

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Case No. 02-B02474
)
KMART CORPORATION,) Chapter 11
) Hon. Susan Pierson Sonderby
Debtor.) **Hearing Date: October 28, 2008**
) **Hearing Time: 11:00 a.m.**
) **Objection Deadline: October 21, 2008**

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **Tuesday, October 28, 2008, at the hour of 11:00 a.m.**, we shall appear before Judge Susan Pierson Sonderby, Courtroom 642, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois, or before any other judge who may be sitting in her place and stead, and shall present the **Kmart's Motion for Order Authorizing Retention of New Claims Agent, Discharge of Existing Claims Agent, Amendment of Case Management Order, and Destruction of Certain Documents**, a copy of which is attached hereto and herewith served upon you at which time and place you may appear if you so see fit.

Dated: October 8, 2008

Respectfully submitted,

/s/ William J. Barrett

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CERTIFICATE OF SERVICE

I, William J. Barrett, an attorney, hereby certify that a true and correct copy of the foregoing **Notice of Motion** and **Kmart's Motion for Order Authorizing Retention of New Claims Agent, Discharge of Existing Claims Agent, Amendment of Case Management Order, and Destruction of Certain Documents** was served to the following parties via first class, postage prepaid, United States mail delivery on the 8th day of October, 2008:

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/s/ William J. Barrett

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Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive e-mail notices for this case.

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

KMART CORPORATION,

Debtor.

Chapter 11

Case No. 02 B 02474

Honorable Susan Pierson Sonderby

Hearing Date: October 28, 2008
11:00 a.m.

**KMART'S MOTION FOR ORDER AUTHORIZING RETENTION OF NEW
CLAIMS AGENT, DISCHARGE OF EXISTING CLAIMS AGENT,
AMENDMENT OF CASE MANAGEMENT ORDER, AND DESTRUCTION OF
CERTAIN DOCUMENTS**

Kmart Corporation ("Kmart") for its Motion for Order Authorizing Retention of New Claims Agent, Discharge of Existing Claims Agent, Amendment of Case Management Order, and Destruction of Certain Documents, states as follows:

1. Kmart commenced its Chapter 11 bankruptcy case on January 22, 2002. Kmart confirmed its Chapter 11 Plan of Reorganization on April 26, 2003, which Plan became effective on May 6, 2003.

2. Over 58,000 proofs of claim were filed in this case. All but 300 claims have been resolved, including all commercial claims (those of vendors, landlords, and contract providers) other than the claim of Continental Insurance Company that is pending before the Court in an adversary proceeding. The remaining claims are mostly personal injury claims that have either been referred to state courts for determination of liability or which remain in this Court.

3. Throughout the case, The Trumbull Group, LLC d/b/a Wells Fargo Trumbull (“Trumbull”) has served as the claims agent for this case.

4. Trumbull has advised Kmart and the Clerk of the Court that Trumbull is withdrawing from the claims management business on or about October 31, 2008. Accordingly, it has become necessary for Kmart to propose to the Court a replacement for Trumbull.

A. Retention of BMC Group, Inc.

5. Kmart has identified BMC Group, Inc. (“BMC”) as an experienced bankruptcy claims manager that can provide the essential services Trumbull provides. Specifically, BMC has proposed to Kmart an arrangement under which BMC will perform the following services: (a) receipt and recordation of claims and claims images, (b) storage and system access to claims data and images, (c) call center support for claims requests and (d) a public case/claims information website.

6. Subject to approval of the Court,¹ Kmart proposes to retain BMC as claims agent in this case to perform the services described above (a copy of the proposed Agreement is attached as Exhibit 1 hereto). Kmart does not propose that BMC be responsible for any noticing duties in this case since there are no remaining notices in this case that would otherwise be the obligation of the Clerk. The only remaining motion of general applicability to be filed in this case is the motion for entry of a final decree. Bankruptcy Rule 2002, however, does not require that the Clerk serve notice of such a motion. At the time Kmart files a motion for entry of a final decree, Kmart will serve the motion itself.

¹ Kmart understands that, in addition to any agreement between Kmart and BMC, the Clerk will require certain undertakings from BMC related to the maintenance of a claims register and the preservation of claims.

B. Discharge of The Trumbull Group, Inc.

7. Upon the retention of BMC, Kmart requests that it be permitted to accept the resignation of Trumbull as claims agent.²

C. Handling of Hard Copies of Proof of Claims.

8. Trumbull has created an electronic image of each proof of claim filed with Trumbull in this case. Trumbull will transfer the images to BMC as part of the transition of claims agent duties. Trumbull also maintains in storage at Iron Mountain Incorporated (“Iron Mountain”) copies of the original claims. Kmart proposes that the stored claims remain in storage at Iron Mountain pending direction from the Clerk as to the disposition of the claims. Kmart will assume directly the cost of storing the claims, but access to the claims would be limited to BMC and the Clerk.

D. New Claim Filings.

9. Kmart proposes that the Case Management Order be amended to (i) show the address of BMC for the filing of claims and (ii) provide that Kmart need not recognize any new claim unless the claimant has obtained an order granting the claimant leave to file a late claim. The last claims bar date in this case passed on June 19, 2003. Although it is still possible that a claimant previously unheard from might file a claim, or that a claimant with an open claim might file an amendment to its claim, Kmart believes that at this late date any such claimant must first demonstrate excusable neglect or some other cause that justifies the delay in filing the claim or amendment.

² Kmart understands that the Clerk will also have to consent to Trumbull’s resignation, and that the Clerk may require certain undertakings from Trumbull related to the maintenance of a claims register and the preservation of claims.

E. Amendment to Case Management Order.

10. Kmart proposes that the Fourth Case Management Order (“CMO”) be amended in additional ways to reflect the current state of the case. Attached as Exhibit 1 hereto is the CMO marked to show changes proposed by Kmart.

F. Plan Balloting and Returned Service Documents.

11. Trumbull has in its possession numerous papers, other than proof of claims, relating to the bankruptcy case, including returned ballots and returned service envelopes. Kmart believes that these materials are no longer useful since there has been no question regarding a ballot in over five years and no “late claim” matters involving a service issue in almost two years. Kmart believes it is appropriate that Trumbull and/or Iron Mountain be instructed to destroy all such documents.

WHEREFORE, Kmart moves that the Court:

(i) Enter an order authorizing the retention of BMC as claims agent in this case, the resignation of Trumbull as claims agent in this case, the continuation of the storage of claims at Iron Mountain at the expense of Kmart, and the destruction of documents maintained at Trumbull that concern or relate to voting on the Kmart Plan of Reorganization or returned service items; and

(ii) Enter the Fifth Amended Case Management Order, reflecting the changes appearing on Exhibit 2 hereto.

Dated: October 8, 2008

KMART CORPORATION

By: /s/ William J. Barrett
One of its Attorneys

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