

# Exhibit A

PDT/mo 02-26 #20075

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

|                             |   |                    |
|-----------------------------|---|--------------------|
| In re:                      | ) | Case No. 02-B02474 |
|                             | ) |                    |
| KMART CORPORATION, et. al., | ) | Chapter 11         |
|                             | ) |                    |
| Debtors.                    | ) |                    |

**MOTION TO FILE**  
**ADMINISTRATIVE EXPENSE CLAIM, INSTANTER**

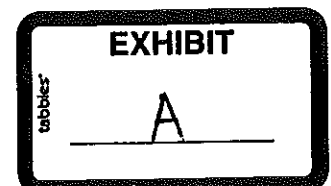
NOW COMES the Movant Rose Montgomery (the "Movant") by her attorneys, PAUL B. EPISCOPE, LLC, and respectfully requests this Court to enter an order, substantially in the form submitted herewith, allowing her to file an administrative expense claim request, instanter, so as to allow her to proceed with her post-petition personal injury claim against Kmart Corporation. In support of said motion, the Movant states as follows:

**I. PROCEDURAL AND FACTUAL BACKGROUND**

1. Kmart Corporation and certain of its affiliated debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on January 22, 2002 (the "Petition Date").

2. Following the Petition Date, the Movant suffered a fall within a Kmart store located at 840 Plainfield Road in Willowbrook, Illinois on February 18, 2002 which resulted in the Movant suffering personal injuries and resulting damages.

3. The Movant timely filed a Complaint at Law against Kmart Corporation in the Circuit Court of Cook County on February 13, 2004. (A copy of said Complaint at Law is attached hereto as Exhibit 1).



4. Kmart Corporation filed a motion to dismiss the Movant's Complaint at Law on April 14, 2004 based upon its contention that the Movant failed to timely provide an administrative expense claim request form and/or a proof of claim form. However, Kmart's motion to dismiss was stricken by the Court on July 30, 2004. (A copy of said order is attached hereto as Exhibit 2). On July 6, 2006, Kmart Corporation filed a motion to place Movant's personal injury lawsuit on the bankruptcy stay calendar which was ultimately granted on August 15, 2006. (A copy of said order is attached hereto as Exhibit 3).

5. Movant's personal injury lawsuit was eventually removed from the bankruptcy stay calendar within the Circuit Court of Cook County on July 29, 2011 and again on August 29, 2011. (Copies of said orders are attached hereto as Exhibits 4 and 5, respectively).

6. Kmart Corporation refiled their motion to dismiss on July 13, 2011 which resulted in a briefing schedule being entered on July 29, 2011. (Copies of Kmart's motion to dismiss and Plaintiff's brief in response thereto are attached hereto as Exhibits 6 and 7, respectively).

7. The basis of the motion to dismiss was that pursuant to Kmart Corporation's confirmed plan of reorganization, Movant was required to file a request for payment of an administrative expense claim by June 20, 2003 (45 days after the Effective Date of the plan) and that as a result of her failure to do so, Movant's claims are barred by the discharge injunction. See motion to dismiss at ¶¶ 6-11.

8. Although Kmart submitted an affidavit indicating that the notice of confirmation of Kmart's plan was mailed to Movant's counsel, counsel never received that notice and no notice was mailed to Movant directly (See affidavits of Rose Montgomery and Peter D. Tarpey attached hereto as Exhibits 9 and 10, respectively).

9. The motion to dismiss was fully briefed and eventually heard by the Honorable William Maddux on November 10, 2011 at which time Judge Maddux indicated that the Movant should seek relief from the Bankruptcy Court in the form of requesting leave to file an administrative expense claim. Therefore, rather than grant Kmart's motion to dismiss, Judge Maddux allowed the Movant to voluntarily dismiss her action without prejudice. (A copy of the voluntary dismissal order is attached hereto as Exhibit 8).

## II. ARGUMENT

10. The Court may allow the filing of a late request for payment of an administrative expense for "cause" under section 503(a), 11 U.S.C. § 503(a). *In re MarchFirst, Inc.*, 448 B.R. 499, 509 (Bankr. N.D. Ill. 2011) (noting that an administrative expense request is not "a claim" the late filing of which is governed by the more stringent excusable neglect standard).

11. The term "cause" is not defined in the Bankruptcy Code but appears to be "intentionally vague and broad." *Hall Fin. Group v. DP Partners, Ltd. Pshp. (in re DP Partners, Ltd. Pshp.)*, 106 F.3d 667, 671-672 (5<sup>th</sup> Cir. Tex. 1997). Bankruptcy Courts are afforded the "widest possible discretion" in determining whether to allow a late request

for payment of an administrative expense. *Good v. Blankenship (In re Heartland Steel, Inc.)*, 2003 U.S. Dist. LEXIS 23123 (S.D. Ind. Dec. 16, 2003).

12. The Movant pursued her personal injury lawsuit within the Circuit Court of Cook County from February 13, 2004 until July 13, 2011 during which time Kmart's primary objection to her being afforded the opportunity to pursue her claim was the fact that she failed to complete and file a "proof of claim" form.

13. Although the Movant did not submit a request for payment of administrative expense claim prior to the deadline established in the plan, this is because neither she nor her counsel were aware of the deadline. (See affidavits of Rose Montgomery and Peter D. Tarpey attached hereto as Exhibits 9 and 10, respectively).

