10.0	264.8	89,180.00	3,500.00	92,680.00
John Tittle <sup>(1)</sup>	Sr. Manager	\$350	307.9	4.7	312.6	107,754.50	1,645.00	109,399.50
Julia Cunningham	Sr. Manager	\$350	0.5	-	0.5	175.00	-	175.00
John Little <sup>(1)</sup>	Manager	\$315	332.2	13.3	345.5	104,627.25	4,189.50	108,816.75
Kyle Redfeam	Manager	\$315	257.7	-	257.7	81,175.50	-	81,175.50
Steve Benenson	Manager	\$315	2.0	-	2.0	630.00	-	630.00
Tom Mason <sup>(1)</sup>	Manager	\$315	276.1	-	276.1	86,955.75	-	86,955.75
Brian Convery	Sr. Consultant	\$360	495.3	-	495.3	178,308.00	-	178,308.00
Anthony Jackson	Consultant	\$180	399.2	16.4	415.6	71,856.00	2,952.00	74,808.00
Mathew Pierre	Consultant	\$180	118.5	-	118.5	21,330.00	-	21,330.00
Michael Finley	Consultant	\$180	110.9	-	110.9	19,962.00	-	19,962.00
Rachel Pack	Consultant	\$180	52.5	-	52.5	9,450.00	-	9,450.00
Ryan Miller	Consultant	\$180	15.5	-	15.5	2,790.00	-	2,790.00
Toby Ware	Consultant	\$180	195.5	-	195.5	35,190.00	-	35,190.00
Brigitte Scott	Paraprof	\$100	188.8	55.5	244.3	18,880.00	5,550.00	24,430.00
Jeri Marlander	Proj. Coord	\$125	1.5	-	1.5	187.50	-	187.50
<b>Total Professional Fees and Hours</b>			<b>3,297.0</b>	<b>128.1</b>	<b>3,425.1</b>	<b>\$ 974,701.00</b>	<b>\$ 29,939.00</b>	<b>\$ 1,004,640.00</b>
<b>Blended Rate per Hour</b>						<b>\$ 295.64</b>	<b>\$ 233.72</b>	<b>\$ 293.32</b>

<sup>(1)</sup> The professional fee and hour amounts reflect rounding differences of .1 hours and \$42.00. This amount has been removed from the total professional fees above, effectively reducing both the total hours and fees. This in essence creates a fee reduction for the Debtor.

# EXHIBIT VII

## Brief Biographies of the Applicant's Personnel Involved in this Engagement

**PARTNER, MANAGEMENT CONSULTING  
DELOITTE CONSULTING L.P., IRVING, TEXAS**

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**PROFESSIONAL  
SUMMARY**

He has been responsible for assisting parties-in-interest in troubled situations for over 18 years primarily in the retail, consumer products manufacturing and financial services industries. He has assisted debtors, secured creditors, official committees of unsecured and trade creditors, and prospective investors. He has testified in various bankruptcy courts in the United States.

Mr. Forcum graduated from Emporia State University in 1973 where he earned a Bachelors of Science in Business with a major in Accounting. For the last five years Tony has served as the Managing Director of the Texas Practice of Deloitte Consulting.

**EXPERIENCE**

*Reorganization Services*

- ◆ Co-partner responsibility for all services to be performed by Deloitte Consulting as Restructuring Consultants to Ames Department Stores, Inc., Debtor-in-Possession, which filed for Chapter 11 on August 13, 2001.
- ◆ Partner responsibility for all services provided to the official Unsecured Creditors Committee of Furr's Supermarkets Inc., Debtor-in-Possession. Primary focus of the services provided included assessments of the adequacy of the DIP facility, reliability of Debtor's cash flow forecast, sensitivity analysis of the forecast to changes in assumptions, viability of the business as a standalone entity, appropriateness of the Key Employee Retention Plan and fees to be paid to the debtor's investment bankers and crisis managers, value of the Debtor's business on both a going concern and liquidation basis, valuation of operating capital leases, and status of operations during the pendency of the case.
- ◆ Partner responsibility for services provided to Anchor Resolution Corporation, Debtor-In-Possession, successor to Anchor Glass Container Corporation. Significant effort during the case focused on activities related to the sale of the majority of the operating assets of the Debtor shortly after the filing; assistance with data gathering, and the design and implementation of the oversight, management and

*infrastructure processes required to wind down the remaining assets, liabilities and operations of the Debtor; and management of all claims resolution activities, including significant efforts related to reclamation claims*

- ◆ Shared partner responsibility for all reorganization, accounting, auditing and tax services provided to Bruno's, Inc., Debtor-In-Possession. Initial primary activities included assistance with planning and organizing, and significant assistance related to the filing of required statements of financial affairs and related schedules, and design and implementation of all activities related to warehouse and DSD vendor reclamation and critical vendor claims processes
  
- ◆ Partner responsibility for all services provided to a regional grocery store/wholesaler with revenues of \$600 million in its turnaround/ restructuring. Worked with management to identify and implement changes to improve operating performance from a negative cash flow of \$2 million per month to break-even within five months. Areas of assistance have included:
  - Developing and implementing improved short-term cash management processes, including daily/weekly/monthly liquidity forecasts and management reports
  - Developing and implementing a short-term stabilization plan focused on liquidity and "quick fix" operational improvements
  - Evaluating and implementing opportunities to improve store, departmental and corporate profitability
  - Assessing the store base and identifying opportunities to rationalize the chain
  - Evaluating current wholesale operations and comparing the costs/benefits versus alternative distribution channels
  - Negotiating and obtaining additional bank financing, as well as developing communication programs to improve vendor support
  - Identifying and evaluating restructuring opportunities aimed at maximizing value, including the potential sale of the business
  
- ◆ Partner responsibility for all services provided to the largest creditor of Mega Foods, Inc., a regional grocery chain with revenues of \$500 million in its Chapter 11 reorganization. Assistance included performing financial, operational and

strategic assessments of the chain on various issues during the restructuring. Areas of assistance have included:

