

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

Clerk's Minutes

Before the Honorable James Starzynski

James Burke, Law Clerk
Jill Peterson, Courtroom Deputy

Joe Jameson Court Reporters
(505) 242-2809

Sara Edmonds X

Date:

Friday, April 20, 2001

In Re:

FURRS SUPERMARKETS, INC.

No. 11-01-10779 SA

FH on Application to Employ Skadden, Arps filed Feb. 8, 2001 (pldg #17, obj, 209 and 253)

FH on Application to Employ Price Waterhouse (pldg. #15, obj. 208)

PH on Motion for Order Authorizing Debtor to Implement Employee Retention (#295)

PH on Application to Employ Peter J. Solomon (#185)

Attorney for Debtor: Robert Jacobvitz and Richard Levin

Attorney for Price Waterhouse: Charles Beckham and Loretta Cross

Attorney for UCC: William Davis

Attorney for UST: Ron Andazola and Leonard Martinez-Metzgar

Attorney for Heller Financial as Agent: Paul Fish

Attorney for MetLife: Jennie Behles

Attorney for NM Beverage: Michael Cadigan

Summary of Proceedings:

Exhibits _____

Testimony _____

M/IMPLEMENT EMPLOYEE RETENTION and APPLIC. TO RETAIN PETER J. SOLOMON AS INVESTMENT BANKER - FH SET FOR MAY 22, 2001 @ 1:30; PARTIES WILL WORK OUT DISCOVERY DEADLINE, BRIEFS DUE MAY 4, 2001, RESPONSES DUE MAY 14, 2001 AND REPLIES DUE MAY 18, 2001 - DEBTOR'S COUNSEL WILL SUBMIT SCHEDULING ORDER

FH ON APPLIC. TO EMPLOY SKADDEN, ARPS AND APPLIC. TO EMPLOY PRICE WATERHOUSE - TAKEN UNDER ADVISEMENT

AFFIRMATION OF DECLARATION RICHARD LEVIN (sworn)

AFFIRMATION OF DECLARATION OF ROBERT J. JACOBVITZ (sworn)

AFFIRMATION OF DECLARATION BY MORTENSON (sworn)

Davis: Call Richard Levin.

TESTIMONY OF RICHARD LEVIN

CROSS EXAMINATION BY LEONARD MARTINEZ-METZGAR

Jacobvitz: No redirect.

CROSS EXAMINATION BY COURT

REDIRECT BY DAVIS

Davis: Call Robert Jacobvitz

TESTIMONY OF ROBERT JACOBVITZ

MM: No ques.

Davis: Ask for a ruling on the late obj. of Mr. L. on the exh.

Ct: Already admitted and will stay admitted. My rule is they get admitted for what they are worth. When I saw that exh. I was wondering where Mr. Brill got his info. Based on # of lawyers at Skadden is 1600 that the amt somebody who a 2.15% client of Skadden is paying Skadden a whole bunch more than I make a year. Assume it is a signif. client. Stmt that one of these judge's made is that one client who may be small may be darned important. Whet. Mr. B. info. is accurate, not sure it is key to this decis. More testimony or evid?

MM: None.

Ct: Counter case?

L: Have a minute if we want to present test.?

Ct: Sure.

L: No further testimony.

Ct: Have record estab. on dtrs applic. to employ Skadden, Arps.

L: Faxed two addit. waiver letters to UST yesterday. Don't know if they made it to the file.

D: No obj.

Ct: Will be admitted. Make them exh. #41 and 42.

D: Antic. brief closing argument.

Ct: I have a # of ques. What about PW.

Beckham: Ready to proceed.

Ct: Planning on cross exam.?

Andazola: Yes.

Ct: How much time?

A: 15 or 20 min.

Davis: Not partic. in this.

Ct: Get factual stuff out of way. Spend some time over lunch thinking over test. Cont. at 1:30 or so.

TESTIMONY OF LORETTA CROSS (examined by Ron Andazola)
(sworn)

CROSS EXAMINATION BY BECKHAM

CROSS EXAMINATION BY COURT

Recess

Ct: Start w/oral argument. I have a # of ques. after reviewing the materials. Make sense to deal w/PWC first. Mr. B. do you want to go first? Read materials.

