

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 SUPPLEMENTAL OBJECTION TO  
APPLICATION FOR EMPLOYMENT OF PRICE WATERHOUSECOOPER'S LLP**

The United States Trustee for the District of New Mexico hereby supplements are objection to the application for employment of PricewaterhouseCoopers LLP (Application), as follows:

1. The Application fails to adequately disclose PricewaterhouseCoopers LLP's (PWC) connections with interested parties. In informal discussions, PWC has provided the U.S. Trustee with a draft Amended and Restated Declaration of Loretta Cross (Amended Declaration) which appears to address this objection. Although Debtor's counsel indicated that the Amended Declaration was going to be filed, the U.S. Trustee has not received a filed copy nor does the U.S. Trustee's review of the court docket indicate that the Amended Declaration has been filed.

2. With the above qualification, the draft Amended Declaration appears to disclose the amount of fees which PWC billed to the Debtor prior to the filing of the petition.

3. Although the Application was filed on February 8, 2001, the U.S. Trustee is not aware of any supplemental disclosures pursuant to Bankruptcy Rule 2014 filed by PWC as of the date of the filing of this objection. As stated above, the U.S. Trustee has been provided with a draft Amended Declaration.

4. The draft Amended Declaration still does not provide full disclosure as to the original billing dates for the fees, charges and disbursements which were paid from the retainer.

5. The hourly rates charged by PWC appear to be excessive and approval of such rates should be deferred until the submission of fee applications.

6. The application states that billing rates may occur and that such rates will be passed on to the Debtor, apparently without notice to creditors. All such changes in billing rates should be subject to Court approval on the submission of fee applications. The draft Amended Declaration provided to the U.S. Trustee agrees that changes in billing rates will be subject to court approval after notice and hearing.

7. The Letter Agreement attached to the Application provides for full payment within 30 days of the invoice date and the accrual of interest on fees not timely paid . In accordance with local practice, only 75% of fees for professional services and 100% of costs should be paid by the Debtor until such time as Court approval is obtained. Further, no interest should accrue on unpaid fees until such time as they are approved by Court order pursuant to §§330 & 331. The draft Amended Declaration appears to concede this point.

8. The Letter Agreement also provides for a retainer to be held and applied by PWC to its final bill for services on the completion or termination of the bankruptcy. Such provision is tantamount to a preference and should be voided. The draft Amended Declaration changes the characterization to that of an advance payment retainer with all sums deposited as “pre-paid” fees. The provisions remains unreasonable and further disclosure should be made as to the date on which the billing for prepetition services was made and payment was received from the retainer.

9. The Letter Agreement provides that it is to be governed and interpreted in accordance with the laws of Texas. To the extent that federal bankruptcy law conflicts with Texas law, the

former should govern interpretation of the Letter Agreement. The draft Amended Declaration appears to drop this provision.

10. The Standard Terms and Conditions attached to the Letter Agreement (Standard Terms) provide, at paragraph 1.1, that the debtor will not place reliance on draft reports, conclusions or advice, whether oral or written. Any such “draft” advice should be conspicuously disclosed as such with written confirmation of the “draft” nature of the advice as soon as possible. The draft Amended Declaration appears to drop this provision.

11. The Standard Terms, at paragraph 1.3, prevent the Debtor from providing any advice or report issued by PWC to any third party without PWC’s prior written consent. The U.S. Trustee objects to the extent that this confidentiality provision restricts the Debtor from disclosing information to the unsecured creditors committee and/or creditors which may be required by the Debtor’s fiduciary obligations. The draft Amended Declaration appears to drop this provision.

12. The Standard Terms, at paragraph 2.4, appears to state that PWC does not give any assurance on the Debtor’s financial data. To the extent that financial information is or was prepared by PWC, this disclaimer should not be effective. The draft Amended Declaration appears to drop this provision.

13. The Standard Terms, at paragraph 2.5, states that PWC does not give any assurance as to projections developed for the Debtor. While it is understood that PWC cannot guarantee projected outcomes, to the extent that the paragraph attempts to avoid liability for the negligent formulation of projections, it should not be effective. The draft Amended Declaration appears to drop this provision.

14. To the extent that the Standard Terms, at paragraph 3.1, allows the Debtor and PWC to change services beyond the scope set forth in an order authorizing employment, that provision

should not be effective without a court order. The draft Amended Declaration appears to drop this provision.

15. The Standard Terms, at paragraph 3.2, requires the Debtor to object to any billings within thirty days of the invoice date. This provision should be ineffective and should allow the Debtor to object to any fees at the time fee applications are noticed to creditors and parties in interest. The draft Amended Declaration appears to drop this provision.

16. The Standard Terms at paragraph 4.1, require the consent of both parties before the confidential information is disclosed to third parties. To the extent that this confidentiality requirement restricts the disclosure of information required by the Debtor's fiduciary duty, it should be ineffective. The draft Amended Declaration appears to drop this provision.

17. The Standard Terms at paragraph 6.1, provide that the Debtor will indemnify PWC for all claims and liabilities relating to services which PWC provides during pendency of this Chapter 11 proceeding. In so doing, the provision apparently requires indemnification for any professional negligence by PWC which may occur. As such, the provision is contrary to sound bankruptcy policy and PWC's professional and fiduciary duties. This provision should be void. The draft Amended Declaration appears to drop this provision.

18. The Standard Terms at paragraph 6.2, provide that PWC's liability to the Debtor for any cause of action is limited to the amount of professional fees paid by the Debtor to PWC. As such, the provision is contrary to PWC's fiduciary duties and the policy underlying the Bankruptcy Code. This provision should be void. The draft Amended Declaration appears to drop this provision.

19. The Standard Terms at paragraph 8.1 provides that PWC has not made any warranties or guarantees regarding "results, outcome or final developments" as a result of the

services provided. To the extent that the provision seeks to waive liability for professional negligence, it should be ineffective. The draft Amended Declaration appears to drop this provision.

20. The Standard Terms at paragraph 9.1, state that PWC will not be prevented or restricted by its employment with the Debtor from providing services to other clients. To the extent that this provision seeks to abrogate the disinterestedness requirement of §327 (a) and §328(c), it should be void. The draft Amended Declaration appears to drop this provision.

21. The Standard Terms at paragraph 6.3 greatly reduce the limitations period in which the Debtor may commence a cause of action against PWC. This provision is contrary to sound bankruptcy policy and should be void. The draft Amended Declaration appears to drop this provision.

Respectfully submitted,

BRENDA MOODY WHINERY  
United States Trustee

Filed electronically 4/16/01  
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The undersigned certifies that a true and accurate copy of the foregoing was mailed and sent by telefacsimile to the below listed counsel this 16th day of April, 2001.

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