

ORIGINAL

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

FILED
2001 AUG -3 PM 2:14
U.S. BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779 SA
Chapter 11

Debtor.

**PETROLEUM CAPITAL'S OBJECTION TO (1) APPROVAL OF NEWCORP AS
THIRD PARTY PURCHASER AND (2) FINDING OF ADEQUATE ASSURANCE
OF FUTURE PERFORMANCE UNDER SECTION 365(f)(2)(B) OF THE
BANKRUPTCY CODE**

Petroleum Capital, lessor of printers and other point-of-sale equipment pursuant to an equipment lease agreement with Furr's Supermarkets, Inc. (the "Debtor") dated November 1, 2000 (the "Equipment Lease"), hereby objects to the designation of NEWCORP as a third party purchaser of a portion of the Equipment Lease, as proposed by Fleming Companies, Inc., the purchaser of the Debtor's assets (the "Purchaser").¹ Petroleum Capital specifically objects to NEWCORP's designation on the grounds that the Purchaser has failed to provide adequate assurance of NEWCORP's ability to perform as required under Section 365(f)(2)(B) of the Bankruptcy Code.

On August 2, 2001, Petroleum Capital received four pages of information about NEWCORP, apparently to be called "Supermarket Enterprises LLC." These documents confirmed that NEWCORP is a yet-to-be formed New Mexico limited liability company, and that Messrs. Denison and Friederich are the principals. The only financial

¹ Due to the limited nature of the question before the Court, this Objection focuses solely on the Section 365(f)(2)(B) issue. Petroleum Capital reserves its right to object to any piecemeal assignment of its Equipment Lease, including the proposed partial assignments to those third party purchasers as to which Petroleum Capital has not objected as part of this Section 365(f)(2)(B) Objection.

8/4

information provided reveals that NEWCORP has not yet secured financing, and apparently intends to be capitalized with only \$1,000,000 of equity to operate ten stores, which is unclear but may not involve any cash investment from the principals or other equity holders. For working capital, it appears that NEWCORP will rely only on a line of credit and long-term lending from Chase Manhattan Bank, for which it has no commitment. Based on this information, the Debtor, Fleming Companies, Inc., and NEWCORP have failed to meet the burden of providing adequate assurances of future performance required by Section 365(f)(2)(B) of the Bankruptcy Code.

Petroleum Capital therefore respectfully requests that this Court (1) hold that NEWCORP has failed to provide adequate assurances of future performance pursuant to Section 365(f)(2)(B) of the Bankruptcy Code with respect to the Equipment Lease or alternatively (2) continue this hearing to a date sufficient to provide Petroleum Capital with at least five business days following receipt of meaningful financial documentation regarding NEWCORP to file a Supplemental Objection if appropriate.

Dated: August 2, 2001

Respectfully submitted,

COOLEY GODWARD LLP

By: 
Robert L. Eisenbach III

One Maritime Plaza
20th Floor
San Francisco, CA 94111
(415) 693-2000

Attorneys for Petroleum Capital

PROOF OF SERVICE

I, Kris Tsao Cachia, hereby declare:

I am employed in the City of San Francisco, County of San Francisco, California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Cooley Godward LLP, One Maritime Plaza, 20th Floor, San Francisco, California 94111-3580.

On August 2, 2001, I served the foregoing document(s) described as:

Petroleum Capital's Objection to (1) Approval of Newcorp as Third Party Purchaser and (2) Finding of Adequate Assurance of Future Performance Under Section 365(f)(2)(B) of the Bankruptcy Code

on the interested parties in this action by placing a true copies thereof, on the above date, enclosed in sealed envelopes for service and prepared for processing in the manner indicated below, addressed as follows or as stated on the attached service list:

Robert H. Jacobvitz
Jacobvitz, Thuma & Walker PC
500 Marquette, NW
Suite 650
Albuquerque, NM 87102
FAX: (505) 766-9287

Stephen J. Lubben
Skadden Arps Slate Meagher & Flom LLP
300 South Grand Avenue, Suite 3400
Los Angeles, CA 90071-3144
(213) 687-5600

XX (BY FIRST CLASS MAIL) I am personally and readily familiar with the business practice of Cooley Godward LLP for collection and processing of correspondence for mailing with the United States Postal Service, pursuant to which mail placed for collection at designated stations in the ordinary course of business is deposited the same day, proper postage prepaid, with the United States Postal Service.

XX (BY FACSIMILE TRANSMISSION) I am personally and readily familiar with the business practice of Cooley Godward LLP for collection and processing of notices and other papers for facsimile transmission, pursuant to which, in the ordinary course of business, such documents are delivered to a designated station at Cooley Godward LLP for transmission by facsimile that same day addressed as listed above or on the attached service list, including the facsimile telephone number(s) to which the notice or other paper was transmitted.

* * * * *

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 2, 2001 at San