Beckham: Have resolved obj. on prepet. retainer. Very little to add. Rates they seek to have approved are higher than trad. in Albuq. market. Are reas. and fair. Val. that PW brings to this case. Specif. expertise on supermarkets. Ms. C. has expertise on financial serv. to bankrupt and insolvent co.

Ct: Exh. C a signif. of them were smaller than Furr's. Across the bar the rates are pretty much the same.

B: They are.

Ct: Not talking about Pulakos and Alongi doing this?

Ct: Trying to estab. a multi-dtr case has complex. compared to single dtr.

A: Edwards case - entities are adminis. consol. W/regard to cases where there is subst. consol. Have to be separ. plans filed. Just are a # of things that have to be done in a ch. 11 proc. Separ. entities. That situation would tax the serv. from a natl. acctg firm to a far greater extent than a single dtr situation. Addit. I would point to the Microage case. Dist. of AZ. Exh. 16 at pg. 2. Parag. 1(a) shows that you have several differ. entities. Cover sheet shows they are jointly admin. cases. Top rate of \$330 an hr. Test. was in the Microage situation part of the reas. it was lower the prof. have a lower chg. Exh. 15 is the emp. applic. for PW. Pg. 3 of that exh. the factors in addit. include bankr. consulting. Under that subparagraph. C is much the same duties that are involved in this case. Assist. in negot. and prepar. financial reports. Had many of the same serv. rendered here. Hourly rate sched. is subst. lower than we had in this case. Applic. tops off the lower rate. W/o belaboring the point the rest of the exh. show that. Only one other case on exh. C which shows the rates req. Wiener stores filed in Delaware. Top rate in this case is \$590. No evid. has been introduced to subst. why this court should approve a top hourly rate of \$590. This is a single entity involved in the ch. 11 proc. Has acctg dept. Staffed w/CPA's. Get financial info.

Ct: Said lots of times she didn't get the info. she wanted. Doesn't sound like anywhere near where should would like it to be.

A: Certainly. Do acctg to get that info. Hourly rates are deter. under the Johnson factors. One of the consider. is awards in similar type cases. Submit the hrly rates shown are ample evid. of awards in similar type cases. Johnson factors is diffic. of matters being performed. Not talking about Dow Chemical or Bugle Boy. Large publicly held corp. 71 store grocery chain that oper. in NM and West Texas. Not the diffic. in prov. the serv. to this client that would merit the hourly rate scale.

Ct: Addr. Exh. C.

Beckham: Those rates were approved pursuant to fee apps. Applic. to employ may have had a broader range.

Ct: Helps estab. the market. What's asked for. Approval is what estab. the market.

B: Depends on what prof. worked on the project at the time. Top rate is \$570 - \$590.

Ct: Mr. Reagan.

B: He has a abundance of expertise in retail bankruptcies. Cases on exh. C are the cases Ms. Cross has worked on. Demons. of the rates the market is paying for her services. Mr. A. did concede that the serv. of a natl. firm were necess. in this case. Complex case. Req. serv. of a natl. firm. Ms. C. and her team have expertise on retail bankr. and grocery stores.

Ct: How much work at \$570 an hr.

Cross: Focused on emp. retention and pkgs assoc. Negot. the financing. Made sure covenants were put in place. Specif. iss. that deal w/retail. Can't tell you how much.

Ct: I think your char. was a caricature. What is the resp. to the Johnson case.

B: Johnson factors - not looking at applic. to emp. At time the fee applic. was approved.

A: In Mr. B. brief w/regard to the Johnson factors he does cite the 10th circ. case that has been adopted. Novelty of ques. involved. Approp. to take those two factors into consider.

Ct: I can't decide this right now. Not going to decide either one this afternoon. Will try to have out at beginning of week. Need to look at notes and test. Won't make decis. on PW this afternoon. Same thing applies to Skadden, Arps emp. Move to Skadden, Arps.

Levin: The papers said everything we want to say. Tried to be thorough and complete. Don't have anything to add. Not necess. to highlight. May wish to reply.

Ct: Entitled to rebuttal. Given importance want to make sure you have a chance. What's of counsel mean at Skadden.

L: Of counsel usually is a senior or retired counsel who work part-time who prov. wisdom and exper. I do know Curtis Barnett. Just retired. Was general counsel. Now of counsel in our Washington Office. Counsel is more senior than an assoc.

Ct: Eq. partner.

L: Don't have anything other than eq. partner. Over \$300, \$320.