- Evaluating cash controls and the forecasting/budgeting processes
  - Assessing financial and operating performance, including benchmarking key performance measures versus competitors
  - Evaluating the store base, including identifying core stores and other stores that should be divested
  - Developing and implementing controls and procedures related to store closings and short-term assets serving as collateral
  - Evaluating various restructuring alternatives, including assessing business plans, financial projections and proposed financing packages for each alternative
- ◆ Shared partner responsibility for all services provided to the official creditors committees (two) of a regional discount retailer in Chapter 11. Assistance included assessments of strategy, management, operations, financial performance and options for creditor recoveries. Activities included expert testimony in U.S. Bankruptcy Court
  - ◆ Partner responsibility for all services provided to First City Bancorporation of Texas, Inc., Debtor-In-Possession (FCBOT), and its official creditors committee subsequent to the failure of FCBOT's 20 former subsidiary banks. Assistance included due diligence related to proposed settlement of litigation with FDIC and assistance with development of plan of reorganization
  - ◆ Assisted management of a midsized life insurance company in the review of expected cash flows from various real estate loan and investment projects. Also assisted with design and implementation of a process and monitoring system to proactively manage such assets
  - ◆ Partner responsibility for all services provided as accountants to the Official Committees of Trade Creditors of Zale Corporation and Gordon Jewelry Corporation. Assistance included in-depth analysis of the debtors' interim business plans, review of operating and internal controls over owned and consigned inventory, and participation in DIP financing and plan of reorganization negotiations
  - ◆ Partner responsibility for all services provided to First Republic Bank Corp., Debtor-In-Possession, subsequent to the failure of

the FRBC's 41 former subsidiary banks in July and August 1988. Assistance included assessment of the organizational, financial and operational structure for remaining holding companies and all nonbank subsidiaries; review, valuation and negotiation assistance in sale or liquidation of certain nonbank subsidiaries and other assets of the holding companies; accumulation of data for filing of Statements and Schedules of Affairs by Debtors with U.S. Bankruptcy Court; review and assessment of accounting issues related to failure of banks and bankruptcy filing of parent companies; review of potential preference payment and fraudulent conveyance transactions by debtors prior to bankruptcy filing; assistance with presentation to creditors of information about debtors' affairs; and assistance with formulating potential reorganization plans

- ◆ Consulting partner responsibilities for reorganization services provided to Texas American Bancshares, Inc. (TAB), Debtor-In-Possession, subsequent to the failure of TAB's former subsidiary banks
- ◆ Participation in due diligence performed by buyer in review of the first major Texas multibank holding company financial restructuring completed under the FDIC's open bank assistance transaction (FDI Act Section 13(c)) powers
- ◆ Extensive participation in a major multifunctional project for the FDIC in Chicago and Washington, D.C., and two foreign sites relative to the FDIC's Assistance Transaction at Continental Illinois National Bank & Trust Co. Project activities included defining the FDIC's oversight objectives and strategies, asset strategies and workout plans, and the accounting and management reporting process. Assisted in the implementation of these strategies and plans and assisted FDIC senior financial management in defining and documenting the effect of the Assistance Transaction on the FDIC's corporate financial statements
- ◆ Partner responsibility on a project to assist a Midwest banking organization in due diligence and proposed restructuring of a troubled \$2 billion, Texas-based bank holding company

**EDUCATION**

Emporia State University, B.S.

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**PARTNER, FINANCIAL ADVISORY SERVICES  
DELOITTE & TOUCHE LLP, DALLAS, TEXAS**

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**FACSIMILE**

(214) 840-7781

**PROFESSIONAL  
SUMMARY**

Mr. Lynch has directed and/or participated in consulting engagements, audits, special investigations, acquisition reviews, bankruptcy matters, numerous litigation projects and other special projects during his career.

His broad industry experience includes accounting, consulting and auditing for manufacturing companies, distribution businesses, chemical companies, oil and gas and related businesses, real estate, banking/financial services, retail, healthcare, telecom, computer software and services, employee benefit plans, nonprofit entities and governmental entities.

**EXPERIENCE**

*Corporate Recovery/Business Regeneration/Bankruptcy*

- ◆ Served as financial expert hired by a company that allegedly received a preference payment. Testified in deposition for this Northern District of Texas bankruptcy action. Case settled prior to trial
- ◆ Served as the lead business turnaround consultant to a \$130 million uniform sales and rental business in the Midwest. Assignment included renegotiation of \$35 million secured lending facilities, advice on collection of receivables and other cash management issues, profitability analysis of lines of business, and consultation with the executives of the company and lending institutions. This work resulted in a new debt agreement and the ultimate sale of a line of business by the company
- ◆ Appointed as a financial advisor and accountants to the Unsecured Creditor's Committee of Nu-Era Group. Work included the investigation of a check kiting scheme and analysis of a reorganization plan by the debtor
- ◆ Served as a financial advisor to the debtor in the Valley Industries, Inc. Chapter 11 bankruptcy in the Eastern District of Missouri. Services included liquidation analysis, analysis of profitability of the lines of business and investigation into an NOL carryforward to a reorganized entity. The company was

liquidated for the benefit of its creditors after the profitability analysis was completed

- ◆ Assisted a company in preparing liquidation accounting reports to creditors in and out of court liquidation of two meatpacking businesses. Provided other liquidation services after the business was discontinued
- ◆ Investigated operations of two physicians' practices for a bankruptcy trustee in Little Rock, Arkansas. Investigations focused on receivables collections and Medicare aspects of those receivables

*Accounting, Auditing and Professional Malpractice Claims*

- ◆ Analyzed accounting and reporting by a real estate joint venture and testified about those practices in a deposition. Case settled prior to trial
- ◆ For a plaintiff corporation, analyzed tax and business records of the defendant company in a series of hearings regarding a garnishment. Testified in state district court in Tarrant County, Texas
- ◆ Analyzed the accounting treatment for a voice mail software license agreement and testified about the accounting in a deposition and trial testimony in a state court in Omaha, Nebraska. The underlying product of the company was utilized by Cable & Wireless
- ◆ Served as an expert witness in a litigation alleging accounting malpractice by an Illinois CPA. The case was settled prior to trial
- ◆ Served as an expert witness in Arkansas State Court in a litigation against a national CPA firm. The business owner alleged a conflict of interest by the CPA. The case was settled prior to trial
- ◆ Testified as an expert witness in St. Louis City Court regarding the AICPA Code of Conduct and its applicability to certain audits that were used as a basis for damage determination
- ◆ Provided litigation consulting services to the FDIC and RTC in three separate causes of action against CPA firms for audits of savings and loans. Served as an accounting and auditing consultant
- ◆ Served as consultant to counsel defending an Oklahoma CPA in a claim by the FDIC in a bank audit. Claim was settled prior to completion of discovery

### *Antitrust*

- ◆ Served as expert witness in a antitrust, business interference multi-billion dollar claim in Texas state court by an oil and gas company. Damage rebuttal testimony was given in a deposition. Case settled during trial prior to my testimony
- ◆ Consulted with counsel for a gas transmission company in an antitrust damages case in arbitration. Our work focused on profitability analysis over an extended number of years