14. However, the Movant notified Kmart of her incident, her injuries and her intent to make a claim and file a lawsuit in three different forms and at three different times. First of all, the Movant immediately notified Kmart of her fall and injury at the time of the subject incident and even completed and signed a "Kmart Customer Incident Information" form on the date of the incident. (A copy of said incident report is attached hereto as Exhibit 11). Secondly, Movant's attorney, Peter D. Tarpey, sent an "attorney lien" letter to Kmart on May 3, 2002 advising Kmart of the fact that the Movant had retained his law firm to pursue a cause of action against Kmart for injuries suffered by Rose Montgomery due to the incident which occurred on February 18, 2002. (A copy of said letter is attached hereto as Exhibit 12). Thirdly and finally, the Movant then filed the Complaint at Law against Kmart on February 13, 2004.

15. Kmart therefore clearly was notified in a timely and sufficient manner of the Movant's personal injury claim. In fact, Kmart acknowledged the "attorney lien" letter when Cynthia Cooper of Kmart sent such an acknowledgment letter to Movant's counsel on May 21, 2002. (A copy of said acknowledgment letter from Kmart is attached hereto as Exhibit 13).

16. Clearly, the Movant properly and timely notified Kmart of her personal injury claim and her intent to pursue a lawsuit and it would be a travesty of justice if she were denied her opportunity to pursue her claim.

17. In sharp contrast, there is no prejudice to Kmart or creditors of the bankruptcy estate by allowing Movant to proceed with her claims. Lawsuits of this nature are an ordinary course of doing business and the Bankruptcy Code anticipates that such post-petition costs of doing business will be paid by debtors reorganizing under chapter 11. Cf *Wallach v. Frink Am. (In re Nuttall Equip. Co.)*, 188 B.R. 732, 738 (Bankr. W.D.N.Y. 1995) ("A common example is that of a store customer who has suffered a "slip and fall" under circumstances that are not immediately brought to the attention of corporate management. Liability on such a claim is an ordinary cost of doing business, but might not be known to the debtor at the time of confirmation of the plan. That fact does not mean that the injured patron's claim should be discharged by § 1141. Statutes of limitations exist in recognition of the fact that there is no duty to assert a claim immediately when it arises. Chapter 11 debtors-in-possession enjoy no right to speedier notification than persons not in bankruptcy.").

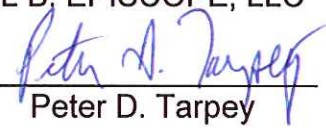
### III. CONCLUSION

18. Therefore, in the interests of justice and fairness, the Movant should now be afforded the opportunity to submit her administrative expense claim request form so that she may continue to pursue her personal injury claim.

WHEREFORE, the Movant respectfully requests this honorable Court to enter an order allowing Rose Montgomery to file an administrative expense claim request form, *instante*.

Respectfully submitted,

PAUL B. EPISCOPE, LLC

By: 

Peter D. Tarpey

PAUL B. EPISCOPE, LLC  
Attorneys for Petitioner  
77 W. Washington, Suite 300  
Chicago, Illinois 60602  
(312)782-6636

PDT/tp 02-26 Attorney No. 20075

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF K A N E )

IN THE CIRCUIT COURT OF THE 16th JUDICIAL CIRCUIT  
KANE COUNTY, ILLINOIS

ROSE MONTGOMERY )  
 )  
Plaintiff, )  
 )  
vs. ) No.  
 )  
KMART CORPORATION OF ILLINOIS, INC. )  
d/b/a KMART and KMART CORPORATION )  
d/b/a KMART )  
 )  
Defendant. )

COMPLAINT AT LAW

NOW COMES the Plaintiff, ROSE MONTGOMERY, by her attorneys, PAUL B. EPISCOPE, LTD., complaining of the Defendants, KMART CORPORATION OF ILLINOIS, INC., d/b/a KMART and KMART CORPORATION d/b/a KMART, and each of them, and states as follows:

1. On February 18, 2002, the Defendants, KMART CORPORATION OF ILLINOIS, INC., d/b/a KMART, owned, operated, managed and maintained retail store number 4459 located at 840 Plainfield Road in Willowbrook, Illinois.
2. On said date and at said location, the Plaintiff, ROSE MONTGOMERY was a customer of the Defendants at the aforesaid store.
3. On said date and at said location, there were certain aisles within the store for customers to walk through in order to view and select items for purchase.





4. On said date and at said location, the Defendants, KMART CORPORATION OF ILLINOIS, INC. d/b/a KMART and KMART CORPORATION d/b/a KMART, by and through their agents and employees, placed and positioned a pallet in one of the aisles through which customers would walk.

5. On said date and said location, the pallet was left unattended and was clearly in the anticipated foot path of customers, including the plaintiff, ROSE MONTGOMERY.

6. On said date and at said location, the Defendants, KMART CORPORATION OF ILLINOIS, INC. d/b/a KMART and KMART CORPORATION d/b/a KMART, by and through their agents and employees, allowed the pallet to remain unattended within the subject aisle and within the footpath of the Plaintiff, ROSE MONTGOMERY.

