

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

IN RE:	)	
	)	
KMART CORPORATION, et. al.	)	
Debtors	)	Chap. 11
	)	NO. 02 B 2474
	)	
	)	
	)	Judge Susan Pierson Sonderby
	)	United States Bankruptcy Judge
	)	
	)	
	)	

**NOTICE OF MOTION FOR RELIEF FROM AUTOMATIC STAY AND TO LIFT PLAN INJUNCTION**

PLEASE TAKE NOTICE that at 11:00 am on the 16<sup>th</sup> day of June, 2009, or as soon thereafter as counsel may be heard, I shall appear before the honorable Judge Susan Pierson Sonderby in Courtroom 642 of the U.S. Courthouse at 219 S. Dearborn Street, Chicago, Illinois, and shall then and there present the Motion for Relief from Automatic Stay and to Lift Plan Injunction, at which time and place you may appear if you see fit so to do. This hearing may be continued from time to time without further notice to you other than the announcement in open court of the continued date. Objections to the Motion must be filed with the Clerk of the Court and received by counsel for the Movant prior to the hearing. In the absence of Objection, the Motion may be granted without a hearing.

Dated this 28 day of April 2009.

*/s/ hwa*

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Henderson, NV 89012

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**MOTION FOR RELIEF FROM AUTOMATIC STAY AND TO LIFT PLAN  
INJUNCTION**

Petitioner/Movant/Claimant Meghan Hall (“Hall,” “Claimant” or “Movant”) by her attorneys Christian Gabroy of Gabroy Law Offices moves this Honorable Court for an Order lifting the Automatic Stay of Proceedings pursuant to Section 362(d)(1), 541, 524, and 1141 of the Bankruptcy Code and for relief from the Article 12.11 of Kmart’s First Amended Plan of Reorganization, and Section 12 of the April 23, 2003 Order confirming the Plan (collectively referred herein as the “Plan Injunction”) issued as it pertains to the Hall only, and in support of said motion states:

1. On or about January 22, 2002, (the “Petition Date”), Kmart and certain of its domestic subsidiaries and affiliates (“Debtors”) filed their respective petitions for relief under Chapter 11 of the Bankruptcy Code.
2. On or about April 23, 2003, this Court entered an Order confirming the

First Amended Plan of Reorganization of Kmart Corporation and its Affiliated Debtors.

3. On May 6, 2003, This Court entered an Order confirming the First Amended Plan of Reorganization and its Affiliated Debtors.

4. On May 6, 2003, the Debtor's bankruptcy reorganization plan (the "Plan") occurred.

5. On or about June 2, 2002 minor Hall was injured at the debtor's Kmart store in Las Vegas, Nevada

6. On July 18, 2002, this Court entered an Order Approving Procedures for (A) Liquidating and Settling Personal Injury Claims and/or (B) Modifying the Automatic Stay to permit Certain Litigation with Respect to Such Claims to Proceed (the "ADR Procedures Order").

7. Pursuant to the ADR Procedures Order, the Court approved Alternative Dispute Resolution Procedures for Post-Petition Personal Injury Claims (the "Claims Resolution Procedure") such as those held by Hall.

8. Pursuant to the Claims Resolution Procedure, Hall timely submitted her Questionnaire.

9. Subsequently, Kmart submitted its Response to the Questionnaire. Unfortunately, despite the party's efforts, settlement negotiations are at an impasse, and Hall has exhausted the steps set forth in the Claims Resolution Procedure. In its Response, Kmart stated that they would not oppose this Motion to Lift the Stay.

10. Pursuant to Section 7 of the Claims Resolution Procedures, because Hall and Kmart have "exhausted the Procedures provided for [in the ADR Procedures Order]",

Hall is now entitled to consensual entry of a stipulation lifting the Plan injunction as contemplated in Section 7A thereof.

11. Also, §362(d)(1) of the Bankruptcy Code permits relief from the automatic stay “for cause”. Whether cause exists to grant a creditor discretionary relief from the stay must be determined on a case-by-case basis. See *In re Benalcazar*, 283 B.R. 514 (Bankr.N.D.Ill.2002); and *In re Comdisco. Inc.*, 271 B.R. 273 (Bankr.N.D.Ill.2002). In deciding whether to modify the automatic stay for cause, a bankruptcy court may consider such factors as “interference with the bankruptcy, good or bad faith of the debtor, injury to the debtor and other creditors if the stay is modified, injury to the movant if the stay is not modified and proportionality of harms from modifying or continuing the stay.” *Sheet Metal Workers & Sierra Const.*, 2002 WL 575701, 2 (N.D.Ill.2002) citing *In re Milne*, 185 B.R. 280, 283 (N.D.Ill.2005). A primary element in determining whether to modify the stay is whether the bankruptcy estate will be prejudiced thereby. *In re Miller*, 228 B.R. 203 (Bankr.N.D.Ill.1999).

12. In addition, “courts have modified or lifted the section 362(a) automatic stay to permit the continuance of a civil suit involving a debtor where (1) no “great prejudice” to either the debtor or the bankruptcy estate would result from the continuance of the civil action; and (2) the hardship to the plaintiff caused by the continuance of the stay outweighs the hardship caused to the debtor by modification of the stay.” *In re UNR Industries.Inc.* 54 B.R. 266, 268 (Bkrtcy.Ill.1985), citing *Holtkamp v. Littlefield (In re Holtkamp)*, 669 F.2d 505, 508 (7<sup>th</sup> Cir.1982); *In re McGraw*. 18 B.R. 140, 142 (Bankr.W.D.Wis.1982).

13. Courts have also modified or lifted the automatic stay where resolution of the issues involved in movant's state court suit would not involve or require the specialized expertise of a bankruptcy tribunal. *In re UNR Industries, Inc.*, 54 B.R. 266 at 268.

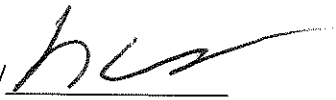
14. In this case, it is respectfully submitted that the bankruptcy stay should be lifted to permit Hall's personal injury action to proceed in the District of Clark County of the State of Nevada. Movant has attached a sample order for this Court's consideration as Exhibit A. First, lifting the stay would not interfere with the Debtor's bankruptcy. Second, the lifting of the stay would not hurt the Debtor or other creditors, but rather, would allow Hall to seek recovery for the serious injuries suffered by Hall. Third, Hall's state court suit does not involve or require the specialized expertise of a bankruptcy tribunal. Fourth, Hall should have her day in court against any non-Debtor parties who may be liable for any of Hall's injuries.

15. In addition, for the foregoing reasons the injunction set forth in Article 12 of the Debtors' Plan should be lifted so as to allow Hall to pursue her Complaint in State Court.

**WHEREFORE**, Hall prays that pursuant to §362(d)(1) of the Bankruptcy Code, the automatic stay be lifted and the Plan Injunction be modified to permit Hall to pursue her Complaint in State Court, and that this Court grant such other and further relief as may be just

Respectfully submitted,

MEGHAN HALL

By: \_\_\_\_\_ /s/ 

*Attorney for the Plaintiff*

Christian Gabroy, Esq.

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**CERTIFICATE OF SERVICE**

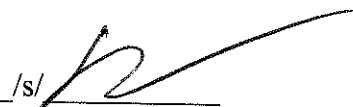
The undersigned attorney certifies that he caused a copy of the foregoing Notice and Motion to be served electronically upon the United States Trustee and Debtor's attorney (and any others having registered) pursuant to Section II(B)(4) of the Administrative Procedures for the Case Management/Electronic Case Filing System through the Court's Electronic Notice for Registrants, and upon the following parties:

Andrew Goldman, Esq.  
Wilmer Cutler Hale & Door  
399 Park Avenue  
New York, NY 10022

William Barrett, Esq.  
Barack Ferrazzano Kirschbaum Perlman & Nagelberg  
333 West Wacker Drive, Suite 2700  
Chicago, IL 60606

Kathryn Gleason, Attorney  
Office of the United States Trustee  
227 West Monroe, Suite 3350  
Chicago, IL 60606

Via United States mail on April 28, 2009.

  
\_\_\_\_\_  
/s/  
Christian Gabroy, Esq.

Christian Gabroy, Esq.

Attorney for Meghan Hall

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**EXHIBIT A**

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

IN RE: )  
 )  
KMART CORPORATION, et. Al, ) No. 02 B 02474  
 ) Hon. Susan Pierson Sonderby  
 ) Chapter 11  
Reorganized Debtors. )

**ORDER MODIFYING AUTOMATIC STAY AND PLAN INJUNCTION  
IN FAVOR OF MEGHAN HALL**

This case coming to be heard on the Motion (the "Motion") of Meghan Hall ("Hall") for relief from the automatic stay and for relief from Article 12.11 of Kmart's First Amended Joint Plan of Reorganization, which became effective as of May 6, 2003, pursuant to Article 12.11 thereof and 11 U.S.C. §524 and §1141 (the "Plan Injunction"); it appearing that Hall has exhausted the alternative dispute resolution procedures approved by this Court; neither Kmart Corporation or certain of its subsidiaries, former debtors and debtors in possession in the above-captioned cases (collectively "Kmart") nor any other party having objected to entry of this order; it appearing to the Court that he relief requested in the Motion should be granted;

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The automatic stay imposed by 11 U.S.C. §362 ("the Automatic Stay") and the Plan Injunction are hereby modified with respect to those certain personal injury claims of Hall against Kmart that allegedly arose on or about June 11, 2002 in Las Vegas, Nevada (the "Claims") in accordance with the terms set forth in this Order.
2. The Automatic Stay and the Plan Injunction are lifted to permit litigation of the Claims to proceed and continue to a final judgment or settlement.
3. Notwithstanding anything in this Order to the contrary, the Automatic Stay and the

Plan Injunction shall remain in effect with respect to any and all actions by Hall to execute on any final judgment or settlement agreement that may be entered or agreed to in favor of Hall and against Kmart, the Kmart estates, the reorganized debtors, or any of their property.

4. Notwithstanding in this Order shall be deemed an admission of the fact on the part of Kmart with respect to the Claims or any facts alleged in the Motion or in the litigation by Hall.
5. This Court shall retain jurisdiction to hear any matters or disputes arising from or relating to this Order.

Dated \_\_\_\_\_

ENTER: \_\_\_\_\_

Hon. Susan Pierson Sonderby  
U.S. BANKRUPTCY JUDGE

**Prepared by:**

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REQUIRED STATEMENT TO ACCOMPANY ALL MOTIONS FOR RELIEF FROM STAY

All Cases: Debtor(s) Kmart Corporation Case No. 02 b 2474 Chapter 11

All Cases: Moving Creditor Meghan Hall Date Case Filed n/a

Nature of Relief Sought: [X] Lift Stay [ ] Annul Stay [ ] Other (describe)

Chapter 13: Date of Confirmation Hearing n/a or Date Plan Confirmed n/a

Chapter 7: [ ] No-Asset Report Filed on n/a [ ] No-Asset Report not Filed, Date of Creditors Meeting n/a

- 1. Collateral a. [ ] Home b. [ ] Car Year, Make, and Model n/a c. [ ] Other (describe) n/a

2. Balance Owed as of Petition Date \$ n/a Total of all other Liens against Collateral \$ n/a

3. Estimated Value of Collateral (must be supplied in all cases) \$ n/a

- 4. Default a. [ ] Pre-Petition Default Number of months Amount \$ n/a b. [ ] Post-Petition Default i. [ ] On direct payments to the moving creditor Number of months Amount \$ n/a ii. [ ] On payments to the Standing Chapter 13 Trustee Number of months Amount \$ n/a

- 5. Other Allegations a. [ ] Lack of Adequate Protection § 362(d)(1) i. [ ] No insurance ii. [ ] Taxes unpaid Amount \$ iii. [ ] Rapidly depreciating asset iv. [ ] Other (describe) n/a

b. [ ] No Equity and not Necessary for an Effective Reorganization § 362(d)(2)

- c. [ ] Other "Cause" § 362(d)(1) i. [ ] Bad Faith (describe) n/a ii. [ ] Multiple Filings iii. [ ] Other (describe)

- d. Debtor's Statement of Intention regarding the Collateral i. [ ] Reaffirm ii. [ ] Redeem iii. [ ] Surrender iv. [ ] No Statement of Intention Filed

Date: 4-28-09

Christian Gabroy Counsel for Movant