### *Arbitrations*

- ◆ Serving as arbitrator in purchase price dispute between two large companies arising after bankruptcy by the selling entity
- ◆ Served as arbitrator between two companies over disputed shipments resulting in written findings about the shipments
- ◆ Served as sole arbitrator between two computer companies resolving purchase price dispute issues
- ◆ Performed damage analysis in a breach of contract case involving two companies in an international arbitration. Testified about damages to a panel of arbitrators
- ◆ Performed damage analysis of plaintiff claims against a telecommunications company for an alleged breach of contract. Testified about lost profits to Arbitrator as a rebuttal witness to plaintiff's expert
- ◆ Served as the sole arbitrator between two Fortune 500 companies regarding interpretation of accounting issues related to contract terms in a business acquisition. Issues involved percentage completion in the financial statements of the seller. The case was settled prior to the conclusion of the process
- ◆ Served as an expert witness in an arbitration over accounting issues involved in a legal contract
- ◆ Served as the sole arbitrator in a dispute resulting from the acquisition of a food business by a Texas company. Primary issues involved disputes over accrued liabilities and promotion accruals
- ◆ Performed damage computations in an arbitration of a sale of a fast food restaurant chain for the seller of the business. The case was settled prior to the arbitration hearing

- ◆ Served as a consultant to a party in arbitration over the sale of a water distribution business. The issues involved were capital expenditures and collectibility of accounts receivable

#### *Breach of Contract*

- ◆ Served as expert witness in a breach of contract claim regarding provisions of a computer outsourcing contract. The case settled after deposition
- ◆ Served as an expert witness for the State of Texas in defense of a breach of contract claim where damages claimed by numerous defendants approximated \$250 million. The State had terminated a contract and faced numerous types of damage claims. Mr. Lynch analyzed the claims, prepared a report, gave a deposition and testified at trial in state court in Austin.
- ◆ Served as an expert witness in a case involving damages in the termination of a physician in a private practice. The case was settled after deposition
- ◆ Analyzed airport services contract damages in a claim of fraudulent misrepresentation
- ◆ Served as an expert witness in a lender liability case in Illinois State Court

#### *Business Interruption*

- ◆ Served as an expert witness in a case involving damages from an alleged equipment failure at a power plant. Analyzed the types of costs claimed as damages by the plaintiff's expert and gave deposition and trial testimony about the damages
- ◆ Advised global company in two different business interruptions claims involving furnaces in a steel plant. Issues involved lost profits due to lost production capacity. Advice included both formulation of claim and negotiation of settlement
- ◆ Assisted insurance company in analysis of a fire loss claim by a law firm after a computer room fire. Analysis included law firm revenues generated before, during and after the fire
- ◆ Assisted insurance company in analysis of two fire loss claims - one by a restaurant and another by an animal clinic
- ◆ Served as consultant to testifying expert in a fire loss claim by a start-up business

### *Dealer/Distribution*

- ◆ Served as consultant to Toyota Motor Sales in two dealer cases. Cases involved allegations of lost profits by dealers resulting from alleged improper allocations of vehicles among dealers
- ◆ Served as consultant to American Honda in several cases for the years 1995-1996. Mr. Lynch's initial involvement was as engagement partner and his involvement was curtailed after his transfer to Dallas

### *Environmental*

- ◆ Served as a financial expert in a dispute over environmental indemnification language in a purchase agreement between two Fortune 500 companies. Testified to a panel of three arbitrators
- ◆ Served as the engagement partner on an assignment to analyze strategic direction in the management of remediation and related environmental liabilities for a confidential Fortune 500 company. The end product of this confidential assignment was recommendations to alter practices in the financial management of environmental matters
- ◆ Served as the reviewing partner in a litigation over asbestos removal costs and related damages to owners of a regional shopping mall
- ◆ Analyzed compliance efforts by a confidential Fortune 500 company in relation to the U.S. Sentencing Commission's definition of an "effective compliance program" and the draft environmental sentencing guidelines "commitment to environmental compliance." Reported recommendations to the CEO and Board of Directors
- ◆ Served as a financial expert for the Texas Natural Resource Conservation Commission in two contracts involving vehicle emissions testing in the State of Texas

### *Ethics/Compliance Programs*

- ◆ Serving as a damage expert witness in a breach of contract/business interference case in the Western District of Texas. The business involves compliance consulting for healthcare entities. No testimony has yet been rendered
- ◆ Acted as a consultant to a former U.S. prosecuting attorney who served as outside counsel to a Fortune 500 multinational company. That engagement compared the company's compliance efforts to the elements of an effective compliance program in the Federal Sentencing Guidelines

- ◆ Assisted two large companies in the design of their compliance programs using the Federal Sentencing Guidelines definition of an effective compliance program. Also consulted with a Fortune 500 company regarding risk assessments in its operations
- ◆ Worked with a large hospital system's corporate compliance committee as the outside consultant to counsel in developing a compliance program responsive to the Federal Sentencing Guidelines. The project entailed consulting regarding the composition of the compliance committee, the drafting of the outline for a code of conduct, working with counsel on the drafting of the code of conduct and consulting on implementation of the program
- ◆ Served on a team of consultants rendering consulting to the outside counsel of a Fortune 500 company that assessed the effectiveness of its compliance program as it related to the Food and Drug Administration regulatory scheme. This project resulted in recommendations to counsel and its client

*Forensic/Investigative*

- ◆ Served as an expert witness in a claim by cooperative members against the officers of the cooperative and the cooperative itself. Analyzed allegations of fraud and testified in a deposition. The case was resolved prior to trial
- ◆ Served as an expert witness in an investigation of a fraud by a fiduciary (attorney) in a real estate business. Case was settled prior to testimony
- ◆ Part of a team that investigated a fraud by an employee of a telecommunications company
- ◆ Advised an internal audit team of a public utility in an investigation of a lapping scheme by a cashier. Advice also involved critique of a fidelity bond claim drafted by the internal auditors
- ◆ Investigated a fraud by an employee perpetrated against the personal assets of a CEO of a public entity. Analysis has included assistance to the private investigator and attorneys in a quantification of the fraud and understanding the accountant's role in discovery of the fraud
- ◆ Analyzed metal broker transactions for a company with a disputed balance. The broker had been indicted by a federal grand jury for illegal activity. Analysis was used to fully document the transactions and settle the disputed balances