7. On said date and at said location, the Plaintiff, ROSE MONTGOMERY, fell over said pallet and injured herself.

8. At all relevant times, it was the duty of the Defendants, KMART CORPORATION OF ILLINOIS, INC. d/b/a KMART and KMART CORPORATION d/b/a KMART, by and through their agents and employees, to exercise ordinary care in the ownership, operation, management and maintenance of the subject for the safety of their customers, including the Plaintiff, ROSE MONTGOMERY.

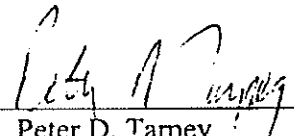
9. On said date and at said location and in violation of the aforesaid duty, the Defendants, KMART CORPORATION OF ILLINOIS, INC. d/b/a KMART and KMART CORPORATION d/b/a KMART, by and through their agents and employees, were guilty of one or more of the following careless and negligent acts or omissions:

- (a) Allowed the aisles of the store to become unsafe for their customers;
- (b) Failed to provide a reasonably safe passage for their customers within said aisles;

- (c) Failed to warn or alert their customers of the hazards within said aisles;
- (d) Left a pallet unattended in a location within an aisle such that it posed a tripping hazard to customers who would walk in said area;
- (e) Failed to promptly remove said pallet from the aisle in a timely manner when they knew, or in the exercise of ordinary care should have known, that the presence of said pallet at said location posed an unreasonable risk of harm to their customers;
- (f) Failed to have an employee present with the pallet so that customers could have been properly alerted to the pallet's presence;
- (g) Was otherwise careless and/or negligent in their ownership and maintenance of the subject store;

10. As a proximate result of one or more of the aforesaid negligent acts or omissions, the Plaintiff, ROSE MONTGOMERY, was injured and sustained damages.

WHEREFORE, the Plaintiff, ROSE MONTGOMERY, prays for a verdict by jury against the Defendants, KMART CORPORATION OF ILLINOIS, INC. d/b/a KMART and KMART CORPORATION d/b/a KMART, in an amount in excess of the jurisdictional limits of the Law Division of the Circuit Court of Cook County.

By:   
Peter D. Tarpey

PAUL B. EPISCOPE, LTD.  
77 W. Washington, Suite 300  
Chicago, Illinois 60602  
(312) 782-6636  
Attorney No. 20075

Document Page 18 of 84

ALAN MATZOWITZ

No

W. H. T. Corp.

2/2/20  
2/2/20 (100, 100)

the matter coming before the Court  
the petition for Sh. is being left  
over to January, the Court  
turns to the previous T. S.  
Hobby, 1862.

Telephone : 304 26139

~~JUL 30 2004~~

ENTER: CIRCUIT COURT-1648

**Judge**

2

CCG N002-250M-7/26/03 (33480662)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT-LAW DIVISION

Rose MONTGOMERY

v.

KMART

No. 04 L 1736

ORDER TO SPECIAL STAY CALENDAR

The Court determining that this cause should be placed on an appropriate Law Division Stay Calendar, due notice given, IT IS HEREBY ORDERED:

This matter is placed on the following Law Division Stay Calendar:

☐ Appellate Calendar  
4854

☒ Bankruptcy Calendar  
4853

☐ Insurance /Stay Calendar  
4852

☐ Military Calendar  
4851

☐ Other: \_\_\_\_\_  
( )

All motions to remove a case from a Stay Calendar must be brought in Courtroom 2005 irrespective of the judge who originally transferred the case to the Stay Calendar. The Presiding Judge or a judge sitting in his/her stead in Courtroom 2005 upon removing a case from a Stay Calendar must then have the case renumbered pursuant to Circuit Court General Order 6.2(c).

Atty. No.: 42907

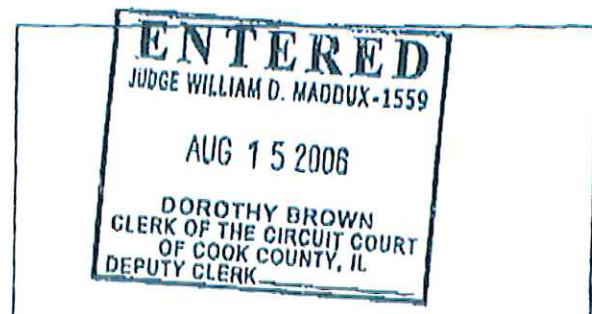
Name: SA JXC

Atty. for: A

Address: 150 N. Michigan, #3300

City/State/Zip: Chicago

Telephone: (312) 897-3202



Judge's Stamp

ENTERED:



Judge

No.



Order

(2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Montgomery

v.

No. 04 L-1736

Kmart Corporation

ORDER

This cause coming to be heard on Defendant's Motion to Dismiss, the Court being fully advised in the premises, IT IS HEREBY ORDERED:

- ① This case is hereby removed from the Bankruptcy Calendar.
- ② Plaintiff shall have 21 days or until August 19, 2011 to file her response to Defendant's Motion to Dismiss.
- ③ Defendant shall have 7 days thereafter or until August 26 to file its Reply.
- ④ Hearing on Defendant's Motion to Dismiss is set for August 29, 2011 at 11:00 AM.