Ct: Is this a matter pursuant to InterWest Business in which I have discretion or something I don't have any discretion.

L: I do think you have discretion. Issues raised have to do primarily w/fact that creds are clients of Skadden, Arps on related matter. Nor anything that puts the dtr or it's counsel in a position adverse to these clients. The dtr has agreed w/the sec. creds as to the valid. and enforceability of clms. Anything that might be directly a potential conflict has been set aside. Something may arise in the future. Re: LaSalle Bank.

Ct: Didn't think so.

L: If we were to lose 2 ½% not cause destruct. of firm. Counsel involved in a matter for the other client. Big V. Partic. focus on that iss.

Ct: He did mention those things as well.

L: Abandon a small client. I don't want to reopen the test. Won't influence the conduct of this case. In the very small firms the partner owns the client. Not situation we have. Consented to our repres. Bankr. is not so easy and I've struggled for years when at a smaller firm how to apply the two party conflict rules and multi conflict rules. Do not take chances. Addr. it directly w/the client. Seek waiver. Fact of getting the waiver. We do the kind of lawyering. Be cautious and make sure.

Ct: What about the UST position that 80% of the eq. holders are Skaddens clients.

L: Not uncommon for a firm to repres. a dtr and shareholders. In 9th circ. there is a per se policy. Bent when multiple creds. Involved in a ptrnship case where we don't repres. the gen. ptrns. Most cts have said that creates a disqualifying conflict. Don't think the UCC is arguing there is val. for the

eq. I can tell you that the eq. holders...

Ct: I have violated my rule on what is on the record. I viol. it when I asked ques. that was redirected to Ms. C. Ought to stick to the factual record. Stick w/what is on the record.

L: Not conducting the case in that matter. Don't think the eq. repres. is relevant. Where the potential for conflict arises.

Ct: UST alleg. in dip financing has already taken place. Construed ag. Skadden's interest. Can't phrase it any better.

L: That is not the case. That is market. I can't recall a case where the sec. cred. did not req. the dtr to waive. We could not come up w/any case where that was the case. Non-bankr. work where new money is given. Release of prior activities. Not put new money in a lawsuit.

Davis: Iss. raised recently. It is in my opin. not so much in the court's discret.

Ct: Would be abusive discret. to allow Skadden to be employed.

D: Yes. Reply brief don't ques. major. of pertinent facts. MetLife is a sec. cred. for \$37mil. ½ of sec. Cred. class. Clm of \$2.8mil. MetLife was \$15mil of dip financing. Not a case where there was prior repres. Most of the cases are cases that talk about a firm's prior repres. Falls out of prior relat. Ongoing relat.

Ct: But, not on these matters?

D: Therein lies the ques. Code says under 327 - wording is they do not hold or repres. int. adverse to the estate.

Ct: UCC is not clming S. repres. MetLife on any of the trans. you just described.

D: Right. SA repres. MetLife in orig. trans.

Ct: 1995.

D: Brings SA into deal. At end of initial purch. SA becomes Furrs counsel. SA repres. Furrs in all of those activities. At the time SA becomes counsel, they brought into case by MetLife. ML is ½ owner of the dtr. Supplied working capital thru sec. and unsec. debt. State they repres. the dtr. Hold an interest w/regard to ML future. Not disputed.

Ct: 5-6 years ago. How long does it take for a relat. to wither up? No longer considered to be repres. that client.

D: Not cont'd to wither up. Cont. to repres. them.

Ct: On other matters.

D: Millions of \$ of revenue. 1/4% of revenue comes from MetLife. Long cont. relat. w/MetLife.

Ct: Differ. argum. having them brought into Furrs relat.

D: Came into Furrs from MetLife.

Ct: Cont. repres. Fact that it started in 1995 and Skadden did what lawfirms

love to do. Work w/one and find they have a new client out of that transaction. Have a case where they have MetLife in a case. Constitutes an adverse interest.

D: Big V case. Client for a long period of time. Dispute this concept that it is wholly unrelated. Signif. portion of the revenue base. Where I see the conflict. Get signif. fees from MetLife. Preserv. of those fees.

Ct: Don't have a case?

D: No.

Ct: Doesn't mean you have a valid argum.

