

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

The United States Trustee for the District of New Mexico hereby objects to the application for employment of PricewaterhouseCoopers LLP (Application), and as her reasons therefore states the following:

1. The Application fails to adequately disclose PricewaterhouseCoopers LLP's (PWC) connections with interested parties. Although the U.S. Trustee is aware that PWC is a national accounting firm which will require a computerized conflicts check, no readily available information is given as to which of the Debtor's large secured and unsecured creditors have been or currently are PWC's clients. Further, no information is given as to the types of matters on which PWC has provided services to these interested parties.

2. The Application further fails to disclose the extent to which PWC provided services to the Debtor prior to the filing of the petition. Neither does the Application given any information as to the payment of PWC's professional fees in the year prior to the filing of the petition, and whether the payment of those billings were timely or untimely.

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.

4. Paragraph 16 of the declaration of Loretta Cross (Cross Declaration) and the Letter Agreement attached thereto as exhibit B, indicate that, "Price waterhouseCoopers will apply the retainer to pay any fees, charges and disbursements which remain unpaid as of the Petition Date, if any...." Full disclosure should be made as to the amounts applied to the retainer for unpaid fees, charges and disbursements. Further, disclosure should be made 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, even for a national accounting firm, and approval of such rates should be deferred until the submission of fee applications.

6. Paragraph 18 of the Cross Declaration indicates that changes in 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Respectfully submitted,

BRENDA MOODY WHINERY
United States Trustee

Filed electronically 3/8/01
Ron E. Andazola
Assistant United States Trustee
Post Office Box 608
Albuquerque, NM 87103
(505) 248-6544

The undersigned certifies that a true and accurate copy of the foregoing was mailed and sent by telefacsimile to the below listed counsel this 8th day of March, 2001.

Filed electronically 3/8/01
Ron E. Andazola

Robert H. Jacobvitz, Esq.
Jacobvitz, Thuma, & Walker
500 Marquette NW, Suite 650
Albuquerque, New Mexico 87102
(505) 766-9272

William F. Davis, Esq.
Davis & Pierce, P.C.
201 Broadway SE
P.O. Box 6
Albuquerque, NM 87103
(505) 243-6129

Paul Fish, Esq.
Modrall, Sperling, Roehl, Harris & Sisk P.A.
500 Fourth Street, N.W. Suite 1000
Albuquerque, N.M. 87103-2168
(505) 848-1800

Jennie Deden Behles, Esq.
J.D. Behles & Associates
400 Gold Ave. S.W., Suite 400
Albuquerque, N.M. 87103-0849
(505) 243-9756