Atty. No.: 6213901

Name: Kelly Schwab/O'Hagan Spencer

Atty. for: A

Address: 18 Wacker Dr. Ste 3400

City/State/Zip: Chicago, IL 60601

Telephone: (312) 422-4100

ENTERED:

Dated:

Judge

|                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ENTERED</b><br>JUDGE WILLIAM D. MADDOX - 1559<br><br>JUL 29 2011<br><br>DOROTHY BROWN<br>CLERK OF THE CIRCUIT COURT<br>OF COOK COUNTY, IL<br>DEPUTY CLERK |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|

Judge's No.

PLAINTIFF'S  
EXHIBIT

4

DOROTHY BROWN, CLERK OF THE CIR

OK COUNTY, ILLINOIS



Montgomery

v

No. 04 L 1736

JMM

Krout

ORDER

This cause coming to be heard pursuant to;

☐ A Mandate of the Appellate / Supreme Court, remanding this matter to the Circuit Court of Cook County.

☒ The Court's determination that this matter should be removed from the bankruptcy calendar.

IT IS HEREBY ORDERED that the Clerk of the Circuit Court is directed to administratively renumber this cause pursuant to Circuit Court General Order 6.2(c), no fee being required. (4099 / 4800)

No. 11 L 8975

This cause having been renumbered pursuant to the above order ; (9800)

☐ IT IS HEREBY ORDERED this case is released into the Black Line (8350) Pool of Cases for trial assignment.

☐ IT IS HEREBY ORDERED this case is placed into the Black Line Pool at # \_\_\_\_\_.

☐ IT IS HEREBY ORDERED this case is set for trial on (4305) \_\_\_\_\_ at 10:00 a.m. in Room 2005.

☐ IT IS HEREBY ORDERED this case is set for trial status on (4315) \_\_\_\_\_ at 10:00 a.m. in Room 2005.

☒ IT IS HEREBY ORDERED this case is assigned reassigned to Judge William D. Maddux, Calendar \_\_\_\_\_, pursuant to a random or prior random computer assignment. (8213 / )

Other This matter is continued to November 10, 2011 at 10:30am

for final hearing on Defendant's Motion to Dismiss and Voluntary Dismissal of Plaintiff's proceeding in bankruptcy court for cause to

Name: Kelly N. Schuchert / Oregon, GA  
Atty. No: 6293901  
Atty. For: A  
Address: 1E. Wacker Dr, Ste 3400  
City: Chicago, IL 60601  
Telephone: (312) 422-6100

ENTER:

ENTERED  
JUDGE WILLIAM D. MADDOX - 1559  
AUG 29 2011  
DOROTHY BROWN  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY

PLAINTIFF'S  
EXHIBIT  
5

CLERK OF THE

in Ln. 2005  
before J. Maddux  
file a  
check  
proof of  
claim.

22209-JPB

#42877

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

ROSE MONTGOMERY )

Plaintiff, )

vs. )

KMART CORPORATION OF )  
ILLINOIS, INC d/b/a KMART and )  
KMART CORPORATION d/b/a )  
KMART )

Defendant. )

No. 04 L 1736

**DEFENDANTS' MOTION TO DISMISS**  
**PURSUANT TO 735 ILCS 5/2-619(a)(9)**

NOW COMES Defendant KMART CORPORATION, by and through its attorneys, O'Hagan Spencer LLC, and for its Motion to Dismiss Plaintiff's Complaint pursuant to 735 ILCS 5/2-619(a)(9), states as follows:

**FACTS**

1. This matter arises out of an incident which occurred at the Kmart Store in Willowbrook, Illinois, on February 18, 2002, where Plaintiff allegedly sustained injuries. On February 13, 2004, Plaintiff filed a complaint in the Circuit Court of Cook County.

2. Kmart filed for bankruptcy protection on January 22, 2002. See Exhibit A, Notice of Confirmation of Kmart's Plan of Reorganization and Operation of Injunction. On April 23, 2003 (the "Confirmation Date"), the Bankruptcy Court approved the First Amended Joint Plan of Reorganization of Kmart Corporation and its Affiliated Debtors and Debtors-in-Possession (the "Plan") via court order ("the Confirmation Order"). See Findings of Fact, Conclusions of Law and Order Under 11 U.S.C. §§ 129(a) and (b) and Fed. R. Bankr. P. 3020 Confirming the First



Amended Joint Plan of Reorganization of Kmart Corporation and its Affiliated Debtors and Debtors-in-Possession, as Modified, attached as Exhibit B. Kmart's Plan became effective on May 6, 2003 (the "Effective Date").

3. On September 30, 2004, Kmart filed a Notice of Confirmation of Kmart's Plan of Reorganization and Operation of Injunction. *See* Exhibit A.

4. Pursuant to Section 362 of the Bankruptcy Code, Kmart's filing of the Chapter 11 petition operated as an automatic stay to personal injury litigation against Kmart. As such, this Court stayed all proceedings associated with this matter. 11 U.S.C. § 362 (2011).

5. The United States Bankruptcy Court approved a plan for settling all personal injury claims, which as one of its requirements, stated that debtors must file an Administrative Expense Claim in order to preserve their underlying claim against Kmart. *See* Relevant portions of First Amended Joint Plan of Reorganization attached to Exhibit B, page 22.

