

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: March 17, 2009  
) Hearing Time: 11:00 a.m.

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on **Tuesday, March 17, 2009, 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 Tenth Motion to Lift Plan Injunction for Unresolved Personal Injury Claims**, 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: February 10, 2009

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 **Kmart's Tenth Motion to Lift Plan Injunction for Unresolved Personal Injury Claims**, was served via first class U.S. Mail, postage prepaid, to the parties listed on the attached Mailing Service List, on the 10<sup>th</sup> day of February, 2009.

/s/ William J. Barrett \_\_\_\_\_

William J. Barrett

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

In re:

KMART CORPORATION,

Debtor.

Case No. 02 B 02474

Honorable Susan Pierson Sonderby

Hearing Date: March 17, 2009

Hearing Time: 11:00 a.m.

**KMART'S TENTH MOTION TO LIFT PLAN INJUNCTION  
FOR UNRESOLVED PERSONAL INJURY CLAIMS**

Kmart Corporation ("Kmart") moves for entry of an order lifting the plan injunction as to certain personal injury claims. In support of this motion, Kmart states as follows:

1. Kmart filed its Chapter 11 petition on January 22, 2002. On April 22, 2003 Kmart confirmed its Joint Plan of Reorganization (the "Plan"), which became effective on May 6, 2003.

2. Under the Plan, Kmart is the party responsible for the resolution of all claims in this case and is the party responsible for disbursements to be made under the Plan. In those capacities, Kmart seeks the following relief. Kmart is working diligently to conclude the bankruptcy case, including the resolution of all claims.

3. Approximately 58,000 proofs of claims were filed in this case. As of February 10, 2009, less than 300 proofs of claims for claims of all classes remain "open." Kmart recognizes a claim as "open" if (i) there has been no order entered disallowing or allowing the claim or (ii) Kmart does not have a written acknowledgment from the claimant that the claim has been resolved.

4. Most of the Open Claims are personal injury claims for which the claimant has not sought relief from the permanent injunction in Section 12.11 of the Plan, Section 12 of the April 23, 2003 Order confirming the Plan, and Sections 541 and 1141 of the Bankruptcy Code (the foregoing are collectively referred to as the "Plan Injunction") that would permit the claimant to

liquidate its claim in state court (such claims, listed on Exhibit A hereto, are referred to as “Stayed Claims”). The Stayed Claims are presently in limbo – this Court lacks the jurisdiction to liquidate any such claim, and so long as the Plan injunction remains in place no other court may liquidate the claim.

5. To move the Stayed Claims towards some form of resolution, and thus to advance the completion of this bankruptcy case, Kmart seeks to lift the Plan Injunction with respect to the Stayed Claims and to give notice to the claimants that, with respect to the liquidation of their claims, they are no longer stayed from proceeding in the appropriate court. An effect of such notice is the resumption of the statute of limitations with respect to the claim. See 11 U.S.C. §108(c).

WHEREFORE, Kmart moves for entry of the order submitted herewith that (i) terminates the Plan injunction, and all other stays imposed by the Bankruptcy Court, with respect to the liquidation (but not the collection) of the Stayed Claims and (ii) directs that Kmart send a copy of the order as well as a notice of the termination of all stays and injunctions to each holder of a Stayed Claim.

Dated: February 10, 2009

KMART CORPORATION

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