

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.

Case No: 11-01-10779 SA

Objection to Debtor's Amended Motion for Approval of Wind Down Budget, Et Cetera

Now Comes the New Mexico Taxation and Revenue Department ("Department"), by and through its undersigned counsel, states:

1. The effect of state statutes regarding transferring liquor licenses creates a super-priority lien for the Department which primes a bank's lien. *First Interstate Bank v. Tax and Rev.*, 108 N.M. 756, 779 P.2d 133 (N.M. App. 1989).
2. The liquor portion of the Department's claim (the portion attributable to the gross receipts on alcohol sales) must be paid prior to any payments to any secured creditor.
3. The Debtor's motion appears to create new classes of super-administrative priority creditors, potentially at the expense of the Department.
4. These new classes of creditors (e.g., retained managers and employees injured pre-petition) cannot receive payments under either the Bankruptcy Code, § 507(a), or state law, NMSA § 7-1-61, until the Department is paid in full.
5. The ability to compromise the unsecured creditors' committee's lawsuit should not be given to the Debtor, but to the Department if anyone other than the committee, because the Department has a large priority claim approaching \$4 million.
6. The secured lenders are required both under the Bankruptcy Code, § 506(c), and under common law, *Ninth Dist. Production Credit Ass'n v. Ed Duggan, Inc.*, 821

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P.2d 788 (Colo. 1991), to pay for the expenses relating to preserving their collateral. The secured creditors should fund those expenses without seeking to "tie" the performance of that obligation to the elimination of any possible recovery to unsecured creditors or otherwise to the Department.

7. The budget may be low for the post-petition gross receipts taxes.

WHEREFORE, the Debtor's motion should be denied.

Respectfully submitted,

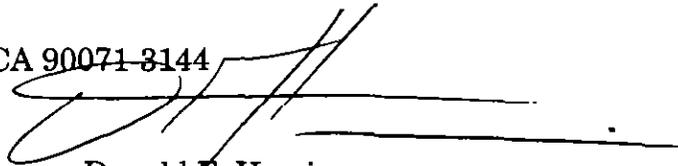


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