6. Specifically, Article 10.4 of the Plan required, unless otherwise specifically provided, that all requests for payment of administrative claims, including those of any claimant who believes that it holds a claim against Kmart that arose during the Chapter 11 between January 22, 2002 and May 6, 2003, should be filed no later than forty-five days after the Effective Date, or June 20, 2003 (the "Bar Date"). *See* Relevant portions of the Plan attached to Exh. B, p. 48.

7. This provision of the Plan applies to personal injury claims, including the claim asserted by Plaintiff in this case. Under the Plan, a claimant's failure to file a request for payment of administrative expense claim by the Bar Date precludes the claimant from obtaining any recovery from Kmart on account of its claim.



8. In accordance with the foregoing, paragraphs 11 and 12 of the Confirmation Order provide that confirmation of Kmart's Plan operates as a discharge and injunction with respect to claims arising prior to the Effective Date (i.e., May 6, 2003). *See* Exh. B, p. 33. Pursuant to Section 1141 of the Bankruptcy Code, Article XII of the Plan provides that the distributions and rights provided under the Plan are in complete satisfaction and discharge of all claims against Kmart arising prior to the Effective Date. Pursuant to Section 524 of the Bankruptcy Code, Article XII of the Plan provides that such discharge operates as an injunction against commencement or continuation of litigation on any such claims.

9. Trumbull Services, Inc. ("Trumbull") was appointed as Kmart's claims agent in connection with the Chapter 11 cases pursuant to an order entered by the Bankruptcy Court. Trumbull was thus responsible for handling Administrative Claims. A certified copy of the order appointing Trumbull is attached hereto as Exhibit C.

10. As the Affidavit of Mark Mackowiak states, there was no Administrative Claim filed by Plaintiff Rose Montgomery in this bankruptcy proceeding. *See* Exhibit D, Affidavit of Mark Mackowiak.

11. In light of Plaintiff's failure to file an administrative expense request form as required by the Plan and the confirmation of the discharge and injunction provisions of Kmart's Plan, the Plaintiff is forever barred from asserting any claim against Kmart arising out of matters alleged in her Complaint. Kmart previously advised Plaintiff of the foregoing via written communication, a sample copy of which is attached hereto as Exhibit E.

12. On July 16, 2010, Plaintiff filed a motion to remove the case from the bankruptcy stay calendar. *See* Exhibit F, Plaintiff's Motion to Remove From Stay Calendar. (without exhibits).

13. In her motion to remove the case from the stay calendar, Plaintiff relied on the

Notice to Party With Unresolved Personal Injury Claim in the Kmart Corporation Bankruptcy Case ("Notice") as a basis for removing the case from the bankruptcy stay calendar. A copy of the Notice is attached as Exhibit G. The Notice provides: "You have filed a proof of claim in the Kmart Corporation bankruptcy case for personal injuries that you allegedly suffered" as proof that Plaintiff's claim was not barred." See Exh. G. However, Plaintiff failed to preserve their underlying claim against Kmart by failing to file an Administrative Expense Claim.

14. The Plaintiff's Motion to Remove from the Stay Calendar was heard by Judge Suriano on October 20, 2010. At that hearing, Judge Suriano indicated that he did not believe he had jurisdiction since there was an issue on whether or not the plaintiff filed the requisite administrative expense claim form and whether Kmart had the obligation of sending the Plaintiff a claim form. Judge Suriano ordered that Plaintiff to present his motion to the bankruptcy court; however, Plaintiff has not done so. See October 20, 2010 Order attached as Exhibit H. In the meantime, the case remains pending on the Bankruptcy Stay calendar.

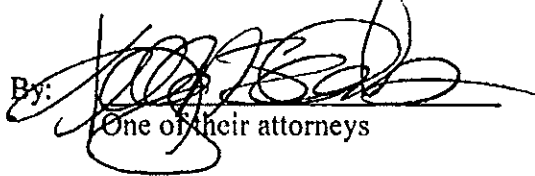
15. As previously asserted and ordered by Judge Suriano, any dispute regarding Plaintiff's failure to file an administrative expense claim should be heard by the Federal Bankruptcy Court. See *Hall v. Kmart Corp.*, 2005 U.S. Dist. LEXIS 18905 (N.D. Ill. Aug. 25, 2005) (Addressing this issue); see also, *Langel v. Kmart Corp.* (In re Kmart Corp.), 2004 U.S. Dist. LEXIS 3149 (N.D. Ill. Feb. 27, 2004) (Examining the same dispute). The Plaintiff has failed to pursue her action in the bankruptcy court.

16. Based on the foregoing, Plaintiff's cause of action should be dismissed with prejudice for failure to state claim upon which relief can be granted, due to the fact that an Administrative Expense Claim was never filed.

CONCLUSION

WHEREFORE, for all the reasons stated above, Defendant KMART CORPORATION respectfully request that this honorable Court enter an order dismissing Plaintiff's Complaint with prejudice and for such other relief as this Court deems just and proper.

Respectfully Submitted:

By:   
One of their attorneys

James P. Balog, Esq.  
Kelly N. Schwab, Esq.  
O'Hagan Spencer, LLC  
One East Wacker Drive, Suite 3400  
Chicago, IL 60601  
PH: 312-422-6100  
Fax: 312-422-6110

PDT/mo 02-26 # 20075

8/25/11

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

ROSE MONTGOMERY

Plaintiff,

vs.