D: Clear on it's face. MetLife is a player in every aspect. Admit they have a signif. sec. clm. Unsec. clm accord. to stmt and sched. Our position that relat. is so intertwined they can't possibly disregard that when making decis. in regard to the dtr. Tried to develop in regard to the plan. Not docs reviewed w/regard to the conflict iss. Seems to me the plan and DS is the primary doc. w/regard to a conflict. Addresses rights of a cont. client in every facet of this case. Myopia. When doing dip order didn't have to tell dtr of relat. w/MetLife. Didn't have to tell client to get separ. counsel. Making decis. on their own conflict. Fact that in the dip order wherein they said the dtr can't contest the sec. rights of prepet. lenders who are MetLife and others. Undeniable evid. that Skadden, Arps didn't get an independ. party. Prepet. sec. agmts will govern what MetLife rec. on sec. clm. SA can't make decis. Whether or not all the dip orders in the world waive sec. int. doesn't make differ. on this order. Dtr should have been advised. Deter. sec. interest.

Ct: I didn't hear Mr. L. say they couldn't advise the dtr when it ought to get separ. counsel. Thought that is what Mr. L. said in respect to a retainer agmt. Second thing is I thought what I heard Mr. L. say is that they did a financing trans. for Furr's. Good oppor. to access the circum. w/respect to MetLife's position. Had that info. avail. to them when negot.

D: Advised dtr to seek other counsel. Not in my recollect. My understanding that was something they would look at in the future.

Ct: I'm asking you a lot of these ques. Asked Mr. L. ques. when test. You are getting these ques. in lieu of having someone on the stand. What about Mr. L. test. that the reorg. have competitive ethics that they pursue their job hammer and tong in connect. w/their duties in repres. dip.

D: If that assert. held weight, would happen to every atty in country. Don't think any atty can make argum. there is an obvious conflict. Essence of having your honor deciding a conflict.

Ct: Have that one case.

D: Other ques. is why Skadden didn't say we are too close involved. Get another natl. firm. Are firms tht don't get 2 ½% of revenues from MetLife. Have repres. dtr in many trans. subj. to scrutiny.

Ct: One of the advantages having familiarity w/the dtr.

D: Makes that argum. Case in brief that says the bankr. code bal. the defic.

Ct: Holding adverse interest.

D: Made decis. Sacrificed of appear. of unbiased repres.

Ct: What one court said. Answered ques. Why would Furrs think of hiring SA. Repres. them for 5 years now. May have been the only one who could have gotten anything together in 5 days.

D: Why would Skadden take the repres. w/all of those conflicts. Some other firm doesn't have those conflicts. W/regard to prefer. iss. I tried to highlight two issues that demons. SA has been swayed. They waived a possible argum. w/o thoroughly reviewing it. Remember Mr. L. argum. Didn't say he was familiar. Said other people in firm were familiar. These things are obvious. Affected case already. Handling of dip order. Second, is iss. of prefer. Not before court whet. SA will have to return portion of money. Whet. SA would be a defendant in a prefer. action. May raise 547 (c) defenses creates adv. action. Took money. Not disputed. Second portion of pymt on invoice. They don't dispute prima facia case.

Ct: Ques. about whet. a Dec. 29 invoice gets paid on Feb. 2 constitutes ord. course of bus. I didn't understand why SA say took \$120k and got \$130k but we ended up doing a ton of work. If look at it in that period of time the dtr got a whole bunch of service that would have consumed the entire \$250k and had serv. left over. Read briefs. Has to be intent to go w/contempor. exchange. SA said if we have to give money back, we will. Dtr didn't suffer a loss, the tech. are such ought to be enough to disqualify.

D: UCC position is if take on their face and don't come up til second supplemental affidavit, became a likely deft.

Ct: Thought you raised it in your brief.

D: Iss. of giving back \$69k. Apply to signif. serv. If had done that on day one, that would have been fine. Retainer agmt doesn't say that. Applying \$130k to a pre-pet. bill. Not paid in ordinary course of bus.

Ct: When I read brief by UCC, one of the first things that occurred to me. Spent a ton of time which would have overwhelmed \$250k. Couldn't say why SA didn't char. it as that way. Had they at the beginning wouldn't be an iss. What's prob. of looking at it that way now. Have some other purpose in approaching this.

D: Twofold. If had only applied \$250k activity would not have been paid. \$130k plus asserted and late billed amts. \$250k retainer going forward.

Ct: From Feb. 2. Chewed up frequently.

D: \$250k worth of bankr. serv. Take a portion of that and apply it. Creating a prefer.