- ◆ Performed an analysis of an employee's mortgage loan account as part of a fraud investigation at a savings and loan audit client
- ◆ Investigated financial activities of a property manager of a hotel and commercial real estate project in Little Rock
- ◆ Performed an investigation of crop yields for a foreign landowner on farms in Arkansas and Oklahoma. Reported results of analyses to owner's counsel in London

*Healthcare*

- ◆ Providing expert witness services to an IPA in two class action claims by hundreds of physicians in Tarrant County court
- ◆ Provided consulting services to a hospital in employment litigation related to alleged age and sex discrimination. Advice related to whether the historical numbers of terminations indicated a pattern of discrimination and whether management's expectations of the controller were reasonable in the industry. Testified in Federal District Court in Lexington, Kentucky, regarding expectations of the controller
- ◆ Provided special investigation services to the trustee for two different physicians' bankruptcies. Developed schedules for use by the trustee
- ◆ Analyzed damages in the termination of an anesthetist in a litigation in St. Louis. The case settled prior to trial

*Independent Judge or Consultant to Neutral*

- ◆ Served as an independent judge in a consumer contest sponsored by Anheuser Busch. Appointed after a printing and production error in the contest game pieces was discovered. Administered the awarding of an additional \$2 million prize pool and the \$1 million in gold at the contest's conclusion
- ◆ Served as accountant to trustees in the refund of an adjudged illegally collected use tax of \$10 million in the state of Arkansas. Duties included managing approximately 2,000 claims for referrals and the \$10 million invested until refund checks were authorized by the court and its trustees
- ◆ Served as the reviewing partner on the refund of a \$3.2 million settlement of a class action refund to health insurance policyholders after settlement of a co-pay calculation dispute

### *Intellectual Property*

- ◆ Serving as expert witness in an attorney malpractice case arising from an intellectual property case. Mr. Lynch has given testimony for the defendant attorneys. Trial is scheduled for 2001
- ◆ Serving as expert witness in a trade secrets case. Report deadlines have not yet been reached
- ◆ Served as expert witness in a patent case in the Western District of Tennessee involving a patented feature on a hip implant cup. Rendered a written damage report on lost profits and reasonable royalty and a deposition on behalf of defendant company. Case settled prior to trial
- ◆ Served as an expert witness in a Texas trade secrets case involving a counterclaim by defendants for business interference. Testified at trial in Dallas County, Texas regarding damages
- ◆ Served as an expert witness in a patent case in the Northern District of Texas involving cholesteric liquid crystal display technology. Rendered a written damage report for the plaintiff company's counsel and testified to a jury on the damage amounts
- ◆ Consulted about damages in a patent infringement and trade secrets litigation in the Northern District of Texas. Testified about alleged price erosion, lost profits, disgorgement of profits by the defendant and the effects on an acquisition by the plaintiff company. The case was settled after deposition
- ◆ Served as an expert witness in a case involving a patent on a toolbox. Examined the damage claim of a Ph.D. economist who claimed price erosion, lost profits and royalty. Examination of all of the facts showed price erosion was due to the plaintiff's own competing products and that lost profits were vastly overstated. The case was settled prior to trial after deposition
- ◆ Served as a damages expert in a design patent case in the Northern District of Texas involving design patent on roofing shingles. Case settled prior to trial
- ◆ Served as an expert witness in a trade dress case in the Eastern District of Louisiana. The case was settled prior to trial or deposition
- ◆ Analyzed damages in a trade dress, trademark and patent case in Federal District Court in St. Louis. Testified about lost

profits damages and a reasonable royalty. Products involved were Vaseline Intensive Care Lotion and a store brand of hand lotion

- ◆ Analyzed damages in a patent litigation. Determined reasonable royalty and lost profits and testified about both in Federal District Court in St. Louis. The patent involved the processing of tuna using casein
- ◆ Analyzed lost profits and reasonable royalty in a patent litigation over diode rectifiers in battery chargers. Testified in several depositions and at the jury trial
- ◆ Consulted with counsel for a Midwest university regarding damages from infringement of a patent by a manufacturer. The case was settled before any testimony was rendered
- ◆ Consulted with counsel in a patent litigation and counterclaim for infringement of patents on vending machines. Analysis involved discovery consulting to assist in arriving at profits from the patented items. The case was settled prior to any testimony

#### *Mergers and Acquisitions Matters*

- ◆ Served as financial consultant in dispute over financial terms in a sale of a battery business in the 1990s. Issues involved accounting reserves and obsolete inventory
- ◆ Served as sole arbitrator in purchase price provisions of a contract in the computer industry
- ◆ Served as financial expert in dispute over financial terms in a business sale. Issues involved earn out and adjusted net worth calculation. Testified in deposition and arbitration hearing in Chicago, Illinois
- ◆ Served as financial expert for purchasing company in a litigation over the effects of a financial fraud on an asset purchase by a public company. Depositions and written a report were rendered. Case settled prior to trial
- ◆ Rendered business-consulting services to former shareholders in a dispute with the purchasing corporation. The dispute involved interpretation of guarantee agreement provision and opinions as to what constituted a default and normal business practices
- ◆ Rendered financial advice and expert testimony in a dispute arising from the sale of a group of mental health clinics.

Arbitration settled the dispute between the parties following his testimony

- ◆ Analyzed financial terms of an employment agreement granted as part of an acquisition and gave deposition and trial testimony about the financial performance of a portfolio of loans related to the financial terms of the employment agreement. The defendant company was a subprime auto lender

#### *Product Liability*

- ◆ Analyzed damages allegedly resulting from poor-performing batteries distributed by an Italian company. The batteries were purchased in the U.S. and used in emergency lighting sold in Europe. Testified about damages in deposition and jury trial in Kansas City, Missouri
- ◆ Analyzed damages allegedly resulting from a bad chemical in the microchip manufacturing process. Testified in deposition. Case settled prior to trial

#### *Securities Cases*

- ◆ Served as consultant to outside counsel in an investigation into a restatement of financial statements by a registrant. Outside counsel reported the findings to the Board of Directors. Registrant is defending numerous class action complaints in Texas
- ◆ Serving as consultant to outside counsel who is responding to a Milberg Weiss class action claim against a distributor of products. Case is pending disposition of summary judgment motion in Miami
- ◆ Analyzed damages alleged by equity holders in a class action suit against a large agricultural cooperative. Analysis involved financial trends over 15 years, as well as financial facts related to the class members. After deposition, the judge granted summary judgment to the defendants
- ◆ Served as a financial and accounting expert in two different class action claims against a subprime auto lender. Was hired by counsel for the officers and directors and the corporation. Rendered financial reports rebutting the accounting claims of the plaintiff's experts
- ◆ Consulted with counsel answering allegations of securities fraud relating to accounting and disclosure matters in a high technology company