No. 04 L 001736

KMART CORPORATION OF ILLINOIS, INC.  
d/b/a KMART and KMART CORPORATION  
d/b/a KMART

Defendant.

NOTICE OF FILING

TO: Craig Cappas  
O'HAGAN, SMITH & AMUNDSEN LLC.  
150 North Michigan Avenue, Suite 3300  
Chicago, Illinois 60601

PLEASE TAKE NOTICE THAT I have this date filed with the Clerk of the Circuit Court of Cook County, County Department, Law Division, **PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS.**

Dated at Chicago, Illinois this 25<sup>th</sup> day of August, 2011.

Paul B. Episcopo, LLC

PAUL B. EPISCOPE, LLC.  
77 West Washington Street  
Suite 300  
Chicago, IL 60602  
312/782-6636  
Atty. I.D. No. 20075

The undersigned, being first duly sworn on oath, deposes and states that she served a copy of the above notice, together with the above-mentioned documents upon the above-named attorney(s) by enclosing a true and correct copy thereof in a duly addressed, postage prepaid envelope and depositing same in the U.S. mail chute at 77 West Washington Street, Chicago, Illinois on or before 5:00 p.m. on August 25, 2011.



Mary O'Hair

PDT/mo 02-26 #20075

8/25/11

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

ROSE MONTGOMERY

Plaintiff,

vs.

No. 04 L 001736

KMART CORPORATION OF ILLINOIS, INC.  
d/b/a KMART and KMART CORPORATION  
d/b/a KMART

Defendant.

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS**

NOW COMES the Plaintiff, ROSE MONTGOMERY, by her attorneys, PAUL B. EPISCOPE, LLC, and for her response to Defendant's Motion to Dismiss, states as follows:

1. The Plaintiff, ROSE MONTGOMERY, filed this lawsuit against the defendant, KMART, in which she alleges that she suffered personal injuries on February 18, 2002 due to the negligence of the defendant.

2. On August 15, 2006, this matter was placed on the Bankruptcy Stay Calendar pursuant to defendant's motion in which they claimed that KMart's Plan of Reorganization operates as a discharge and injunction as to any pre-petition claims.

3. The defendant has been discharged from bankruptcy; therefore, this case should be removed from the Stay Calendar so that this litigation may proceed in the Law Division so that Plaintiff may be afforded an opportunity to challenge the "discharge and injunction" as it pertains to her claim. (See Final Decree Closing Case of KMart Corporation

and Order Discharging Claims Agent dated March 3, 2010, attached hereto as Exhibits 1 and 2, respectively).

4. It appears from defendant's motion that their primary objection to plaintiff being afforded the opportunity to now pursue her personal injury claim is the fact that she failed to complete and file a "Proof of Claim" form.

5. Although plaintiff admits that neither the plaintiff nor her attorney ever completed such a "Proof of Claim" form, it is due to the fact that neither the plaintiff nor her attorney ever received such a form from K-Mart. (See affidavits of Rose Montgomery and Peter D. Tarpey attached hereto as Exhibits 3 and 4, respectively).

6. However, the plaintiff has notified K-Mart of her incident, her injuries and her intent to make a claim and file a lawsuit in three different forms and at three different times. First of all, the plaintiff Rose Montgomery immediately notified K-Mart of her fall and injury at the time of the subject incident and even completed and signed a "K-Mart Customer Incident Information" form on the date of the incident (a copy of said incident report is attached hereto as Exhibit 5). Secondly, plaintiff's attorney, Peter D. Tarpey, sent an "attorney lien" letter to K-Mart on May 3, 2002 advising K-Mart of the fact that Rose Montgomery has retained his law firm to pursue a cause of action against K-Mart for injuries suffered by the plaintiff due to the incident which occurred on February 18, 2002 (a copy of said letter is attached hereto as Exhibit 6). Thirdly and finally, plaintiff then filed the Complaint at Law against K-Mart on February 13, 2004.

7. Although plaintiff did not complete a "Proof of Claim" form due to the fact that she never received such a form nor did her attorney, K-Mart clearly was notified in a timely and sufficient manner of Rose Montgomery's personal injury claim.



8. In fact, K-Mart acknowledged the "attorney lien" letter when Cynthia Cooper of K-Mart sent such an acknowledgment letter to plaintiff's counsel on May 21, 2002. (A copy of said acknowledgment letter from K-Mart is attached hereto as Exhibit 7).

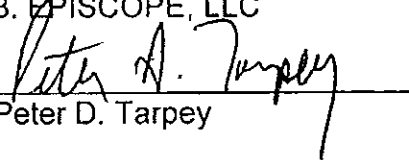
9. Clearly, plaintiff has properly and timely notified K-Mart of her personal injury claim and her intent to pursue a lawsuit and it would be a travesty of justice if she were denied her opportunity to pursue her claim simply due to such a mere technical deficiency as not filing a "Proof of Claim" form (especially considering she never received such a form nor did her attorney). In fact, the manner in which the plaintiff notified K-Mart of her personal injury claim on three different occasions provided K-mart with more information about her claim than had she simply completed and filed the "Proof of Claim" form. Therefore, K-Mart was clearly on notice of Rose Montgomery's incident the moment it happened and then subsequently was notified of the fact that she retained an attorney to pursue an actual claim against them as of the date of the "attorney lien" letter which was May 3, 2002.