Ct: Situation where SA is saying if anything left not worried. Already waived some. Need to look at. Was a way to easily charact. Not resulted in a loss to SA. I'm struggling to understand why UCC is so focused on that.

D: Dtr loses that amt of money applied in the bankr.

Ct: SA said if prob. w/\$69k will give credit of that. Apply as they do the work.

D: \$189k is not bankr. work. That is pre Feb. 2 general repres. of Furrs. Pre-pet. unsec. clm. Taking \$130k and applying ag. non-bankr. work. Go into ord. course argum. Raise def. and become deft in adv. to recover that prefer.

Ct: 547 to take care of situation to pay down debt. Work in Jan. and paid in

Feb. Recast it and get rid of prob.

D: May want to. Not what they proposed in their brief. Credit on \$130k. When SA entered into this relat. They created a prefer. w/o taking a prefer. of a pre-pet. bill. Be a deft in a prefer. action. Not supp. to be here today to decide of a prefer.

Ct: Here to decide whet. SA ought to be employed. My perspect. when I listen to trials and motions. My ques. is given SA did all this work prev. if SA is forced out dtr will spend more money in getting somebody else up to speed. What is it that is motivating the comm. to oppose their applic.

D: Holds an interest on cont. repres. of MetLife and CreditSuisse. Entire structure of the plan and ongoing litig. will be colored by that underlying exist. relat. between SA and the two major creds. Comm. bel. put in major disadv. to rec. a plan and discover the underlying reas. As to why a certain plan is proposed. Must modify int. that ML and CS holds. Having an atty repres. the dtr that has this vital interest will color and distort prov. of the plan. May be sales free and clear of liens. Activity by the dtr. Ques. we struggle w/is whet. a lawfirm w/this connect. would come to same decis. and conclus. as SA does.

Ct: Get somebody who is more neutral to max. return to estate. Why not obj. to rates.

D: Larger than rate iss. Let UST proc. w/that iss. Our orig. obj. obj. to the rates. Comm. was most concerned whet. the repres. would be unbiased. Let UST carry the rate w/regard to the rates iss. Comm. is outside the info. flow. Doesn't know what oppor. the dtr may have to sell stores.

Ct: Doesn't make sense. Saying if offer comes in won't get copy.

D: Not confident of that. Comm. has decided to hire an invest. advisor to make sure the comm. is informed w/whatever disposition oppor. there may be. Better served by an atty whom did not have these iss. SA rec. many mil. of \$ a year.

Ct: Comm. is entitled to get the info. the dtr gets. Ought not to be an iss. If having trouble getting doc. get on phone w/court w/other side. I would have said give them the stuff.

D: Undisputed the SA has intertwined connect. w/ML and CS. ML and CS own 90% of the company and major portions of the debt. Atty w/o those connect. and affil. would make decis. and advice not subj. to being biased. Raised iss. of dip financing. Identify iss. where that interest may have swayed decis. by SA.

Ct: Do you have any evid. that is not the pattern around the country.

D: L. testified they did not review those. Fact he didn't review those is indictive. Find a challenge to ML sec. int. Did not advise dtr to seek other counsel. Directly adverse to his clients ML. Drawing line that says that is an inditia of an unfort. situation.

Ct: Comm. has right to exam. pre-pet. sec. int.

D: Yes. Doing that.

Ct: Right to bring it up. By and large that most of those financing things will be bullet proof. If not, good for you. It does seem there is something to be said the comm. has the right. What S did constituted evid. of a

conflict of int. Mean they shouldn't repres. the estate.

D: SA should have informed the dtr that they were waiving clms ag. one of it's largest clients. W/regard to the second supplemental declar. it seems that SA has come to the realiz. that they have conflict iss. Sugg. JTW would take over iss. where they had a conflict. The course it chooses to take is the worst of all. Mr. J. said his firm is not qualif. to take on...

Ct: I'll read it again.

D: Don't have exper. and resources to be lead counsel. This affid. seem to sugg. you have to have a natl. firm w/credib. to take battle w/another natl. firm. Recog. prob. Proposed a solution that the docs sugg. is unworkable.

Ct: Don't read the docs that way. Put together a strategic plan to pull these folks out. More run of the mil kind of stuff like prefer. screens would leave to J. firm. I hear the argum. you are making. Is a prob. here.

