

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.

Debtor.

§
§
§
§
§
§

CASE NO. 11-01-10779-SA

Chapter 11

Date: January 23, 2002

Time: 8:45 a.m.

**RESPONSE OF PRICEWATERHOUSECOOPERS, LLP TO
UNITED STATES TRUSTEE'S MOTION TO COMPEL DEPOSITIONS
OF WITNESSES DESIGNATED BY PRICEWATERHOUSECOOPERS, LLP**

TO THE HONORABLE JAMES S. STARZYNSKI, UNITED STATES BANKRUPTCY JUDGE:

Comes now PricewaterhouseCoopers, LLP ("PwC"), financial consultants for the Debtor, and files its Response of PricewaterhouseCoopers, LLP to United States Trustee's Motion to Compel Depositions of Witnesses Designated By PricewaterhouseCoopers, LLP (the "Response"). In support of the Response, PwC respectfully represents:

I. BACKGROUND

1. On February 8, 2001 (the "Petition Date"), Furr's Supermarkets, Inc. ("Furr's" or the "Debtor") filed a voluntary petition under chapter 11 of the United States Bankruptcy Code. On the Petition Date, the Debtor filed its Application for Order Under 11 U.S.C. 327(a) and Fed. R. Bank. P. 2014 Authorizing the Employment of PricewaterhouseCoopers, LLP as the Debtor's Financial Consultants (the "PwC Retention Application"). The PwC Application was supported by the Declaration of Loretta Cross.

2. PwC's retention was approved by Order Granting Motion to Employ PricewaterhouseCoopers LLP as Debtor's Financial Consultant, entered June 27, 2001.

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3. On November 16, 2001, PwC filed its First and Final Application For Allowance of Compensation and Reimbursement of Expenses Incurred by PricewaterhouseCoopers LLP as Financial Advisors For the Debtors For the Period February 8, 2001 Through May 31, 2001 (the "PwC Fee Application").

4. On December 7, 2001, the Office of the United States Trustee filed its Objection to Fee Application By First and Final Application For Allowance of Compensation By PricewaterhouseCoopers LLP as Financial Advisors For the Debtor (the "UST Objection"). In the UST Objection, the UST raises a number of factual allegations concerning the work performed by PwC. Such allegations include:

- (i) The number of intraoffice conferences conducted by PwC were "excessive" and included an "unnecessary number of participants."
- (ii) PwC assigned an "unnecessary" number of professionals to render services related to preparation of presentations made to the Committee and in connection with employee retention and compensation analysis.
- (iii) Senior level professionals performed services that could have been performed by lower-level associates or accounting staff.
- (iv) PwC should have recognized earlier than it did that the Debtor's deteriorating financial condition did not justify the fees and expense that were being incurred.

5. On January 8, 2002, the Court entered its Order Resulting From Preliminary Hearings on Fee Applications (the "Fee Application Order"). Pursuant to the Fee Application Order, a hearing

on the PwC Fee Application is set for January 31, 2002 at 1:30 p.m. (the "PwC Fee Application Hearing").

6. On December 31, 2001, the UST filed and served on PwC its U.S. Trustee's *Designation of Witnesses For Hearings on Fee Applications (the "UST Witness List")*. The UST lists Michele Lombard and Jean LaShelle, both bankruptcy analysts, as the UST's witnesses for the PwC Fee Application Hearing.

7. From January 17, 2002 through January 19, 2002, the UST produced exhibits to PwC that the UST intends to introduce at the PwC Fee Application Hearing. These exhibits include (i) summary sheets of PwC billing entries prepared by Michele Lombard; (ii) monthly operating reports filed by the Debtor; and (iii) an analysis of the monthly operating reports prepared by Jean LaShelle.

8. The UST requested that PwC produce Loretta Cross and Kevin Regan for telephonic depositions during the week of January 25, 2002. PwC agreed to do so.

9. On January 19, 2002, PwC requested that the UST produce Michele Lombard and Jean LaShelle for depositions. In addition, PwC requested that the UST produce for deposition the person most knowledgeable about the factual allegations raised in the UST Objection pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure. The UST refused, stating that the UST had no obligation to produce for depositions any person in the UST's office regarding the UST Objection.

10. On January 19, 2002, the UST filed its Motion to Compel Depositions of Witnesses Designated by PricewaterhouseCoopers, LLP (the "Motion to Compel").¹ PwC has not been served

¹ The Motion to Compel did not state under which Rule the UST was seeking relief.

by the UST with a Notice of Deposition or a subpoena requesting that PwC produce either Ms. Cross or Mr. Regan.

