

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
SEP 27 AM 11:33
U.S. BANKRUPTCY COURT
ALBUQUERQUE, N.M.

In re

FURR'S SUPERMARKETS, INC.,

Debtor.

Case No. 11-01-10779-SA

Chapter 11

**DECLARATION OF IAIN GOLD IN SUPPORT OF MOTION OF
UNITED FOOD AND COMMERCIAL WORKERS UNION LOCALS 540 AND 1564
FOR ORDER ALLOWING AND REQUIRING IMMEDIATE PAYMENT OF
ADMINISTRATIVE EXPENSES**

I, IAIN GOLD, hereby declare and state:

1. I am employed by the United Food and Commercial Workers International Union, the parent body for United Food and Commercial Workers Union Local 540 ("Local 540") and United Food and Commercial Workers Union Local 1564 ("Local 1564"), as a Research Associate. As Research Associate I am responsible for undertaking economic analyses of employers, and in particular retail grocery chains, in connection with collective bargaining between UFCW Locals and those employers.

2. Local 1564 has furnished me with copies of two documents provided to it by Furr's Supermarkets, Inc.: (1) a document entitled "Seniority List" and (2) a document entitled "UFCW Severance Report." I will present copies of these documents, which are both relatively lengthy, at the time I am called as a witness in this matter. Since we have not received any documentation from Furr's concerning its employees represented by Local 540, this declaration and the charts attached to it cover only the Furr's employees whom Local 1546 represents.

3. As the collective bargaining agreement attached as Exhibit A to the Declaration of Diane Kimberle provides, severance benefits are calculated by multiplying the number of years of service worked by an employee by two percent of

1119

his or her average earnings over the previous twelve months. The document provided by Furr's entitled "UFCW Severance Report" lists, store by store, the members of the bargaining unit and the amount of severance benefits paid to date to those employees who have received them. Those employees are, however, the exception to the rule, since Furr's has provided full severance benefits to employees at only two stores (Store Nos. 871 and 903), while paying partial severance benefits to some employees at another eight (Store Nos. 811, 866, 868, 880, 883, 905, 911 and 949).

4. The Seniority List identifies 2069 employees represented by Local 1564 by name, store number, hire date and pay rate. It does not, on the other hand, state the amount of hours that any individual employee has worked over the past twelve months or any other period.

5. In order to estimate the amount of severance pay due to bargaining unit employees, I first entered the name, store number, hire date and pay rate of each employee listed on the Seniority List. I then calculated each employee's average earnings by assuming that the employee averaged thirty hours per week over the twelve months preceding the closure of the store at which he or she was employed. This meant, more specifically, that I multiplied that employee's rate of pay by 1560 hours.

6. That assumption that employees average thirty hours per week appears to be quite reasonable. In the case of the two stores in which Furr's paid employees all of the severance pay they were owed, my estimates, based on an assumption of thirty hours per week, are almost identical to the figures that Furr's actually paid :

| <u>Store Number</u> | <u>Actual Severance</u> | <u>Estimated Severance</u> |
|---------------------|-------------------------|----------------------------|
| 871 | \$53,610 | \$52,844 |
| 903 | \$176,481 | \$175,037 |

This thirty hour average appears, if anything, to be slightly conservative.

7. I then determined the amount of "years of service" for each employee listed in the Seniority List. At the outset I eliminated 348 employees who had less than one year of service and were therefore not eligible for severance benefits under any of these collective bargaining agreements. I also excluded the thirty-three employees at Store Nos. 871 and 903 who had already received all of the severance pay they were owed. I then calculated the number of complete years of service for the remaining 1688 employees by comparing their dates of hire with a closure date of August 31, 2001.

8. I then proceeded to determine the amount of severance pay owed to eligible employees. I first multiplied these employees' estimated earnings by two percent, then by their number of years of service. In addition, because the agreement provides that employees will receive a minimum of \$200.00 in any event, in the case of a small number of employees I adjusted their severance pay upward in order to meet the floor provided by the agreement. At that point I added up the amount owed to employees in each store.

9. I took one more step before finishing my calculations. As noted above, Furr's paid a portion of the severance benefits that it owed to employees in eight stores. I deducted those figures from the total owed to all employees in that store. This produces the aggregate figures for each store set out in Exhibit M to this Declaration. I will offer the more detailed calculations for each individual employee when I am called as a witness in this matter.

