

In re:

FURR'S SUPERMARKETS, INC.,
A Delaware Corporation,

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

Case No. 11-01-10779 SA
Chapter 11

Debtor.

**THE DIVISION'S SPECIAL APPEARANCE AND OBJECTION TO DEBTOR'S
MOTION FOR ORDER DETERMINING THAT THE DIRECTOR OF THE NEW
MEXICO ALCOHOL AND GAMING DIVISION MAY NOT CONDITION
APPROVAL OF THE TRANSFER OF DEBTOR'S LIQUOR LICENSES UPON
PAYMENT IN FULL TO LIQUOR WHOLESALERS**

The New Mexico Alcohol and Gaming Division (the Division), by and through the Attorney General (Assistant Attorney General Daniel Rubin), hereby specially appears and objects to the Debtor's motion for order determining that the Director of the Division may not condition approval of the transfer of debtor's liquor licenses upon payment in full to liquor wholesalers, and in support states as follows:

1. The Division hereby specially appears subject to and without waiving any rights enjoyed by the State of New Mexico pursuant to the Eleventh Amendment of the United States Constitution, including its immunity to suit in federal court. A state's right to specially appear in federal bankruptcy court without waiving its immunity pursuant to the Eleventh Amendment is well-settled. *See, e.g., In re Secretary of Dep't of Crime Control and Public Safety*, 7 F.3d 1140, 1148 n.6 (4th Cir. 1993).

2. The Division further specially appears subject to and without waiving any rights enjoyed by the State of New Mexico pursuant to the Twenty-First Amendment of the United States Constitution.

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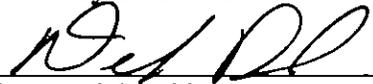
9. Such laws include Section 60-6B-4, providing for approval of a transfer by the appropriate governing body, Section 60-6B-7, providing for cancellation of any license if the licensee fails to notify the Division of a cessation of operations for more than ten days, and Section 60-6B-12, governing inter-local option district transfers of licenses. Other provisions of the New Mexico Liquor Control Act, and regulations promulgated thereunder, may also apply.

10. The Division thus asks that the Court approve the sale only after Debtor and Purchaser comply with all applicable provisions of the Liquor Control Act, and all regulations promulgated thereunder by the Division.

WHEREFORE, the Division respectfully asks that the Court deny Debtor's motion, and asks for such other and further relief as the Court deems just and proper.

Respectfully submitted,

PATRICIA MADRID
Attorney General of New Mexico


by: Daniel Rubin
Assistant Attorney General
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CERTIFICATE OF SERVICE

The undersigned hereby affirms that he served a copy of the forgoing *Special Appearance and Objection*, and the attached *Memo in Support*, on the following counsel of record by first-class U.S. mail, postage prepaid, this 2nd day of August, 2001:

Robert Jacobvitz
500 Marquette, N.W.
Suite 650
Albuquerque, New Mexico 87102


Daniel Rubin