

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.
Tax I.D. No. 22-3137244

Case No. 11-01-10779 SA

Debtor.

**UNITED STATES TRUSTEE'S MOTION TO SUPPLEMENT OBJECTION TO
APPLICATION FOR EMPLOYMENT OF PETER J. SOLOMON CO., LTD.**

The United States Trustee for the District of New Mexico hereby moves to supplement her objection to the Debtor's Application for Order Authorizing Employment of Peter J. Solomon Co., Ltd. (Application), and as her reasons therefore states the following:

1. On May 22, 2001, the final hearing on the Debtor's Application for Order Authorizing Employment in Retention of Peter J. Solomon Co. Ltd. (PJSC) was conducted.

2. On June 1, 2001, the Debtor filed its Motion for Order Approving Sale of Some or All of the Debtors Operating Assets at Docket No. 542 (hereafter Motion).

2. At page 4, paragraph 3 of the Motion, the Debtor states that as part of the process of marketing the Debtor's business, "[T]he Debtor established, and *Skadden, Arps staffed*, a data room in Albuquerque, New Mexico which provided potential purchasers...with a further source of information regarding the Debtor's business." (Emphasis added)

3. The United States Trustee had previously been led to believe that this data room had been established and staffed by PJSC as part of its duties as the Debtor's investment banker.

4. As made clear by the Motion and the testimony of George Golleher and Greg Mays during the hearing on the approval of their consulting agreements (final hearing also held on May 22, 2001), the primary function of PJSC in this matter has been to market the Debtor's assets.

5. Given the very substantial fixed monthly fees requested by PJSC (\$150,000), it is unclear why Skadden Arps is staffing a data room. Presumably, Skadden Arps will seek payment for these services rendered in marketing the Debtor's assets, which should be included within the services to be rendered by PJSC.

6. In addition to the above, the Letter Agreement attached to the Application to retain PJSC provides that the Debtor may not terminate PJSC's engagement within six months of employment. If the Debtor is successful in the Motion and an auction is conducted and approved, PJSC will continue to be entitled to a windfall of \$150,000 per month for the unexpired portion of the six-month period.

7. The above referenced admission in the Motion together with a potential windfall to PJSC is highly relevant to the U.S. Trustee's objections that:

a. The Application does not specify the work to be done by PJSC for the fixed monthly fee.

b. The Application does not disclose what personnel are assigned to this employment, nor does it disclose their qualifications and hourly rates.

c. There may be duplication of services with other professionals.

d. The Application does not otherwise establish the reasonableness of the fees requested.

8. As to legal issues, the admission in the Motion and the potential windfall supports the U.S. Trustee's position that requested compensation should not be approved in advance under 11

U.S.C. §328 (a). As a corollary, it is highly relevant to the U.S. Trustee's contention that PJSC should be required to submit fee applications subject to the reasonableness requirements of 11 U.S.C. §330.

9. Pursuant to Bankruptcy Rule 9023, newly discovered evidence can be the basis for a motion for a new trial or hearing. In these circumstances, where evidence is discovered before the entry of a ruling by the Court, the United States Trustee respectfully submits supplementation of the evidence is appropriate.

10. The United States Trustee reserves her right to object to any fees billed by Skadden Arps for staffing the above referenced data room.

11. Counsel for the Debtor has been contacted with regard to this motion and opposes same. Counsel for the secured lenders has been contacted and has not obtained a response from his clients as to their position on the motion. Finally, the U.S. Trustee has been unable to contact counsel for the Unsecured Creditors Committee as to its position on this matter.

Respectfully submitted,

BRENDA MOODY WHINERY
United States Trustee

Filed electronically 6/08/01
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The undersigned certifies that a true and accurate copy of the foregoing was mailed to the below listed counsel this 8th day of June, 2001.

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