10. I also conducted an alternative analysis, in which I calculated the amount of severance pay owed to eligible employees attributable solely to the amount of hours that these employees worked between February 8, 2001 and August 31, 2001. Once again, I assumed that employees averaged thirty hours per week. I then multiplied employees' estimated earnings by two percent and then by the

percentage of the year representing the period from February 8, 2001 to August 31, 2001. In addition, I also adjusted some employees' severance pay upward in order to meet the \$200.00 floor provided by the agreement.

11. The figures for each store are set out in Exhibit N to this Declaration. I will also offer the more detailed calculations for each individual employee obtained under this alternative method when I am called as a witness in this matter.

12. In the case of those eight stores in which Furr's has paid a portion of the severance pay it owes employees it has paid out more in severance benefits than the limited amount that corresponds to employees' post-petition service. The figures for those particular stores are highlighted in Exhibit N. I have excluded them from the total severance pay calculated using the alternative methods set forth in this Exhibit.

13. Finally, I calculated vacation benefits to which employees were entitled by multiplying the amount of weeks of vacation pay to which an employee was entitled by that employee's pay rate and estimated average number of hours worked per week. I used the same assumption that employees averaged thirty hours per week in this case that I used in calculating severance benefits.

14. Before reaching any final results for employees' vacation benefits, however, I reduced these benefits by seventy percent. I made this adjustment to reflect the likelihood that these employees would have taken roughly two thirds of their vacation during the eight months between the filing of the bankruptcy petition and the closure of these stores. These figures are set out in Exhibit O to this Declaration. I will also offer detailed calculations of the amount of vacation pay owed to each individual employee when I am called as a witness in this matter.

15. Local 540's collective bargaining agreements with Furr's contain essentially the same provisions governing vacation and severance pay as Local 1564's agreement. I am prepared to use the same procedures to calculate the amount

of severance pay and vacation pay that Furr's owes to its employees represented by Local 540 when those documents are produced.

I declare under penalty of perjury under the laws of the District of Columbia that the foregoing is true and correct.

Executed at Washington, D.C. on September 25, 2001.


IAIN GOLD

**UFCW Represented Furr's Employees
Severance Calculations By Store***

| Store # | Total Employees | Severance I | Already Paid |
|--------------------|------------------------|--------------------|---------------------|
| 801 Total | 30 | \$172,398 | |
| 811 Total | 47 | \$219,105 | \$18,174 |
| 812 Total | 58 | \$194,619 | |
| 860 Total | 48 | \$171,286 | |
| 862 Total | 46 | \$130,786 | |
| 866 Total | 31 | \$123,689 | \$11,451 |
| 868 Total | 18 | \$69,308 | \$14,439 |
| 874 Total | 67 | \$265,628 | |
| 875 Total | 67 | \$239,868 | |
| 876 Total | 64 | \$229,948 | |
| 877 Total | 45 | \$153,941 | |
| 878 Total | 48 | \$195,064 | |
| 879 Total | 77 | \$297,983 | |
| 880 Total | 28 | \$119,460 | \$10,779 |
| 881 Total | 63 | \$279,276 | |
| 882 Total | 64 | \$259,214 | |
| 883 Total | 22 | \$83,101 | \$15,814 |
| 884 Total | 91 | \$368,291 | |
| 885 Total | 30 | \$124,723 | |
| 886 Total | 35 | \$146,718 | |
| 888 Total | 30 | \$141,301 | |
| 889 Total | 41 | \$161,584 | |
| 891 Total | 74 | \$293,671 | |
| 893 Total | 38 | \$154,991 | |
| 894 Total | 44 | \$166,323 | |
| 896 Total | 73 | \$226,832 | |
| 897 Total | 77 | \$182,052 | |
| 898 Total | 40 | \$127,005 | |
| 899 Total | 73 | \$128,938 | |
| 901 Total | 37 | \$115,190 | |
| 904 Total | 35 | \$117,193 | |
| 905 Total | 24 | \$92,765 | \$20,675 |
| 907 Total | 43 | \$176,482 | |
| 908 Total | 34 | \$131,642 | |
| 909 Total | 44 | \$169,402 | |
| 911 Total | 40 | \$180,218 | \$14,245 |
| 912 Total | 36 | \$148,771 | |
| 913 Total | 30 | \$118,864 | |
| 914 Total | 84 | \$169,533 | |
| 916 Total | 46 | \$56,770 | |
| 917 Total | 46 | \$68,921 | |
| 918 Total | 53 | \$130,054 | |
| 949 Total | 35 | \$186,164 | \$25,805 |
| Grand Total | 2036 | \$7,289,272 | \$131,382 |
| Adjusted | | \$7,157,890 | |