D: He says in parag. 10 JTW will handle anything that is an adverse action. Going ag. other parties w/regard to pre-pet. lending.

MM: Given the way the argum. have been going I can proc. w/argum. or if court wants to ask ques. from get go is fine.

Ct: Talk about rates?

MM: No.

Ct: Do a present. Asked a lot of ques. of Mr. D. already. Can fill in gaps.

MM: I will say there is one case that I found that dealt w/situation in this case. Solv-Ex. Approach that Judge McFeeley used is very applic. in this case. Approach he took is he looked at all those factors. Rose to the level of a conflict. That approach is on point. All of the connect. SA has is such that taken together there is a conflict of interest. If look at Heller connect., SA repres. Heller that is not related to dtr. Bothered me - Heller clm is disputed. These are the ques. the unsec. are going to be asking. IF look at percentage wise, can say that. If apply article, it is subst. amt.

Ct: Subst. is in eye of beholder.

MM: Several court's that say it doesn't matter how much it is. Two clients. Shouldn't matter how much they are paid. Have ML - got a situation where SA has repres. ML. Conceded sec. docs too. Ques. has to be asked why was that done. Paid dimin. amt.

Ct: All speculation. Perhaps that is your point.

MM: Mr. L. prov. three differ. financing orders. One from AZ and none from Delaware. Ntc none were from the 10th circ. InterWest says that one of the fiduc. duties is the trustee must examine an exchange of creds. Those iss. have been waived already.

Ct: Not waived by UCC. If a bus. judg., not clear I need to take InterWest case that says you can't enter into a dip financing order. Effect of what you are arguing. Say reversible w/InterWest case.

MM: Saying have to be careful. IW says you have to be careful. Will get yourself into a conflict. Two sec. lenders that had disputed clms already. FM and Heller. Look at lang. of IW case. Be aware of what it says. Fact specific. Look at 10th circ.

Ct: Understand it is governing law.

MM: 3 cases. Two out of 3 disqualif. counsel. One that did not used a wait and see attitude.

Ct: Dynamark case. That judge was criticized.

MM: Have to look at counterevailing policy. Don't have a potential conflict. It happened.

Ct: Okay to take Dynamark approach?

MM: Envirodyne case. Disruption. Cause disrupt. if change lawyers in mid-stream. Conflict should outweigh. Mr. D. mentioned how the unsec would be concerned. Have same concern. Going to be a min. of taint. Will follow them throughout case. A lot of creds will ask how hard will SA try when it comes time to negot. for them. Second point is what differ. will it make now if Mr. J. will review clms on behalf of dtr. Same thing w/waivers. Doesn't matter anymore. Already conceded their clms. When it comes to reviewing their clms. Mr. L. testif. about the press. they felt from sec. creds on first day hrgs.

Ct: I think there is reality and then there is a construct some people put up. Decis. that were made on first day of this case may be critiqued hindsight. Threatened to collapse. Restock the shelves. Sold as going concern. I am not concerned that the dip order says the dtr won't challenge the sec. lenders position. Otherwise, wouldn't be many of us sifting thru the cold ashes.

MM: I respectfully disagree. Don't know if that would happen. A lot of times you find in commercial world. Have rules you have to follow. Examine clms. Can't ignore them.

Ct: Enough on that iss. Go to next point. Second supp. declar. Rates. Looks like they are chging less than those rates.

MM: Docs. we pres. as exh. are rates the court should look at. Not saying Furrs is not complicated. Not natl. case. Is more of a regional case. Set whatever reas. rates would be. I don't know what those are. In the middle.

Ct: Not talking about the Miller resp.

MM: No. Local rates aren't approp. Not natl. case though. Somewhere in middle. Maybe closer to top. Reduce Goffman's rate to \$550, Mr. L. to \$525. By 10%. Reas. sugg. W/the connect. the SA firm has it was telling when I read InterWest over and over again. Judge Lions was correct when he said given the facts in the case he didn't think another judge would decide it differ. Disqualify SA bec. of conflict of interest.

Ct: Specif. test. which SA repres. and lender ag. dtr. Don't have that in this cas.

MM: Right. If you look at totality of circum. and the factors in this case and factors that Judge McFeeley used there is a conflict of interest.

Ct: The Solv-Ex case that is referred to by UST was one in which I was involved as counsel before I came on bench. The UCC I repres. that counsel should not have been disqualif. I respect Judge McFeeley as an incredible intellect, I don't necess. agree w/his decis.