II. LEGAL ARGUMENT

11. Rule 30 of the Federal Rules of Civil Procedure ("Rule 30"), states in relevant part:

(a)(1) A party make take the testimony *of any person*, including a party, by deposition upon oral examination without leave of court

. . . .

(b)(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association *or governmental agency* and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify.

Fed. R. Civ. P. 30 (emphasis added).

12. Rule 37 of the Federal Rules of Civil Procedure ("Rule 37") provides the structure for compelling discovery. Rule 37 provides, in relevant part, that if a party fails to appear for a deposition "after being served with proper notice," the party noticing the deposition may make a motion to the court in which the action is pending to compel such attendance. Fed. R. Civ. P. 37(a), (d). A motion to compel filed pursuant to Rule 37 must include a certification that the movant has "conferred or attempted to confer in good faith" with the other party. *Id.*

13. The UST has failed to comply with Rule 30 or Rule 37 by failing to prepare and serve PwC with either a Notice of Deposition or a subpoena requesting that Ms. Cross or Mr. Regan appear for a deposition at a stated time or place. Accordingly, the UST's Motion to Compel is procedurally defective and premature.

14. The UST filed its Motion to Compel based upon its mistaken belief that PwC refuses to produce Ms. Cross and Mr. Regan. PwC has never taken that position. PwC understands that the UST has a right to take the depositions of Ms. Cross and Mr. Regan pursuant to Rule 30. PwC has been at all times willing to produce Ms. Cross and Mr. Regan. The UST, however, has insisted that PwC produce Ms. Cross and Mr. Regan informally while at the same time refusing to produce its witnesses for deposition. Accordingly, PwC has been forced to insist that the parties make formal discovery requests, so that either party's failure to comply with a formal discovery request may be brought before this Court.

15. The UST has refused to informally produce for deposition the bankruptcy analysts who are listed on the UST Witness list and who prepared the exhibits the UST intends to introduce at trial. In addition, the UST has refused to produce the "person most knowledgeable" about the factual allegations raised in the UST Objection.² PwC believes that the UST has an obligation to produce such persons for depositions.

16. As set forth in paragraph 4 above, with one or two exceptions, the factual allegations raised in the UST Objection are generic and non-specific. PwC has the right to take discovery on such allegations to determine the specific portions of the PwC Fee Application that the UST believes are objectionable. PwC otherwise faces the near-impossible task of responding to these allegations at trial. Accordingly, contemporaneously with the filing and service of this Response, PwC has served upon the UST Notices of Deposition and Subpoenas for Michelle Lombard, Jean LaShelle

² Ron Andazola, an Assistant United States Trustee, has disclosed to counsel for PwC that he is the person with the most knowledge regarding the UST Objection.

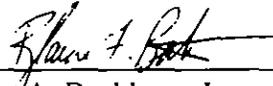
and the “person most knowledgeable” at the UST. A copy of these Notices and Subpoenas are attached hereto as **Exhibit A**.

17. The UST has provided no authority for its position that the UST is immune from discovery requests. The opposite is true. *In re Travelstead*, (Bankr. D. Md. 1997); *see also In re J.F.D. Enterprises, Inc.*, 223 B.R. 610, 630 (Bankr.D.Mass. 1998). In *Travelstead*, the Office of the United States Trustee for Region 4 sought a protective order for the deposition of an assistant U.S. Trustee. After the court denied the request for a protective order, the assistant U.S. Trustee appeared at the deposition, but refused to answer any questions on the grounds that (i) her testimony was not “authorized”; and (ii) all the information she possessed was privileged. *Travelstead*, 212 B.R. at 507. Upon further hearing, the court directed the assistant U.S. Trustee to answer questions that were not subject to a properly-asserted privilege. The court concluded that, “The U.S. Trustee may not evade discovery of nonprivileged facts based on an agency decision not to authorize deposition testimony where the U.S. Trustee is a party.” *Id.* at 508.³

WHEREFORE, PwC respectfully requests that the Court deny the Motion to Compel, and grant PwC such other and further relief to which it is justly entitled.

³ The court also noted that a notice of deposition pursuant to Rule 30(b)(6) was the appropriate method in which to seek the testimony of the Office of the U.S. Trustee. “Under this procedure, the person or persons so designated would testify based on the knowledge of the entity. The designated person must make a good faith effort to prepare adequately to answer fully and unequivocally the questions posed.” *Id.* at 509.

Respectfully submitted this 21st day of January, 2002.