*Excludes Store Numbers 871 and 903

**UFCW Represented Furr's Employees
Severance Calculations By Store***

| Store # | Total Employees | Severance II | Already Paid |
|-------------|-----------------|--------------|--------------|
| 801 Total | 30 | \$6,221 | |
| 802 Total | | | |
| 812 Total | 58 | \$10,611 | |
| 860 Total | 48 | \$7,959 | |
| 862 Total | 46 | \$8,198 | |
| 863 Total | | | |
| 874 Total | 67 | \$13,388 | |
| 875 Total | 67 | \$13,089 | |
| 876 Total | 64 | \$11,086 | |
| 877 Total | 45 | \$9,455 | |
| 878 Total | 48 | \$9,689 | |
| 879 Total | 77 | \$16,346 | |
| 880 Total | | | |
| 881 Total | 83 | \$13,349 | |
| 882 Total | 64 | \$12,417 | |
| 883 Total | | | |
| 884 Total | 91 | \$17,371 | |
| 885 Total | 30 | \$6,941 | |
| 886 Total | 35 | \$7,558 | |
| 888 Total | 30 | \$5,187 | |
| 889 Total | 41 | \$7,588 | |
| 891 Total | 74 | \$14,766 | |
| 893 Total | 38 | \$8,727 | |
| 894 Total | 44 | \$8,797 | |
| 896 Total | 73 | \$13,886 | |
| 897 Total | 77 | \$14,176 | |
| 898 Total | 40 | \$8,672 | |
| 899 Total | 73 | \$10,353 | |
| 901 Total | 37 | \$7,543 | |
| 904 Total | 35 | \$6,532 | |
| 905 Total | | | |
| 907 Total | 43 | \$8,821 | |
| 908 Total | 34 | \$7,396 | |
| 909 Total | 44 | \$8,417 | |
| 910 Total | | | |
| 912 Total | 36 | \$7,692 | |
| 913 Total | 30 | \$5,577 | |
| 914 Total | 64 | \$12,576 | |
| 916 Total | 46 | \$7,032 | |
| 917 Total | 46 | \$7,392 | |
| 918 Total | 53 | \$7,802 | |
| 919 Total | | | |
| 920 Total | | | |
| 921 Total | | | |
| 922 Total | | | |
| 923 Total | | | |
| 924 Total | | | |
| 925 Total | | | |
| 926 Total | | | |
| 927 Total | | | |
| 928 Total | | | |
| 929 Total | | | |
| 930 Total | | | |
| 931 Total | | | |
| 932 Total | | | |
| 933 Total | | | |
| 934 Total | | | |
| 935 Total | | | |
| 936 Total | | | |
| 937 Total | | | |
| 938 Total | | | |
| 939 Total | | | |
| 940 Total | | | |
| 941 Total | | | |
| 942 Total | | | |
| 943 Total | | | |
| 944 Total | | | |
| 945 Total | | | |
| 946 Total | | | |
| 947 Total | | | |
| 948 Total | | | |
| 949 Total | | | |
| 950 Total | | | |
| 951 Total | | | |
| 952 Total | | | |
| 953 Total | | | |
| 954 Total | | | |
| 955 Total | | | |
| 956 Total | | | |
| 957 Total | | | |
| 958 Total | | | |
| 959 Total | | | |
| 960 Total | | | |
| 961 Total | | | |
| 962 Total | | | |
| 963 Total | | | |
| 964 Total | | | |
| 965 Total | | | |
| 966 Total | | | |
| 967 Total | | | |
| 968 Total | | | |
| 969 Total | | | |
| 970 Total | | | |
| 971 Total | | | |
| 972 Total | | | |
| 973 Total | | | |
| 974 Total | | | |
| 975 Total | | | |
| 976 Total | | | |
| 977 Total | | | |
| 978 Total | | | |
| 979 Total | | | |
| 980 Total | | | |
| 981 Total | | | |
| 982 Total | | | |
| 983 Total | | | |
| 984 Total | | | |
| 985 Total | | | |
| 986 Total | | | |
| 987 Total | | | |
| 988 Total | | | |
| 989 Total | | | |
| 990 Total | | | |
| 991 Total | | | |
| 992 Total | | | |
| 993 Total | | | |
| 994 Total | | | |
| 995 Total | | | |
| 996 Total | | | |
| 997 Total | | | |
| 998 Total | | | |
| 999 Total | | | |
| 1000 Total | | | |
| Grand Total | 2036 | \$388,992 | |
| Adjusted | | \$340,592 | |