Recess

Fish: The UST's comment about shutting it down. It didn't our help to shut it down. Not a fight of cc. Your comments made it clear we don't need to go into that. I didn't know it was such a great victory for us. I find any sugg. that the SA people has been less than a zealous advocate for the dtr is a total misapprehension.

Behles: I would have to agree w/Mr Fish. Certainly have had relat. w/many of the cred. in this case. Brought up on the night when negot. the DIP order. Two natural sources were the UST or the UCC or the combin. of the two. Is how it's done. Too late in this case. These iss. come up late. I think the disruption about a conflict when taking over these iss. would do an injustice to the UCC. Appear. of having no impropriety. I trust Mr. D. and Mr. H. and Mr. C. trust them w/their lives as I have seen in many cases of the past.

L: I'm grateful for Mr. F. and Ms. B. remarks. Up to this point there are tech. argum. here. Listening to is a real insult to my firm. Nobody has ever ques. the integrity of my firm to the extent they have today. Public percept. is misinterpretation. Public percept. Bus. decis. were made bec. SA was favoring other clients. No evid. Bald accus. If accus. is made often enough, the people will bel. and say a public percept. of impropriety. Real insult to the firm. Asked ques. what is motivating. What is motivating the comm. I now have heard a decis. has been made. Obj. to emp. of CEO's. Comm. has said it fears if a quick sale is on the horizon the facts and the econ. will dictate what happens. SA will not dictate if a sale or an internal reorg. Committee wants to control this case. Matter of law that sec. creds have int. Sec. creds have a role. Nothing to do w/conflict. I understand Mr. MM and UST don't come at it from that perspect. Are carrying out stat. duties. Did a fine job on their brief. Pulled together a lot of stuff. I disagree or impude bad motive to them. Improper for comm. to take control of the case. Run reorg. as code contemplates. Were a lot of loose alleg. in the papers. That info. is not before the court. Info. flow is free and open. We do not encourage our clients to draft analysis or info. that has not been verified. We got a req. yesterday that we copy every exec. contract and submit it to the comm. Do we want to pay the fees, prob. not. That is their choice. Not all financial info. is in perfect condition. Whet. the pre-pet. sec. have a valid sec. agmt. Open secret there is no filings in the county office w/respect to those leases. Not a ques. of challenging the valid. of the liens. Will SA litig. vigor. on conf. of a plan, you bet we will. We are a cred. of this case. Where we hold an int. A clm ag. the estate is cited in the briefs. Doesn't have to do w/SA clients. We must have the interest that is adverse to the estate. Let me close on the fee iss. Have a standard set of rates. Heard Mr. MM say we should tailor our rates to ea. case. Standard rate should be max. Rates we've been chging this dtr for the last 5 years. Rate sched. they have been paying. Upon filing of ch. 11, counsel must reduce it's rates. I do not think that is supp. in the code. Upon that filing we should reduce our rates. 10 weeks into the case. Intense 10 week period. If Feb. 8 and court said this is the max. I will allow in this district, we would say goodbye and good luck. We stick w/our clients. Percent. of fees not disclosed til later. Help them thru this period. Most of blood was drained on sand. Don't know where this case is going. Doing best to make it solvent. Prefer. iss. - I wasn't sure your honor understood flow of time and pymts. Day the case was filed we wrote off \$187k worth of fees and exp. Incurred \$189k of fees and exp. Will write off \$61k. We should not be req. to write that off or straw that broke the camel's back, will write it off. I hope that answers all of your ques. and where SA is on this case.

Ct: I need to take these matters under advisement and think about them. Diffic. case. I need to work thru it. PW is consider. easier. Will take under advisement. Orig. sched. for two hours. Has gone slightly longer. Gives me trepidation on May 22 hrg. I guess I would urge parties w/respect to

that that we try and cut those iss. down to essentials. If test., limit it.
Get evid. base in place and oral argum. in place so we can move on.
Comfortable there will be one added feature. Demons. by Mr. Craddock.
Important things is those people who are not prof. that they can partic. if
they have a legit. concern. Will allow Mr. Craddock to ask ques. and addr.
concerns.

L: Will iss. a decis. Method of transmitting decis.

J: Registered to rec. papers by fax.

Ct: If not, or a delivery box upstairs.