

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

FILED

at _____ o'clock ____ M

APR 19 2001

United States Bankruptcy Court
Abuquerque, New Mexico

In re:

FURR'S SUPERMARKETS, INC.,
a Delaware corporation,

Debtor.

Case No. 11-01-10779 SA
Chapter 11

**DECLARATION OF ROBERT H. JACOBVITZ
IN SUPPORT OF APPLICATION FOR ORDER APPROVING
RETENTION OF SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
AND AFFILIATED LAW PRACTICE ENTITIES AS
ATTORNEYS FOR DEBTOR-IN-POSSESSION**

I, Robert H. Jacobvitz, declare that:

1. I am a member of Jacobvitz Thuma & Walker, P.C. ("JTW"), New Mexico co-counsel to the Debtor in this case. I am an attorney in good standing to practice in the State of New Mexico, and before this Court. I submit this Declaration in support of the application, dated February 7, 2001, of Furr's Supermarkets, Inc., debtor and debtor-in-possession (the "Debtor"), for an order under Bankruptcy Code §327 and Federal Rule of Bankruptcy Procedure 2014 approving its employment of Skadden, Arps, Slate, Meagher & Flom LLP and its affiliated law practice entities (collectively, "Skadden, Arps") as its attorneys.

2. I have represented debtors, creditors and committees in many chapter 11 cases in New Mexico for more than 15 years. I have devoted a substantial portion

380

of my law practice to representing clients in chapter 11 cases in New Mexico during that period.

3. To the best of my knowledge and belief, the Debtor's case is one of the few largest, if not the largest, operating chapter 11 cases ever filed in this District.

4. The Debtor's chapter 11 case was filed on relatively short notice. Skadden, Arps attorneys arrived in New Mexico on the morning of Saturday, February 3, 2001, to prepare for a possible chapter 11 filing, and by the evening of February 7, 2001 had drafted the petition and the many "first-day" motions and orders submitted to the Court on February 8, 2001. At the same time, another team of Skadden, Arps attorneys engaged in constant negotiations with the Debtor's principal secured creditors in New York, and provided continuing advice to the Debtor's board of directors. To the best of my knowledge and belief, no New Mexico firm, including JTW, could have completed this simultaneous work in two states in five days.

5. The Debtor's post-petition financing agreement is significantly more complex than those typically seen in this District. In my opinion, if the Debtor had not had a firm with Skadden Arps' familiarity and experience with the workings of the New York financial community, and with Skadden Arps' credibility and recognition in that community, there would have been a significant risk that the Debtor would not have successfully negotiated the debtor in possession financing, and would have ceased operating.

6. This case involves complex tax, labor, corporate, commercial, and bankruptcy law issues. While I believe JTW could handle certain of these issues, JTW does not have the resources or experience to address all of the issues that will likely arise within the next several weeks and months.

7. The Debtor's pre- and post-petition secured lenders include several large, sophisticated international banks and financial institutions. Each is represented by a large, national law firm. In my opinion, Skadden, Arps' familiarity and experience with the workings of the New York financial community, and Skadden, Arps' credibility in that community, is of substantial value and benefit to the Debtor in dealing with the secured lenders.

8. The Unsecured Creditors Committee appointed in this case is represented by a large, national law firm. The Debtor and its counsel, at the Committee's request, attends Committee meetings that are held in different parts of the country. To date, the meetings have been held in Chicago, Dallas, Denver and New York. Skadden Arps has represented the Debtor at those meetings. JTW does not have the resources to attend all of the meetings, in addition to its other responsibilities in the case.

9. Any chapter 11 case necessarily requires that counsel make a host of judgment calls. In a large, complex case such as this one, the estate will benefit from

Skadden, Arps' substantial talents, and its wealth of experience in other large, complex cases in which many of the same issues have arisen.

10. Accordingly, I believe that the Debtor's retention of the services of a national firm like Skadden, Arps is necessary and reasonable under the circumstances of this case.

11. I reviewed the Comment on Proposed Hourly Rate (the "Comment"), filed in the chapter 12 case styled *In re Miller*, United States Bankruptcy Court, District of New Mexico, Case No. 12-98-13174 RR, which the United States Trustee submitted in support of its objections to the Skadden, Arps retention application. Attached as exhibits to the Comment are fee applications in six other cases filed in the United States Bankruptcy Court for the District of New Mexico. In those cases, Jacobvitz, Thuma & Walker, P.C., or its predecessor, Jacobvitz, Thuma & Matthews, P.C., represented the debtor in possession (as co-counsel) in *In re La Vida Llena*, Case No. 11-98-14983 RA, a major party in interest (General Electric Capital Corporation) in *In re Campbell Mobile Homes*, case No. 11-86-00768 RA, and the Unsecured Creditors' Committee in *In re AutoLend Group, Inc.*, Case No. 11-97-15499 MA. Further, the undersigned, while employed by Poole, Tinnin & Martin P.C., represented a large creditor (Resolution Trust Corporation) in *In re Bellamah Community Development*, Case No. 7-89-01559 MA. Among the lawyers listed in the Comment, the undersigned has dealt extensively with Daniel J. Behles, Jennie Deden Behles and

Linda Bloom in various bankruptcy cases in New Mexico, and was a member of the same firm with Marshall G. Martin and worked closely with him for many years. The undersigned knows Stuart D. Shanor by reputation and also to a limited extent from personal dealings. The undersigned has represented debtors in chapter 12 cases, as well as debtors in chapter 7 cases and chapter 11 cases.

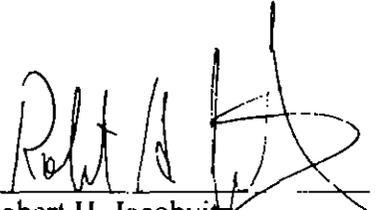
12. In my opinion, a family farmer case under chapter 12, where the debt limit is \$1.5 million and the business is farming, is not comparable to the Furr's Supermarkets, Inc. case with respect to the justification for retaining a national firm like Skadden, Arps as debtor in possession counsel. Further, in my opinion, *In re Campbell Mobile Homes*, case No. 11-86-00768 RA, *In re AutoLend Group, Inc.*, Case No. 11-97-15499 MA and *In re Bellamah Community Development*, Case No. 7-89-01559 MA were not comparable to the Furr's Supermarkets, Inc. case with respect to justification for retaining a national firm like Skadden, Arps as debtor in possession or debtor's counsel. To the best of my knowledge, none of those cases involved operating companies with thousands of employees, more than 70 locations, a union, thousands of trade vendors, and debtor in possession financing of more than \$30 million. In *La Vida Llena*, the Los Angeles firm of Stutman, Triester and Glatt was lead counsel. The case involved a pre-negotiated plan restructuring approximately \$50 million of publicly traded municipal bonds, and a debtor with one location, less than

100 employees, no union, and substantially no unsecured debt. Separate national counsel served as bond and securities counsel.

13. In my opinion, none of the attorneys listed in the Comment with whom I am familiar, including myself, have the experience and resources, or the credibility with the Debtor's national lenders, to be the Debtor's lead counsel in this case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 19th day of April, 2001, at Albuquerque, New Mexico.



Robert H. Jacobvitz