*Excludes Store Numbers 811, 866, 868, 871, 880, 883, 903, 905, 911 and 949

EXHIBIT N

**UFCW Represented Furr's Employees
Accrued Vacation Calculations By Store***

| Store # | Total Employees | Vacation Pay |
|--------------------|----------------------------|---------------------|
| 801 Total | 30 | \$11,138 |
| 811 Total | 47 | \$16,132 |
| 812 Total | 58 | \$14,913 |
| 860 Total | 48 | \$12,933 |
| 862 Total | 46 | \$11,161 |
| 866 Total | 31 | \$9,673 |
| 868 Total | 18 | \$5,505 |
| 874 Total | 67 | \$20,167 |
| 875 Total | 67 | \$17,805 |
| 876 Total | 64 | \$16,469 |
| 877 Total | 45 | \$11,793 |
| 878 Total | 48 | \$14,866 |
| 879 Total | 77 | \$23,011 |
| 880 Total | 28 | \$8,761 |
| 881 Total | 63 | \$20,273 |
| 882 Total | 64 | \$18,887 |
| 883 Total | 22 | \$6,070 |
| 884 Total | 91 | \$27,581 |
| 885 Total | 30 | \$9,418 |
| 886 Total | 35 | \$11,185 |
| 888 Total | 30 | \$8,919 |
| 889 Total | 41 | \$11,415 |
| 891 Total | 74 | \$22,148 |
| 893 Total | 38 | \$10,822 |
| 894 Total | 44 | \$13,028 |
| 896 Total | 73 | \$17,816 |
| 897 Total | 77 | \$16,084 |
| 898 Total | 40 | \$10,057 |
| 899 Total | 73 | \$11,286 |
| 901 Total | 37 | \$9,326 |
| 904 Total | 35 | \$9,153 |
| 905 Total | 24 | \$7,857 |
| 907 Total | 43 | \$13,466 |
| 908 Total | 34 | \$9,934 |
| 909 Total | 44 | \$12,429 |
| 911 Total | 40 | \$13,590 |
| 912 Total | 36 | \$11,243 |
| 913 Total | 30 | \$8,579 |
| 914 Total | 64 | \$13,526 |
| 916 Total | 46 | \$6,383 |
| 917 Total | 46 | \$6,899 |
| 918 Total | 53 | \$10,409 |
| 949 Total | 35 | \$12,438 |
| Grand Total | 2036 | \$554,545 |

*Excludes Store Numbers 871 and 903

EXHIBIT O

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2001, a true and correct copy of DECLARATION OF IAIN GOLD IN SUPPORT OF MOTION OF UNITED FOOD AND COMMERCIAL WORKERS UNION LOCALS 540 AND 1564 FOR ORDER ALLOWING AND REQUIRING IMMEDIATE PAYMENT OF ADMINISTRATIVE EXPENSES was sent via UPS Next Day Air to:

Robert H. Jacobvitz, Esq.
David Thuma, Esq.
Jacobvitz, Thuma & Walker, P.C.
500 Marquette Avenue, Suite 650
Albuquerque, New Mexico 87102

David Heller, Esq.
Latham & Watkins
233 West Wacker Drive
58th Floor
Chicago, Illinois 60606

Ronald J. Silverman, Esq.
Bingham Dana LLP
399 Park Avenue
New York, New York 10022

Paul Fish, Esq.
Modrall, Sperling, Roehl, Harris
& Sisk, P.A.
500 Fourth Street, N.W.
Bank of America Centre, Suite 1000
Albuquerque, New Mexico 87103-2168