10. Therefore, in the interests of justice and fairness, plaintiff should now be afforded the opportunity to pursue her personal injury claim which was timely filed within the Circuit Court of Cook County.

WHEREFORE, the Plaintiff, ROSE MONTGOMERY, respectfully requests this Honorable Court to enter an order denying Defendant's Motion to Dismiss.

Respectfully submitted,

PAUL B. EPISCOPE, LLC

By: 

Peter D. Tarpey

PAUL B. EPISCOPE, LLC  
Attorneys for Plaintiff  
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Chicago, Illinois 60602  
(312)782-6636  
Attorney No. 20075

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re

KMART CORPORATION, *et al*,

Debtor.

Chapter 11

Case No. 02 B 02474  
(Jointly Administered)

Hon. Susan Pierson Sonderby

Hearing Date: March 3, 2010  
Hearing Time: 11:00 a.m.

FINAL DECREE CLOSING CASE OF KMART CORPORATION

Upon Kmart Corporation's ("Kmart") Motion for Entry of a Final Decree Closing Case and for Relief from Local Bankruptcy Rule 3022-1 (the "Motion"); and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to U.S.C. § 157; and the Court being satisfied that the estate of Kmart has been fully administered within the meaning of Section 350 of the Bankruptcy Code; and due and proper notice of the Motion having been given; and after due deliberation and sufficient cause appearing therefore, it is HEREBY ORDERED:

1. The bankruptcy case of Kmart Corporation, case no. 02-02474, shall be closed as provided for in Bankruptcy Rule 3022, effective as of the date of this order.

2. Notice of the Motion as actually provided is sufficient and the requirements of Rule 3022-1 of the Local Rules of the United States Bankruptcy Court Northern District of Illinois are satisfied by such notice.

3. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this order.

4. Conversion of contested matters to adversary proceedings:

(i) The Clerk shall open an adversary proceeding with the caption Beulah Johnson v. Kmart Corporation, and shall cause to be docketed in such adversary proceeding the filings in the main bankruptcy case listed on Exhibit A hereto;

(ii) The Clerk shall open an adversary proceeding with the caption Global Property Services, Inc. v. Kmart Corporation and shall cause to be docketed in such adversary proceeding the filings in the main bankruptcy case listed on Exhibit B hereto;

(iii) The Clerk shall open an adversary proceeding with the caption United States v. Kmart Corporation. Upon the opening of the adversary proceeding, Kmart shall file in the adversary proceeding copies of the following claims: 29716, 39429, 44457, 45644, 46712, 45056 and 37637 and copies of any objections to such claims;

(iv) The Clerk shall open an adversary proceeding with the caption The CIT Group/Commercial Services, Inc. ("CIT") v. Kmart Corporation (the "CIT Adversary") and shall caused to be docketed in such adversary proceeding the filings in the main bankruptcy case listed on Exhibit C hereto; and

(v) The Clerk shall open an adversary proceeding with the caption David Kersh v. Kmart Corporation and shall caused to be docketed in such adversary proceeding the filings in the main bankruptcy case listed on Exhibit D hereto.

5. General provisions applicable to all converted contested matters:

(i) Upon the opening of an adversary proceeding as provided in this Order, Kmart shall provide all parties to the proceeding with the case number for the proceeding;

(ii) The contested matters that have been converted to adversary proceedings shall continue to be treated in all respects as contested matters rather than adversary proceedings,

including, without limitation, that Fed. R. Bankr. P. 3007, 9013 and 9014 shall continue to apply to such matters;

(iii) There shall be no substantive or procedural prejudice to the rights of any party as a result of the conversion of contested matters to adversary proceedings. The inclusion of a pleading or proof of claim among items to be docketed in an adversary proceeding shall not be deemed an admission by any party as to the validity of the pleading or claim; and

(iv) Any party to a converted contested matter may designate additional pleadings in the main case, or proofs of claims filed in the main case or in the case of an affiliate, to be included in the adversary proceeding by filing in the adversary proceeding a copy of the pleading or claim which shall be attached to a Notice of Filing that contains the case number of the adversary proceeding.

✓ 6. The discharge injunction provisions of the Kmart Plan of Reorganization, of the order confirming the Kmart Plan of Reorganization, and of 11 U.S.C. §524 (collectively, the "Discharge Injunctions"), are modified to permit any claimant who filed a proof of claim for a personal injury or wrongful death claim against Kmart to obtain from an appropriate non-bankruptcy court a determination of Kmart's liability with respect to the claim. Kmart shall serve on any claimant who has not previously obtained relief from the Discharge Injunctions a notice in the form attached hereto as Exhibit E. Notwithstanding the foregoing, the provisions of the Kmart Plan of Reorganization governing the treatment of any such personal injury or wrongful death claim shall remain in full force and effect and the Discharge Injunctions shall remain in full force and effect as to any judgment, award, or settlement obtained on such a claim.

