

**FILED**  
12:00 MIDNIGHT

**UNITED STATES BANKRUPTCY COURT**

**AUG 09 2001**

**DISTRICT OF NEW MEXICO**

**DROP BOX**  
United States Bankruptcy Court  
Albuquerque, New Mexico

**IN RE:**

**Case No. 11-01-10779 SA**

**FURR'S SUPERMARKETS, INC.,**

**Chapter 11**

**Debtor.**

**JOE G. MALOOF'S RESPONSE TO DEBTOR'S MEMORANDUM  
IN SUPPORT OF 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**

TO THE HONORABLE JAMES S. STARZYNSKI

Comes now, Joe G. Maloof and Company, a liquor license wholesaler and a creditor of Furr's Supermarkets, Inc., Debtor-in-Possession, by and through its attorneys, Marchiondo Vigil & Associates P.C. (Kimberly A. Middlebrooks) and Philip Marchiondo, and hereby submits this response to the Debtor's Memorandum in Support of 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.

**I. Joe G. Maloof and Company supports the position of the New Mexico Alcohol and Gaming Division as discussed in its Memorandum in Support of 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.**

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The arguments as set forth by the New Mexico Alcohol and Gaming Division adequately set forth the position of Joe G. Maloof and Company regarding the Eleventh amendment and the Twenty-First Amendment.

**II. It is the position of Joe G. Maloof and Company that N.M.S.A. §60-6B-3(E) creates a conditions precedent to the transfer of the liquor license in favor of the wholesalers.**

The United States District Court for the District of New Mexico, upon recommendation of the United States Bankruptcy Court, certified to the New Mexico Supreme Court the question of whether NMSA 1978, Sections 7-1-82 and 60-6B-3(E) create conditions precedent to the transfer of a liquor license and therefore the Claims of the tax department and liquor wholesales have super priority status over security interests, mortgages and other liens or whether the requirements of NMSA 1978, Section 7-1-37 and general lien law must be met in order to effectuate a claim under Sections 7-1-82 and 60-6B-3(E). In What D'Ya Call It, Inc., 105 NM 164, 730 P.2d 467 (1986) the New Mexico Supreme Court held "Section 7-1-82 creates conditions precedent to obtaining approval for the transfer of a liquor license. This section assures the New Mexico Taxation and Revenue Department of payment in full for all taxes due from engaging in business authorized by the liquor license by prohibiting the transfer, assignment, lease or sale of a liquor license unless the conditions as to the payment of taxes have been met."

The New Mexico Liquor Control Act provides a wholesale liquor distributor with a lien on the liquor licenses of any liquor licensee for outstanding debts of the licensee to the distributor.

The transfer, assignment, sale or lease of any license shall not be approved until the director is satisfied that all wholesalers who are creditors of the licensee have been paid or that satisfactory arrangements have been made between the licensee and the wholesaler for the payment of such debts. Such debts shall constitute a lien on the license, and the lien shall be deemed to have arisen on the date when the debt was originally incurred.

NMSA 1978 §60-6B-3(1998)

Satisfactory arrangements have not been made by the Debtor with Joe G. Maloof and Company. Furthermore, Joe G. Maloof and Company will not voluntarily waive its right to payment upon the transfer of the liquor license. The current amount outstanding is \$569,167.32.

WHEREFORE, Joe G. Maloof and Company prays that this Court deny the Debtor's Motion, prays that the Court require immediate payment to the liquor license wholesalers prior to, or contemporaneous with the transfer of the liquor licenses and prays for such other and further relief as this Court deems just and proper.

Respectfully submitted,

Marchiondo Vigil & Associates, P.C.



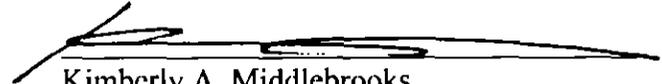
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## Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been served by first class United States mail on this 9<sup>th</sup> day of August, 2001, to all parties listed below:

  
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