David H. Thomas III, Esq.
Dave Thomas & Associates, P.C.
3915 Carlisle
Albuquerque, New Mexico 87107

Mark L. Metz, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water Street, Suite 2100
Post Office Box 514000
Milwaukee, Wisconsin 53203-3400

Ronald E. Andazola, Esq.
Assistant U.S. Trustee
421 Gold Street, S.W., Suite 112
Albuquerque, New Mexico 87102

Jennie D. Behles, Esq.
J. D. Behles & Associates
400 Gold Avenue, S.W.
Suite 400
Albuquerque, New Mexico 87103-0849

Michael J. Cadigan, Esq.
Risey & Cadigan
6400 Uptown Boulevard
Suite 570-W
Albuquerque, New Mexico 87110

David G. Aelvoet, Esq.
Linebarger, et al.
310 South St. Mary's, Suite 1000
San Antonio, Texas 78205

Dean Gramlich, Esq.
McDermott, Will & Emery
227 West Monroe Street
Chicago, Illinois 60606

Pilar Vaile, Esq.
Provost & Umphrey, L.L.P.
Youngdahl & Sadin, P.C.
9621 Fourth Street, N.W.
Albuquerque, New Mexico 87114

Jared Bently Seneca Steele, Esq.
1200 "K" Street N.W.
Washington, D.C. 20005-4026

K. Lee Peifer, Esq.
The Law Offices of K. Lee Peifer
108 Wellesley Drive, S.E.
Albuquerque, New Mexico 87106

George "Dave" Giddens, Esq.
Law Offices of George "Dave" Giddens, P.C.
10400 Academy, Suite 350
Albuquerque, New Mexico 87111

Jonathon Linker, Esq.
599 Lexington Avenue
New York, New York 10022-6069

I also hereby certify that on September 26, 2001, a true and correct copy of DECLARATION OF IAIN GOLD IN SUPPORT OF MOTION OF UNITED FOOD AND COMMERCIAL WORKERS UNION LOCALS 540 AND 1564 FOR ORDER ALLOWING AND REQUIRING IMMEDIATE PAYMENT OF ADMINISTRATIVE EXPENSES was sent via U. S. Express Mail to:

William P. Davis, Esq.
Davis & Pierce P.C.
Post Office Box 6
Albuquerque, New Mexico 87103

Daniel J. Behles, Esq.
320 Gold S.W., Suite 1001
Post Office Box 415
Albuquerque, New Mexico 87103-0415

Donald Harris, Esq.
New Mexico Taxation and
Revenue Department
Post Office Box 8485
Albuquerque, New Mexico 87198-8485

Gail Gottlieb, Esq.
Sutin, Thayer & Browne
Post Office Box 1945
Albuquerque, New Mexico 87103

James C. Jacobsen, Esq.
Kelcher & McLeod
Post Office Drawer AA
Albuquerque, New Mexico 87103

Robert R. Feuille, Esq.
Post Office Box 99123
El Paso, Texas 79999-9123

Michael Reed, Esq.
McCreary, Veselka, Bragg & Allen, P.C.
Post Office Box 26990
Austin, Texas 78755-0990

Kimberly A. Middlebrooks, Esq.
Post Office Box 568
Albuquerque, New Mexico 87103

Carlos A. Miranda, Esq.
Krafsur Gordon Mott P.C.
Post Office Box 1322
El Paso, Texas 79947-1322

William J. Arland III, Esq.
Rodey, Dickason, Sloan, Akin & Robb, P.A.
Post Office Box 1888
Albuquerque, New Mexico 87103-1888

Duncan Scott, Esq.
Scott & Kienzle
Box 587
Albuquerque, New Mexico 87103-0587

John Farrow, Esq.
Fairfield, Farrow, Flowers, Pierson & Strotz
Post Office Box 35400
Albuquerque, New Mexico 87176-5400

Robert A. "Joe" Johnson, Esq.
Post Office Box 1276
Albuquerque, New Mexico 87103



DIANE ROSS

Schwartz, Steinsapir, Dohrmann & Sommers LLP
6300 Wilshire Boulevard
Suite 2000
Los Angeles, California 90048-5202
Telephone: (323) 655-4700
Facsimile: (323) 655-4488