Charles A. Beckham, Jr.
Texas State Bar Number 02016600
Blaine F. Bates
Texas State Bar Number 24049979
HAYNES AND BOONE, LLP
1000 Louisiana, Suite 4300
Houston, Texas 77002
Telephone: (713) 547-2243
Telcopy: (713) 236-5638

**COUNSEL FOR
PRICewaterHOUSECOOPERS, LLP**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Response was served upon the parties listed below by facsimile on the 21st day of January 2002 in accordance with the Federal Rules of Bankruptcy Procedure.

Ron Andazola
United States Trustee
U.S. Department of Justice
421 Gold Avenue, S.W. Room 112
Albuquerque, NM 87102
Fax # (505) 248-6558

Robert Jacobvitz
David T. Thuma
Jacobvitz Thuma & Walker
500 Marquette N.W., Suite 650
Albuquerque, NM 87102
Fax # (505) 766-9287



Blaine F. Bates

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

IN RE:	§	
	§	Chapter 11
	§	
FURR'S SUPERMARKETS, INC.	§	Case No. 11-01-10779-SA
	§	
Debtor.	§	

**NOTICE OF INTENT TO TAKE
DEPOSITION OF MICHELE LOMBARD**

TO: Michele Lombard, by and through Ronald Andazola, Office of the United States Trustee, 421 Gold Avenue, S.W., Room 112, Albuquerque, New Mexico 87102.

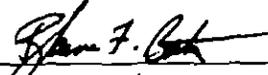
PLEASE TAKE NOTICE that PricewaterhouseCoopers, LLP, by their undersigned counsel, will take the deposition upon oral examination pursuant to the Federal Rules of Civil Procedure of Michele Lombard in connection with the factual allegations raised by the Office of the United States Trustee in its Objection to First and Final Fee Application for Allowance of Compensation By PricewaterhouseCoopers, LLP as Financial Advisors for the Debtors.

The deposition shall take place at Joe Jamison Court Reporters, 201 Third Street., N.W., Suite 1180, Albuquerque, New Mexico, on January 25, 2002 at 9:30 a.m. before an officer duly authorized to administer oaths and will continue, if necessary, from day to day until completed with such adjournments as to time and place as may be necessary. The deposition may be videotaped or otherwise recorded in a manner authorized by the Federal Rules of Civil Procedure. You are invited to attend and cross-examine.



Dated: January 21, 2002.

HAYNES AND BOONE, LLP



Charles A. Beckham, Jr.

TBA No. 02016600

Blaine F. Bates

TBA. No. 24029979

1000 Louisiana St.

Suite 4300

Houston, TX 77002

Phone: (713) 547-2000

Fax: (713) 547-2688

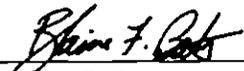
COUNSEL FOR PRICEWATERHOUSECOOPERS, LLP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served via facsimile and by United States First Class Mail, postage prepaid, on the parties listed below on the 21 day of January, 2002.

Ron Andazola
United States Trustee
U.S. Department of Justice
421 Gold Avenue, S.W. Room 112
Albuquerque, NM 87102
Fax # (505) 248-6558

Robert Jacobvitz
David T. Thuma
Jacobvitz Thuma & Walker
500 Marquette N.W., Suite 650
Albuquerque, NM 87102
Fax # (505) 766-9287



Blaine F. Bates

United States Bankruptcy Court
DISTRICT OF NEW MEXICO

In re

**SUBPOENA IN A CASE UNDER
THE BANKRUPTCY CODE**

FURR'S SUPERMARKETS, INC.

Debtor

Case No: 11-01-10779-SA

To:

Chapter 11**MICHELE LOMBARD**

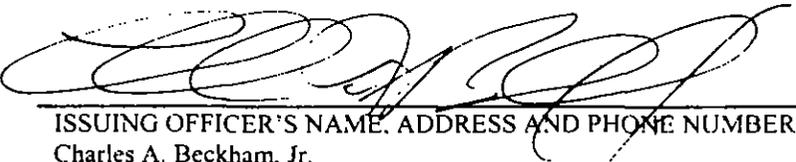
Office of the United States Trustee
421 Gold Avenue, S.W., Room 112
Albuquerque, NM 87102

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE Joe Jamison Court Reporters 201 Third Street, N.W. Suite 1180 Albuquerque, NM 87103	DATE AND TIME January 25, 2002 9:30 a.m.
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
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ISSUING OFFICER SIGNATURE AND TITLE	DATE
	January 21, 2002

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Charles A. Beckham, Jr.
Haynes and Boone, LLP
1000 Louisiana, Ste. 4300
Houston, TX 77002
(713) 547-2600

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Fed.R.Civ.P., Parts (c) & (d) made applicable in cases under the Bankruptcy Code by Rule 9016, Fed. R. Bankr. P.

