

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT
ALBUQUERQUE, N.M.

In Re:

FURR'S SUPERMARKETS, INC.,

Chapter 11

Case Nos. 01-10779-SA

Debtor.

Hearing Date: _____, 2001,
_____ a.m.

**OBJECTION OF OFFICIAL UNSECURED CREDITORS' COMMITTEE
TO APPLICATION FOR ORDER AUTHORIZING EMPLOYMENT AND RETENTION
OF PETER J. SOLOMON COMPANY LIMITED AS ITS INVESTMENT BANKER**

PEPPER HAMILTON LLP, on behalf of the Official Unsecured Creditors' Committee (the "Committee"), and in support of its Objection (the "Objection") to the Debtor's Application for Order Authorizing Employment and Retention of Peter J. Solomon Company Limited As Its Investment Bank (the "Solomon Application"), respectfully states as follows:

INTRODUCTORY STATEMENT

1. On February 8, 2001, the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code (the "Code").
2. On or about February 13, 2001, the United States Trustee appointed the Committee under Section 1102 of the Code.
3. On March 5, 2001, the Debtor filed the Solomon Application. As set forth in the Solomon Application, Peter J. Solomon Company Limited ("Solomon") is being retained to help in the

refinancing and/or sale of the Debtor, with its fee, in part, being based upon the results of such refinancing and/or sale.

4. On March 26, 2001, the Debtor filed its Motion for Order Authorizing Debtor to (a) Implement Employee Retention, Severance, and Success Bonus Plans; (b) Enter Into Transition Agreement with Thomas Dahlen; and (c) Enter Into Consulting Agreement with George Golleher and Greg Mays (the "Employee Motion"). As set forth in the Employee Motion, the Success Bonus Plan and the Consulting Agreements with Golleher and Mays (the "Consultants") also contemplate paying certain employees and the Consultants based upon the results of the refinancing and/or sale of the Debtor.

5. For the reasons set forth below, the Committee objects to the Solomon Application. The Committee will be objecting to the Employee Motion by a separate objection, which it anticipates filing within the next several days.

OBJECTIONS TO SOLOMON APPLICATION

6. The Committee does not object to the retention of Solomon in principle. There are, however, many reasons why the Committee objects to the terms pursuant to which Solomon is being retained, which terms are set forth in the February 26, 2001 letter from Solomon to the Debtor, Exhibit A to the Declaration of Peter J. Solomon in support of the Solomon Application. In general, the Committee's reasons can be categorized into issues of substance (i.e., reasons why the Committee believes the substance of the retention, as set forth in Exhibit A, are ill-advised) and issues of drafting (i.e., reasons why the Committee believes Exhibit A needs to be revised to describe more accurately the terms of the retention).

7. The substantive bases for the Committee's objection to the Solomon Application are as follows (paragraph references are to Exhibit A):

(a) Solomon's fees for a reorganization (par. 3(b)) and/or transaction (par. 3(d)), when combined with the payments under the Success Bonus Plan and the Consulting Agreements, are way too high. Attached as Exhibit 1 is a chart showing, at different transaction values, the total of the fees for such transaction. These fees range from 1.5% (for a \$100 million transaction) to 6.28% (for a \$300 million transaction). The Committee believes the total fees should be less than 1.5%, with Solomon and the Consultants dividing 1.25% of the first \$200 million in transaction value and decreasing percentages on the excess. This pool would be divided among them as they agree.

(b) There should not be a minimum transaction fee for **each** transaction. Rather, there should be a minimum total transaction fee of \$1.25 million (not \$1.5 million). Having a minimum transaction fee for **each** transaction, especially the \$500,000 in par. 3(d), which would be payable to Solomon for the sale of even a single store, means that the Debtor will not be able to sell just a few stores in any transaction.

(c) There are several problems with the definition in par. 3(d) of Aggregate Consideration, upon which the transaction fee is based.

(1) It should not include any portion of the purchase price put in escrow until it is paid to the Debtor. As drafted, Solomon receives a fee on escrowed money even if it is returned to the purchaser. These are funds to protect the purchaser with respect to items such as purchase price adjustments and breaches by the Debtor of covenants or representations. Unless

and until the Debtor receives the funds out of escrow, it should not be paying Solomon a fee based on them.

(2) It should not include (a) funds paid other than to the Debtor under covenants not to compete and (b) payments with respect to post-closing services under employment contracts, benefit plans, management agreements, and similar arrangements. The former are funds that do not benefit the Debtor, and the latter are payments for services rendered to the purchaser, for which the Debtor should not pay Solomon a fee.

(3) The amount of assumed revolving debt should be the actual amount at the closing, not the 12-month average as provided, especially if the purchase price is based on actual inventory at the closing. Since revolving debt goes down as inventory goes down, basing the fee upon an average has the Debtor paying a larger fee than is fair.