**PREVIOUS  
EXPERIENCE**

*Price Waterhouse LLP, Partner, Financial Advisory Services  
Controller, Mangan Rains Ginnaven Associates*

**EDUCATION**

University of Arkansas, B.S.B.A., major in Accounting

**CERTIFICATION**

Certified Public Accountant in Texas, Missouri and Arkansas

**PUBLICATIONS**

Co-authored "Blue Ribbon Blues: What the SEC's New Audit  
Committee Rules Mean for Public Companies" – published  
in *Corporate Legal Times* July 2000

Co-authored "Is It Fraud or Just a Misstatement?" published in  
*Corporate Legal Times* in 2000

Authored "Is a Damage Study an Audit?" - published in internal  
newsletter June 1997

Co-authored "Environmental Corporate Compliance Program - Why  
Should I Get Interested in an Environmental Compliance  
Program?" - published in the *Southeast White Collar Crime  
Subcommittee* newsletter

Authored two summaries of the Federal Sentencing Guidelines for  
Corporations in 1993 and 1998

Compiled and published a St. Louis bankruptcy survey in 1990

**PROFESSIONAL  
AFFILIATIONS**

American Institute of Certified Public Accountants  
Texas Society of Certified Public Accountants  
Former Member (and Co-Chair for one year) of Professional Ethics  
Committee of three different state societies of CPAs  
Association of Insolvency and Restructuring Advisors  
Licensing Executives Society

Updated: August 2001

**PARTNER, FINANCIAL ADVISORY SERVICES**  
**DELOITTE & TOUCHE LLP, DALLAS, TEXAS**

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**Relevant  
experience:**

Litigation Support

- ◆ - Testified in U.S. Bankruptcy Court in Fort Worth, Dallas, Tulsa, San Antonio, Phoenix, New York and Worcester in support of market value conclusions covering secured claim value, plan feasibility, mortgage interest rates and cash collateral. Testimony has also been given in the Federal Court of Claims (Winstar). He has additional litigation support experience in federal tax, property tax, condemnation, environmental and general litigation issues

Asset Management/Marketing

- ◆ - Appraised, managed and successfully marketed 6,200 acres of vacant land and one industrial facility in Kern County, California, and 78 acres of industrial lots in Pueblo County, Colorado. His combination of appraisal and marketing skills resulted in a total sale price that was 6.6 times higher than the perceived value just prior to the commencement of the project

International

- ◆ - Provided real estate valuation and consulting services to Coca-Cola and Northern Eurasia for properties located in Moscow, Kiev, Utena, Lithuania, and Tallinn, Estonia. The purpose of the project was to estimate the value of assets to be contributed to joint ventures between Coca-Cola and local organizations

**Previous  
experience:**

- Was in private consulting in litigation support, dispute resolution and acquisition underwriting for debt and equity placement and subsequent securitization. Has closed more than \$30 million in real estate transactions in 1998
- ◆ - Has provided field and review appraisal and/or feasibility analysis on developed or undeveloped special-use, commercial, industrial, retail and multifamily properties. Has assisted in the review of loan portfolios and REO/workout properties for various members of the thrift and banking industry. Some of these portfolios comprised more than 100 properties
- Has worked in public accounting (Arthur Young, Ernst & Young LLP and Arthur Andersen LLP) in real estate valuation for 14 years. Prior to this, was a valuation engineer with the Internal Revenue Service. In this capacity, appraised real property,

trademarks, covenants and cattle breeding operations; performed investment tax credit analysis; and negotiated settlements

**Education:**

Texas Tech University, B.S., Microbiology  
Texas Tech University, B.S., Chemical Engineering

**Professional affiliations:**

Member of the Appraisal Institute

- ◆ Certified Commercial Investment Member
- ◆ Certified General Appraiser - Texas, Colorado, Georgia and other states as needed
- ◆ Real Estate Broker - Texas
- ◆ Property Tax Consultant - Texas
- ◆ Chairs peer review committees in Counseling and Ethics for the Appraisal Institute
- ◆ Member of the Board of Directors of the Texas Appraiser Licensing and Certification Board
  - 1995 – present
  - Vice Chair 1996
  - Chair 1997 – 1998
- ◆ Member of the Board of Directors of the National Properties Committee of the Boy Scouts of America-Irving, Texas



TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

BE IT KNOWN THAT

**BENJAMIN EDWIN BARNETT**

*HAVING PROVIDED SATISFACTORY EVIDENCE OF THE QUALIFICATIONS REQUIRED BY  
THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT,  
ARTICLE 6573a.2, VERNON'S TEXAS CIVIL STATUTES,  
IS AUTHORIZED TO USE THE TITLE*

**STATE CERTIFIED  
GENERAL REAL ESTATE APPRAISER**

Number: TX-1322914-G

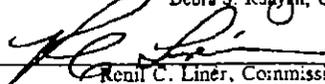
Date of Issue: February 18, 2000

Date of Expiration: April 30, 2002

*In Witness Whereof*



  
Debra S. Runyan, Chair

  
Renil C. Liner, Commissioner

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Benjamin E. Barnett  
L. W. (Wayne) Mayo

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Jacqueline G. Humphrey, Secretary  
Eduardo A. Lopez  
Angie V. White

SENIOR MANAGER, FINANCIAL ADVISORY SERVICES  
DELOITTE & TOUCHE LLP, DALLAS, TEXAS

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FACSIMILE

(214) 840-7677

PROFESSIONAL  
SUMMARY

Mr. Tittle has more than 20 years of accounting and financial experience, including founding, growing, and managing an accounting and consulting practice and a financial advisory firm. He has taken a company public and has experience as the Chief Financial Officer of an AMEX listed manufacturer and distributor. Mr. Tittle's areas of special emphasis include rendering bankruptcy advisory/reorganization services on behalf of varied stakeholders in the bankruptcy/turnaround arena, obtaining debt and equity capital, acting as a consultant and/or principal in merger and acquisition activities, including substantial attention to due diligence matters, rendering business valuations and solvency opinions, and providing expert testimony and litigation consulting services in judicial proceedings.

His industry experience includes manufacturing, retail, wholesale distribution, Internet, e-Business solutions, telecommunications, media (old and new), insurance, construction, railroads, healthcare, aquaculture, sub-prime auto finance companies, restaurants, and oil and gas exploration and production.