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) require a person who is not a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts

business in persons, except that, subject to the provisions of clause (c)(3)(B)(ii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

IN RE: §
§ Chapter 11
FURR'S SUPERMARKETS, INC. §
§ Case No. 11-01-10779-SA
§
Debtor. §

**NOTICE OF INTENT TO TAKE
DEPOSITION OF OFFICE OF THE UNITED STATES TRUSTEE**

TO: Ronald Andazola, Office of the United States Trustee, 421 Gold Avenue, S.W., Room 112, Albuquerque, New Mexico 87102.

PLEASE TAKE NOTICE that PricewaterhouseCoopers, LLP, by their undersigned counsel, will take the deposition upon oral examination pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure of the person most knowledgeable at the Office of the United States Trustee, with respect to the factual allegations raised by the Office of the United States Trustee in its Objection to First and Final Fee Application for Allowance of Compensation By PricewaterhouseCoopers, LLP as Financial Advisors for the Debtors, including, but not limited to:

The number of intraoffice conferences conducted by PwC were "excessive" and included an "unnecessary number of participants."

PwC assigned an "unnecessary" number of professionals to render services related to preparation of presentations made to the Committee and *in connection with employee retention and compensation analysis.*

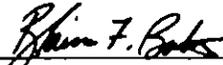
Senior level professionals performed services that could have been performed by lower-level associates or accounting staff.

PwC should have recognized earlier than it did that the Debtor's deteriorating financial condition did not justify the fees and expense that were being incurred.

The deposition shall take place at Joe Jamison Court Reporters, 201 Third Street., N.W., Suite 1180, Albuquerque, New Mexico, on January 25, 2002 at 1:00 p.m. before an officer duly authorized to administer oaths and will continue, if necessary, from day to day until completed with such adjournments as to time and place as may be necessary. The deposition may be videotaped or otherwise recorded in a manner authorized by the Federal Rules of Civil Procedure. You are invited to attend and cross-examine.

Dated: January 24, 2002.

HAYNES AND BOONE, LLP



Charles A. Beckham, Jr.

TBA No. 02016600

Blaine F. Bates

TBA. No. 24029979

1000 Louisiana St.

Suite 4300

Houston, TX 77002

Phone: (713) 547-2000

Fax: (713) 547-2688

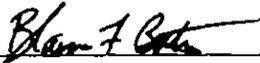
COUNSEL FOR PRICEWATERHOUSECOOPERS, LLP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served via facsimile and by United States First Class Mail, postage prepaid, on the parties listed below on the 21 day of January, 2002.

Ron Andazola
United States Trustee
U.S. Department of Justice
421 Gold Avenue, S.W. Room 112
Albuquerque, NM 87102
Fax # (505) 248-6558

Robert Jacobvitz
David T. Thuma
Jacobvitz Thuma & Walker
500 Marquette N.W., Suite 650
Albuquerque, NM 87102
Fax # (505) 766-9287



Blaine F. Bates

United States Bankruptcy Court
DISTRICT OF NEW MEXICO

In re

**SUBPOENA IN A CASE UNDER
THE BANKRUPTCY CODE**

FURR'S SUPERMARKETS, INC.

Debtor

Case No: **11-01-10779-SA**

To:

Chapter **11**

Office of the United States Trustee
421 Gold Avenue, S.W., Room 112
Albuquerque, NM 87102
Attn: Ronald Andazola

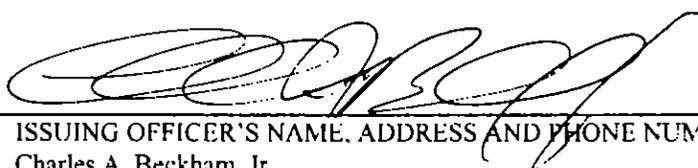
Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, the Office of the United States Trustee has an obligation to designate a person or persons to testify on the matters described in more detail in the Notice of Intent to Take Deposition of Office of the United States Trustee, as attached hereto.