(d) Par. 7 provides that Solomon is paid a fee if, within 18 months after Solomon's retention is terminated, the Debtors reorganize or sell assets under certain conditions. This 18 month period is too long and should be reduced to 6 months.

(e) Solomon's fee should be on top of the carveout for the Debtor's other professionals and the Committee's professionals, not part of it as provided in par. 8(b). Solomon's fees, as currently proposed, could consume the entire carveout to the detriment of Committee members' rights to reimbursement for reasonable expenses and the payment of fees and expenses to other professionals in the case.

(f) Exhibit B to the Letter should not provide for the Debtor to indemnify Solomon against its own negligence.

8. The drafting bases for the Committee's objections to the Solomon Application are as follows:

(a) The reference in par. 3(b), with respect to the reorganization fee, to "a reorganization . . . that represents no less than 40% . . . revenues" is very unclear. Does it mean that the assets reorganized must have generated at least 40% of the applicable revenues or does it mean that the projections for the reorganized company must show at least 40% of the applicable revenues?

(b) Any financing fee (par. 3(c)) agreed to by the Debtor and Solomon should be subject to Committee approval or Court order.

(c) At the end of par. 8(f), add "or as required by the Bankruptcy Code; provided that such advise may be shared with the Creditors' Committee." This is needed to be consistent with the final financing order.

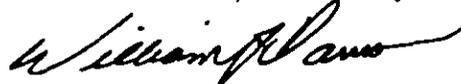
(d) In par. 8(i), the Bankruptcy Court should have exclusive jurisdiction.

(e) On the second line of par. 8(j), add "except those arising out of this Agreement") after "counterclaims."

Wherefore, the Committee prays that this Honorable Court deny the Solomon Application unless Exhibit A to the Solomon Application is modified as set forth above.

Respectfully submitted,

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The undersigned hereby certifies
that a true and accurate copy of
the foregoing was mailed this
16th day of April, 2001.

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Committee's Views and Suggestions on the Proposed Success Bonus/Fee Plan

As currently proposed, the total Success Bonus/Fee is excessive

Transaction Value	Existing Management ⁽¹⁾	Golleher/Mays ⁽²⁾		P.J. Solomon ⁽³⁾		Total	Total as a % of T.V.	Existing Management w/ Dahlen ⁽⁴⁾
		\$	%	\$	%			
\$ 100,000	\$ -	-	1.50%	\$ 1,500	1.50%	\$ 1,500	1.50%	\$ -
110,000	-	1,500	2.86%	1,650	2.86%	3,150	2.86%	-
120,000	750	1,500	3.38%	1,800	3.38%	4,050	3.38%	1,600
130,000	950	1,500	3.40%	1,975	3.40%	4,425	3.40%	1,800
140,000	1,150	1,500	3.45%	2,175	3.45%	4,825	3.45%	2,000
150,000	1,250	1,500	3.42%	2,375	3.42%	5,125	3.42%	2,250
160,000	1,500	1,500	3.52%	2,625	3.52%	5,625	3.52%	2,500
170,000	1,750	1,750	3.75%	2,875	3.75%	6,375	3.75%	2,750
180,000	2,000	2,000	3.96%	3,125	3.96%	7,125	3.96%	3,000
190,000	2,250	2,250	4.14%	3,375	4.14%	7,875	4.14%	3,300
200,000	2,500	2,500	4.31%	3,625	4.31%	8,625	4.31%	3,600
210,000	2,750	2,750	4.49%	3,925	4.49%	9,425	4.49%	3,900
220,000	3,050	3,050	4.69%	4,225	4.69%	10,325	4.69%	4,200
230,000	3,350	3,350	4.88%	4,525	4.88%	11,225	4.88%	4,500
240,000	3,650	3,650	5.05%	4,825	5.05%	12,125	5.05%	4,800
250,000	3,950	3,950	5.21%	5,125	5.21%	13,025	5.21%	5,200
260,000	4,250	4,250	5.39%	5,525	5.39%	14,025	5.39%	5,500
270,000	4,650	4,650	5.64%	5,925	5.64%	15,225	5.64%	5,800
280,000	5,050	5,050	5.87%	6,325	5.87%	16,425	5.87%	6,200
290,000	5,450	5,450	6.08%	6,725	6.08%	17,625	6.08%	6,600
300,000	5,850	5,850	6.28%	7,125	6.28%	18,925	6.28%	7,000

(1) Based on the Company's March 16, 2001 presentation to the Committee

(2) Per the Golleher/Mays consulting agreements dated March 21, 2001

(3) Per the Peter J. Solomon retention application filed March 5, 2001

(4) Range of Success Bonus with Dahlen Included, per the February 21, 2001 Company presentation

Exhibit 1