EXPERIENCE

*Bankruptcy Consulting/Reorganization Services*

- ◆ Assisting Secured Lenders to consumer products manufacturer and wholesaler with operating budgets and projections, cash collateral budgets and extensions, DIP financing terms, valuation issues, industry analyses, and due diligence. Project is in progress
- ◆ Retained as Accountants, Reorganization Consultants and Financial Advisors to the Unsecured Creditors' Committee in TransCom USA Management Co. Our work is on going
- ◆ Retained as Accountants, Reorganization Consultants and Financial Advisors to Lucky Lady Oil Company. We have assisted the Debtor with budgets and projections, fuel tax issues, cash collateral budgets and extensions, accounting

issues, DIP facility matters, flash reports and long term business plan issues. Project is in process

- ◆ Retained as Accountants, Reorganization Consultants and Financial Advisors to the Unsecured Creditors' Committee of Furr's Supermarkets, Inc. Our work included cash flow projections, cash collateral issues, trade lien analysis, DIP financing terms and issues, investment banking fee comparables and analyses, Key Employee Retention Plan analyses, liquidation and valuation issues, real estate matters, lease rejection and valuation issues, flash reports, and assisting in negotiations with other parties-in-interest. Our retention is on going
- ◆ Appointed as Accountants, Consultants and Financial Advisors to the Trustee (Foreign Representative) of Mid-American Indemnity Insurance Company to analyze, review and testify as to a series of business transactions over a 10-year period between a Cayman Island domiciled excess lines insurance carrier, a domestic excess lines carrier, several related offshore reinsurance companies and other related offshore entities to determine whether the transactions in question were an attempt to transfer to other persons or entities value created within the Debtor. The engagement also included determining the solvency of the Debtor and the related domestic excess lines carrier at certain points in time. Determined that the transactions were fraudulent and designed to hinder, delay and defraud creditors. Prepared a report and an affidavit in the case. The matter was settled prior to Mr. Tittle's testimony
- ◆ Retained as Accountants, Consultants and Financial Advisors to the Chapter 7 Trustee of HardCote Technologies, Inc. to analyze and investigate a series of potentially fraudulent transactions by former officers, directors and shareholders of HardCote. These alleged fraudulent transactions occurred less than one year prior to the filing of the Chapter 11 proceeding by HardCote. Mr. Tittle delivered his opinions and conclusions in the form of an affidavit. Determined that these transactions were fraudulent. The matter was resolved prior to Mr. Tittle's testimony
- ◆ Retained as Accountants, Consultants and Financial Advisors to the Official Unsecured Creditors' Committee of HardCote Technologies, Inc. Assisted the Committee by reviewing and analyzing HardCote's bankruptcy filings as well as evaluating the Debtor's plan of reorganization. Performed due diligence relative to certain items contained in the Debtor's filings. Determined that the Debtor's plan was not feasible. HardCote's bankruptcy was converted to a Chapter 7 proceeding

- ◆ Served as Accountants, Consultants and Financial Advisors to the Official Unsecured Creditors' Committee of Pangburn Candy Company. Work included performance of due diligence on certain assets of Pangburn in order to assist the Committee in evaluating bids for the purchase of these assets. The engagement also included monitoring the winding down of operations and sale/liquidation of certain assets as well as the conducting of a review of preferences/voidable transactions
- ◆ Retained as Accountants, Consultants and Financial Advisors to Western Fidelity Insurance Company. Assisted the Debtor in the preparation of all bankruptcy filings and certain work in connection with the plan of reorganization
- ◆ Served as Interim Chief Financial Officer for The Leather Factory, Inc. (AMEX:TLF) for one year. In this turnaround period, Mr. Tittle completed a financial restructuring of its senior and subordinated debt. Structured and obtained a \$9 million senior debt facility from an asset-based lender to liquidate the Company's maturing senior and subordinated debt. With this senior debt facility, the Company was able to eliminate the need for subordinated debt
- ◆ Assisted the Official Unsecured Creditors' Committee of Jayhawk Acceptance Corporation in evaluating the plan of reorganization proposed by the Debtor, provided due diligence services relative to certain key parameters/assumptions in the Debtor's plan and assisted in the Committee's negotiations with the Debtor
- ◆ Retained by a Secured Creditor to review certain transactions by a Debtor in connection with the Secured Creditor's objection to the Debtor's discharge. Determined that the Debtor had omitted or mischaracterized certain items in its bankruptcy filings. The matter was settled prior to Mr. Tittle's testimony
- ◆ A Secured Creditor hired Mr. Tittle to value a construction company the day prior to the offset of the Debtor's operating account by the Secured Creditor. Mr. Tittle determined that the Company had no value as of the date of the offset and was insolvent. The case was resolved prior to Mr. Tittle's testimony
- ◆ A Secured Creditor hired Mr. Tittle to review the feasibility of a plan of reorganization of a Debtor who owned an apartment complex. Determined that the plan lacked sound assumptions and contained errors and/or problems that jeopardized the plan's feasibility. Mr. Tittle also worked with counsel in deposing the Debtor's expert. The case was resolved prior to Mr. Tittle's testimony

- ◆ Retained by Secured Creditor to trace certain loan proceeds due to potential diversion by a Debtor to affiliates prior to the filing of its Chapter 11 proceeding. Determined that the Debtor did indeed divert loan proceeds to related entities prior to filing. The matter was settled prior to trial
- ◆ A Secured Creditor hired Mr. Tittle to review the feasibility of a plan of reorganization of an apartment complex, including the interest rate assumptions used in the plan. Determined that the plan lacked sound assumptions and contained errors and/or problems that jeopardized the plan's feasibility. The case was resolved prior to Mr. Tittle's testimony

*Corporate Finance Services*

- ◆ Assisted a short line railroad in evaluating three acquisitions and conducting due diligence on two transactions. One transaction involved a \$40 million prospective purchase of the ferry operation of a major Canadian railway. Negotiated an \$11 million credit facility for this railroad client. Acted as financial advisor in a \$5.2 million purchase transaction
- ◆ Retained in sell-side engagement by an Alberta-based Internet/New Media consulting company. Performed due diligence on the Company, prepared a Confidential Information Memorandum on the opportunity, including the rendering of a valuation conclusion, marketed the proposed transaction to institutional investors, obtained letters of intent from certain institutional investors—one for \$30 million for 30% of the company. Client rejected letter of intent in favor of sale to industry player
- ◆ Retained in sell-side engagement to market a Mechanical Contractor to industry investors. Engagement included determination of the value of the Company, structuring of deal terms and conditions, preparation of a Confidential Information Memorandum on the proposed transaction, and introduction of the opportunity to industry investors
- ◆ Acted as financial advisor to a startup satellite-delivered radio news network including preparation of a business plan and Financing Memorandum, determination of valuation issues and use of proceeds, and introductions to selected institutional investors
- ◆ Assisted an oil and gas exploration company involved in a horizontal drilling project in revising its business plan.

packaging a proposed equity transaction to raise capital for developmental drilling purposes, and marketing the transaction to institutional investors

- ◆ Acted as financial advisor to an Ontario-based telecommunications company involved in a rollup of interconnect companies across Canada and conversion of those acquired entities to its CLEC/ICP business model. Assisted the Company in identifying an Internet Service Provider (ISP) to acquire. Performed due diligence on the Company and its business plan. Engagement also included assistance in the Company's capital-raising efforts, including, determination of the value of the Company, structuring of deal terms and conditions, preparation of a Confidential Information Memorandum on the proposed transaction, and introduction of the opportunity to institutional investors
- ◆ Retained as co-manager with a Virginia-based boutique financial advisory firm to assist a Vienna, Virginia- based Internet/Telecommunications Company in obtaining new debt and equity capital. The Company provided wholesale Internet access to ISPs and retail shopping malls and rendered network security and integration services. Revised the Company's business plan and determined a value for the Company for purposes of the private placement and introduced the proposed transaction to institutional investors
- ◆ Assisted a radiology practice group in due diligence and acquisition assistance in its purchase by a national radiology practice management group
- ◆ Acted as a financial advisor to a Quebec-based consumer/leisure products company in its discussions to be acquired by various US companies in the same industry. Engagement included preparation of valuation of the Company and negotiation of deal structure, pricing and terms
- ◆ Retained in sell-side engagement to market a Specialty Contractor to industry investors. Engagement included determination of the value of the Company, structuring of deal terms and conditions, preparation of a Confidential Information Memorandum on the proposed transaction, and introduction of the opportunity to industry investors
- ◆ Acted as co-manager with an Alberta-based financial advisory boutique to assist an Alberta-based company with patented technology for direct digital capture of x-ray images in raising a new round of equity capital. Performed due diligence on the Company and its business plan. The client terminated the engagement by paying the prescribed breakup fee in order to

take advantage of a proposed firm underwritten offering as opposed to our best efforts arrangements

- ◆ Served as financial advisor in a buy-side engagement involving a due diligence review of a company that minted and sold coins for use in casinos and hotels
- ◆ Retained as financial advisor to a British Columbia-based Internet software/tools development company including preparation of a business plan and Financing Memorandum, determination of proposed terms, use of proceeds and valuation conclusion, and introductions to selected institutional investors
- ◆ Retained as co-manager with a Virginia-based boutique financial advisory firm to assist a Miami-based company in obtaining new debt and equity capital. The Company provided telecommunications services and Internet access between its Miami-based Network Operations Center, its Points of Presence (POPs) in Miami, New York and California and selected cities in South America. Performed due diligence on the Company on proposed transaction. Revised the Company's business plan and introduced the proposed transaction to institutional investors
- ◆ Assisted an alternative power generation company involved in a project to roll-out biomass gasification units that produced electricity, steam and heat. Revised the Company's business plan, packaged a proposed equity transaction to raise capital for growth/deployment purposes, and marketed the transaction to institutional investors
- ◆ Retained as co-manager with a Virginia-based boutique financial advisory firm to assist a McLean, Virginia-based company in obtaining new debt and equity capital in a mezzanine-financing round. The Company provided "best of breeds" solutions and customized e-Business services to emerging growth enterprises through working e-Commerce development centers. Performed due diligence on the Company on proposed transaction. Assisted in the preparation of a Private Placement Memorandum
- ◆ Has taken a company public including performance of legal and accounting due diligence on target shell companies, preparation of the registration statement that was filed with the United States Securities and Exchange Commission in conjunction with the company going public, and preparation and coordination of all matters relative to the company's listing on the American Stock Exchange
- ◆ In a three year period, as a principal, closed nine acquisitions, took another six transactions to the letter of intent stage and

reviewed, analyzed, and conducted preliminary negotiations and due diligence on 17 additional targets. All acquisition activity was handled from determination of initial interest through closing or applicable termination of discussions

- ◆ While serving as its Chief Financial Officer, completed two private placement transactions for The Leather Factory, one of which included the placement of a \$10 million Senior Cumulative Convertible Preferred Stock issue. Also negotiated a \$10 million bank acquisition line of credit
- ◆ Negotiated and obtained bank financing arrangements for The Leather Factory, including more than tripling the size of the Company's line of credit, substantially reducing the prevailing rate of interest on the Company's indebtedness, and eliminating the personal guaranties of the principal stockholders
- ◆ Structured and installed three stock option programs. Facilitated two transactions with an institutional buyer to assist employees in selling stock who had exercised options pursuant to one of these programs. These transactions involved significant and complex issues involving application of SEC Rule 144
- ◆ Consulted with an aquaculture project in the preparation of a business plan and assisted in discussions/negotiations with European investors/lenders
- ◆ Assisted a Kansas City-based home builder in the preparation of a business plan/feasibility study and in discussions/negotiations with European investors/lenders
- ◆ Retained by a British Columbia-based salmon operation to revise its business plan and assist in the negotiations with European investors/lenders
- ◆ Acted as financial advisor on buy-side engagements to assist a client in purchasing two restaurant chains including preparation of business plans and Financing Memoranda, dealing with valuation issues and use of proceeds, and assisting in negotiations with lenders
- ◆ Retained by a wholesale distributor to perform a business valuation for purposes of installing an employee stock ownership plan
- ◆ Performed a business valuation for a wholesale distributor for gift tax purposes in order to facilitate transfers among family members

- ◆ Retained by a law firm to perform a business valuation for purposes of share transfers

#### *Employment Law*

- ◆ Retained to calculate damages due to plaintiff's lost remuneration as a result of defendant's alleged perpetration of age discrimination. Rendered deposition and trial testimony. The jury found for the plaintiff. \$27.5 million award highest contested jury verdict in history of county
- ◆ Retained to calculate damages due to plaintiff's lost remuneration as a result of defendant's alleged perpetration of age discrimination. Rendered trial testimony. The jury found no discrimination
- ◆ Served as testifying expert on behalf of a plaintiff in a handicap discrimination case. Testified at trial. Jury misread the jury charge and due to the way that it completed the jury verdict, it could not award the client any damages
- ◆ Retained to calculate damages due to plaintiff's lost remuneration as a result of defendant's alleged perpetration of age discrimination. The matter was resolved prior to Mr. Tittle's testimony
- ◆ Retained to calculate damages due to plaintiff's lost remuneration as a result of defendant's alleged perpetration of sexual harassment. The matter was resolved prior to Mr. Tittle's testimony
- ◆ Served as testifying expert on behalf of a plaintiff in an age discrimination case. The matter settled prior to testimony
- ◆ Retained to calculate damages due to plaintiff's lost remuneration as a result of defendant's alleged perpetration of age discrimination. The matter was resolved prior to Mr. Tittle's testimony
- ◆ Retained to calculate damages due to plaintiff's lost remuneration as a result of defendant's alleged perpetration of sexual harassment. Rendered deposition testimony. The matter was settled prior to trial testimony
- ◆ Served as testifying expert on behalf of a plaintiff in an age discrimination case. Rendered deposition testimony. The case settled prior to trial testimony.
- ◆ Retained to calculate damages due to plaintiff's lost remuneration as a result of defendant's alleged perpetration of

age discrimination. Rendered deposition testimony. The matter was resolved prior to Mr. Tittle's trial testimony

- ◆ Retained to calculate damages due to plaintiff's lost remuneration as a result of defendant's alleged perpetration of sexual harassment. Rendered deposition and trial testimony. The judge ruled for the defendant
- ◆ Served as a testifying expert on behalf of a plaintiff in a wrongful termination case. Rendered deposition testimony. The case settled prior to trial testimony
- ◆ Retained to calculate damages due to counter-plaintiff's lost remuneration as a result of plaintiff's alleged perpetration of age discrimination. Rendered deposition and trial testimony. The judge found no discrimination

#### *Lost Profits*

- ◆ Defendant insurance company retained Mr. Tittle to review plaintiff's claim for lost profits. The plaintiff claimed that the denial of an insurance claim left the company without working capital and this resulted in lost sales. Reviewed the plaintiff's damage calculations as well as the financial statements and other financial records of the plaintiff. Mr. Tittle was able to show that the plaintiff had the working capital available to achieve the projected sales and therefore the plaintiff had no lost profits. The case was resolved prior to Mr. Tittle's testimony
- ◆ Defendant retained Mr. Tittle to review plaintiff's claim for lost profits. The plaintiff, a surgeon, claimed that he had sustained lost profits due to falling in defendant hospital's operating room. Reviewed the financial statements and records of the plaintiff and determined that there were no lost profits. Rendered trial testimony. The jury found for the defendant
- ◆ Retained to calculate damages on behalf of a defendant in a personal injury case involving a self-employed individual. Reviewed the books and records of the individual and prepared the necessary damage model. The case settled prior to testimony
- ◆ Served as a testifying expert for the plaintiff in a case involving a furniture distributor that allegedly lost profits due to the denial of an insurance claim. Prepared damage model and rendered deposition testimony. The case settled prior to trial testimony
- ◆ Retained to calculate damages on behalf of a plaintiff in a personal injury case involving a self-employed individual.

Reviewed the books and records of the individual and prepared the necessary damage model. The case settled prior to testimony

#### *Breach of Contract*

- ◆ Served as a testifying expert for the defendant in a breach of contract case involving a construction contractor. Performed a business valuation and prepared a damage model. Rendered trial testimony
- ◆ Retained to calculate damages on behalf of a plaintiff as to lost profits due to premature cancellation of a marketing contract. Prepared damage model. Case was not resolved. Defendant declared bankruptcy
- ◆ Plaintiff retained Mr. Tittle to render testimony regarding certain aspects of financial statements involved in a dispute over an alleged breach of representations and warranties in a purchase transaction. Mr. Tittle testified at trial. The case was ordered to mediation and settled prior to the rendering of a jury verdict
- ◆ Retained to serve as a testifying expert on behalf of a defendant as to alleged damages sustained by the plaintiff due to his termination and resultant potential lost value on his stock under the buy/sell agreement. Reviewed the plaintiff expert's damage model. Prepared a damage model and business valuation. Rendered deposition and trial testimony. Court awarded value in between two experts.

#### *Intellectual Property*

- ◆ Retained as a testifying expert on behalf of plaintiff in patent infringement case. The case settled prior to testimony
- ◆ Served as expert witness on behalf of a plaintiff in a patent infringement matter involving a home appliance apparatus. Prepared damage model. The case settled prior to testimony

#### *Accounting Issues*

- ◆ Retained to testify regarding accounting aspects of projections and other matter in a new business venture. The case settled prior to Mr. Tittle's testimony
- ◆ Retained by the local chapter of a non-profit organization in litigation against its national organization regarding accounting issues involving the local chapter. The case settled prior to Mr. Tittle's testimony

**PREVIOUS  
EXPERIENCE**

*Cascade International Capital Corporation, President  
Price Waterhouse LLP, Director, Financial Advisory Services  
The Leather Factory, Inc., Chief Financial Officer, Treasurer and  
Director  
Bailey Vaught Robertson & Co., CPAs and Consultants, Partner  
Tittle & Associates, Inc., CPAs and Consultants, President*

**EDUCATION**

Texas Christian University, B.B.A., Major in Accounting, *Magna  
Cum Laude*

**CERTIFICATION**

Certified Public Accountant in Texas

**PUBLICATIONS**

Mr. Tittle authored and presented "How to Write a Business Plan,"  
which was co-sponsored by the Fort Worth Chamber of Commerce

Mr. Tittle authored "Knowledge is Your Ally in Trimming  
Legal Costs" for publication in The Business Press  
Mr. Tittle co-authored and presented "Running the Law Firm Like a  
Business."

**PROFESSIONAL  
AFFILIATIONS**

Board of Directors, I Have a Dream Foundation-Fort Worth  
American Institute of Certified Public Accountants  
Texas Society of Certified Public Accountants  
Association of Insolvency and Restructuring Advisors  
Turnaround Management Association  
American Bankruptcy Institute  
Former Member and Chairman of Small Business Committee and  
Small Business/Entrepreneur's Conference Committee, Texas  
Society of CPAs  
Former Member of the Regulatory and Legislative Council  
Steering Committee of the TSCPA  
Former Member of the Management Consulting Services  
Committee of the TSCPA  
Former Member of Associated Builders and Contractors; Former  
PAC Committee Chairman of ABC, North Texas Chapter

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