■ **SUCH DESIGNATED PERSON OR PERSONS ARE COMMANDED** to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE Joe Jamison Court Reporters 201 Third Street, N.W. Suite 1180 Albuquerque, NM 87103	DATE AND TIME January 25, 2002 1:00 p.m.
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
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ISSUING OFFICER SIGNATURE AND TITLE 	DATE January 21, 2002
--	---------------------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Charles A. Beckham, Jr.
Haynes and Boone, LLP
1000 Louisiana, Ste. 4300
Houston, TX 77002
(713) 547-2600

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Fed.R.Civ.P., Parts (c) & (d) made applicable in cases under the Bankruptcy Code by Rule 9016, Fed. R. Bankr. P.

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance
- (ii) require a person who is not a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts

business in persons, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

IN RE:	§	
	§	Chapter 11
	§	
FURR'S SUPERMARKETS, INC.	§	Case No. 11-01-10779-SA
	§	
Debtor.	§	

**NOTICE OF INTENT TO TAKE
DEPOSITION OF JEAN LaSHELLE**

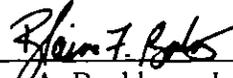
TO: Jean LaShelle, by and through Ronald Andazola, Office of the United States Trustee, 421 Gold Avenue, S.W., Room 112, Albuquerque, New Mexico 87102.

PLEASE TAKE NOTICE that PricewaterhouseCoopers, LLP, by their undersigned counsel, will take the deposition upon oral examination pursuant to the Federal Rules of Civil Procedure of Jean LaShelle in connection with the factual allegations raised by the Office of the United States Trustee in its Objection to First and Final Fee Application for Allowance of Compensation By PricewaterhouseCoopers, LLP as Financial Advisors for the Debtors.

The deposition shall take place at Office of the United States Trustee, 2929 N. Central Avenue, Room 700, Phoenix, Arizona, on January 24, 2002 at 9:30 a.m. before an officer duly authorized to administer oaths and will continue, if necessary, from day to day until completed with such adjournments as to time and place as may be necessary. The deposition may be videotaped or otherwise recorded in a manner authorized by the Federal Rules of Civil Procedure. You are invited to attend and cross-examine.

Dated: January 4, 2002.

HAYNES AND BOONE, LLP



Charles A. Beckham, Jr.

TBA No. 02016600

Blaine F. Bates

TBA. No. 24029979

1000 Louisiana St.

Suite 4300

Houston, TX 77002

Phone: (713) 547-2000

Fax: (713) 547-2688

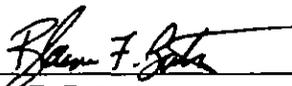
COUNSEL FOR PRICEWATERHOUSECOOPERS, LLP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served via facsimile and by United States First Class Mail, postage prepaid, on the parties listed below on the 1 day of January, 2002.

Ron Andazola
United States Trustee
U.S. Department of Justice
421 Gold Avenue, S.W. Room 112
Albuquerque, NM 87102
Fax # (505) 248-6558

Robert Jacobvitz
David T. Thuma
Jacobvitz Thuma & Walker
500 Marquette N.W., Suite 650
Albuquerque, NM 87102
Fax # (505) 766-9287



Blaine F. Bates

United States Bankruptcy Court
DISTRICT OF NEW MEXICO

In re
FURR'S SUPERMARKETS, INC.

**SUBPOENA IN A CASE UNDER
THE BANKRUPTCY CODE**

Debtor

Case No: **11-01-10779-SA**

To:
JEAN LaSHELLE
Office of the United States Trustee
2929 N. Central Avenue, Room 700
Phoenix, AZ 85012

Chapter 11

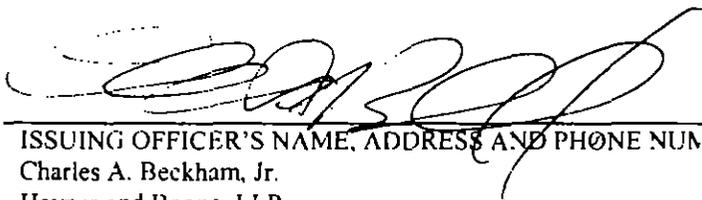
YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE Office of the United States Trustee 2929 N. Central Avenue, Room 700 Phoenix, AZ 85012	DATE AND TIME January 24, 2002 9:30 a.m.
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

ISSUING OFFICER SIGNATURE AND TITLE



DATE:

January __, 2002

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Charles A. Beckham, Jr.
Haynes and Boone, LLP
1000 Louisiana, Ste. 4300
Houston, TX 77002
(713) 547-2600

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Fed.R.Civ.P., Parts (c) & (d) made applicable in cases under the Bankruptcy Code by Rule 9016, Fed. R. Bankr. P.

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance,
- (ii) require a person who is not a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts

business in persons, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim