

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re

KMART CORPORATION,

Debtor.

Chapter 11

Case No. 02 B 02474

Hon. Susan Pierson Sonderby

Hearing Date: March 3, 2010

Hearing Time: 11:00 a.m.

**KMART CORPORATION'S SUPPLEMENT TO MOTION FOR ENTRY OF A FINAL
DECREE CLOSING CASE**

Kmart Corporation ("Kmart") has filed a motion for entry of a final decree closing this bankruptcy case. Since filing the motion, Kmart has received comments from several parties, including the United States Trustee, regarding the motion and the relief sought therein. Kmart addresses those comments in this pleading.

1. Personal Injury Claims. Kmart proposes in its motion that the Final Decree include a provision terminating the Plan and discharge provisions as to unresolved personal injury claims. The United States Trustee has questioned whether the language Kmart sought was a modification to the confirmed Plan of Reorganization, and thus subject to 11 U.S.C. §1127.

Kmart does not wish to modify the Plan, but simply to provide for a mechanism where those personal injury claimants that filed timely claims and have exhausted the resolution procedures may proceed to liquidate their claims in state court. This provision is consistent with the jurisdictional limits of the court regarding personal injury claims. It is also consistent with the Plan, which in Section 9.6(c) provides that any claim may be "determined and liquidated in accordance with the ADR Procedures." ADR Procedures is defined in Section 1.4 of the Plan to include the procedures established by several Orders for the resolution of personal injury claims.

Those procedures, set forth in orders entered on July 17, 2002 and January 28, 2003, provided that personal injury claimants may liquidate their claims in state court upon exhausting the procedures.

Thus, allowing personal injury claimants to do what the Plan provides, even though it requires relief from the discharge injunction of the Plan, is not a modification of the Plan. In fact, since the effective date of the Plan hundreds of orders have been entered, without objection, allowing personal injury claimants to liquidate their claims in state court. The Court's statutory authority to enter such order arises under 11 U.S.C. §1142(b), which allows orders "necessary for the confirmation of the plan."

2. CIT Motion. In the motion for a final decree, Kmart set forth a proposal for resolving the pending Motion of The CIT Group/Commercial Services, Inc. ("CIT"), which seeks in effect an accounting of certain shares distributed in claims held by CIT. Kmart's proposal allowed that, should a dispute arise between Kmart and CIT subsequent to entry of the Final Decree, either party could file an adversary proceeding to resolve the dispute. Kmart is now advised that it may not be possible to file an adversary proceeding once the case is closed without reopening the case. Accordingly, Kmart moves that the present motion of CIT be converted to an adversary proceeding captioned "The CIT Group/Commercial Services, Inc. v. Kmart Corporation" (the "CIT Case") and that the Clerk's Office be directed to populate the adversary proceeding with the pleadings listed on Exhibit A hereto.

In its original motion for a Final Decree, Kmart requested that a time limit be set for CIT to identify additional shares that it claims. Upon discussion with CIT, Kmart has agreed to modify the relief sought as follows: (i) CIT will be allowed 120 days from entry of the Final Decree to identify which of the unclaimed shares held at Computershare it claims; (ii) CIT can

seek in the CIT Case, by amendment or otherwise (including, but not limited to, the seeking of relief against a third party), any relief available to it in this bankruptcy case as of the entry of the Final Decree (subject to any defenses Kmart might have to any relief sought); and (iii) to the extent CIT is entitled to receive additional shares of Sears Holdings Corporation, Kmart shall be responsible for causing such distribution. To accommodate these modifications, the proposed Final Decree will also be modified to provide that any shares that revert to Kmart will be held at Computershare for 120 days from entry of the final decree. In the event, after such 120 days, CIT claims shares that Kmart disputes or has otherwise not yet caused to be distributed to CIT, Kmart shall retain at Computershare such number of shares.

3. David Kersh Matters. In conjunction with its motion for a final decree, Kmart moved that the Court abstain from hearing the David Kersh matters. Mr. Kersh has advised Kmart that for health reasons he will not be able to participate in the March 3 hearing. Kersh is willing to continue the hearing, but all David Kersh matters should be moved to an adversary proceeding captioned David Kersh v. Kmart Corporation. Attached hereto as Exhibit B is a list of pleadings that should be included in the adversary proceeding.

Dated: March 1, 2010

KMART CORPORATION

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