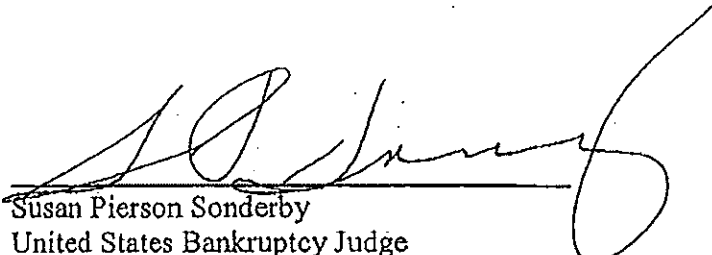
7. (i) CIT will be allowed 120 days from entry of the Final Decree (such 120 days being the "CIT Period") to identify which of the unclaimed shares held at Computershare it

claims; (ii) CIT may seek in the CIT Adversary, by amendment or otherwise (including, but not limited to, the seeking of relief against a third party or the joinder of a party plaintiff), 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.

8. Kmart shall serve on any person that has not claimed a distribution on its Class 5 claim a Notice in the form attached hereto as Exhibit F and, in accordance with the Notice and 11 U.S.C. §§347(b) and 1143, any shares not timely claimed shall revert to Kmart (provided that Kmart shall maintain at Computershare until the end of the CIT Period all such shares so that such shares are available to distribute to CIT should CIT timely identify shares that it claims. Subsequent to the CIT Period, Kmart shall maintain at Computershare, for possible distribution to CIT, such number of shares as are subject to unresolved timely claims of CIT).

Chicago, Illinois

Dated: MAR - 3 2010, 2010

  
Susan Pierson Sonderby  
United States Bankruptcy Judge

Case 02-02474 Doc 32235-1 Filed 07/17/13 Entered 07/17/13 11:41:47 Desc

Case 02-02474 Doc 32231 Filed 09/18/12 Entered 09/18/12 13:02:30 Desc Main

Case 02-02474 Doc 32184 Filed 03/03/10 Entered 03/04/10 15:27:23 Desc Main

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## EXHIBIT A



**BEULAH JOHNSON DOCKET ENTRIES**

06/16/200 #13071 Notice of Motion and Objection to Claim # (Seventh Omnibus) Filed by John Butler, Jr on behalf of Kmart Corporation, Hearing scheduled for 7/15/2003 at 10:00 AM at 219 South Dearborn, Courtroom 642. (Attachments: # (1) Exhibit # (2) Exhibit # (3) Exhibit # (4) Exhibit) (Marola, Rosalie)

06/16/2003 #13073 Notice of Motion and Objection to Claim # Tenth Omnibus Filed by John Butler, Jr on behalf of Kmart Corporation. Hearing scheduled for 7/15/2003 at 10:00 AM at 219 South Dearborn, Courtroom 642. (Attachments: # (1) Exhibit) (Marola, Rosalie)

07/07/2003 #14455 Response to Objections to Claims Filed by Beulah Johnson. (Green, Josephine)

08/03/2003 #15712 Order Re: Disallowing and Expunging or Otherwise Reducing or Reclassifying Certain Claims Set Forth in the Seventh Omnibus Obection (RE: 13071 ). Signed on 7/30/2003 (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit) (Green, Josephine) (Entered: 08/03/2003)

07/31/2003 #15715 Order Re: Disallowing and Expunging or Otherwise Reducing or Reclassifying Certain Claims Set Forth in the Tenth Omnibus Objection (RE: [13073]). Signed on 7/31/2003 (Attachments: # (1) Exhibit # (2) Exhibit) (Green, Josephine)

01/07/2009 #31854 Notice and Certificate of Service of Status Hearing on Kmart Corporation's Objection to Claim No. 46097 of Beulah Johnson Filed by William J. Barrett on behalf of Kmart Corporation. (Barrett, William)

05/20/2009 #31958 Notice of Motion and Motion to Approve Order Applying Bankruptcy Rules 7008 and 7012 to Contested Matter on Claim of Beulah D. Johnson Filed by William J. Barrett on behalf of Kmart Corporation. Hearing scheduled for 6/16/2009 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) Proof of Claim #46097# (2) Proposed Order)(Barrett, William)

09/16/2009 #32096 Response to order granting Kmart's motion for order applying bankruptcy rules 7008 and 7012 to contest matter on claim of Beulah D Johnson be denied. Filed by Beulah D Johnson (Marola, Rosalie)

10/20/2009 #32117 Objection to (related document(s): [32096] Response) Filed by William J. Barrett on behalf of Kmart Corporation (Barrett, William)

11/05/2009 #32135 Statement of Claims of Beulah D Johnson Filed by Beulah D Johnson (Marola, Rosalie)

Case 02-02474 Doc 32235-1 Filed 07/17/13 Entered 07/17/13 11:41:47 Desc  
Case 02-02474 Doc 32231 Filed 09/18/12 Entered 09/18/12 13:02:30 Desc Main  
Document Page 37 of 84  
Case 02-02474 Doc 32184 Filed 03/03/10 Entered 03/04/10 15:27:23 Desc Main  
Document Page 7 of 38

11/05/2009 #32136 Notice of Hearing Filed by Beulah D Johnson. Hearing scheduled for 12/15/2009 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) Document Continued # (2) Document Continued # (3) Document Continued) (Marola, Rosalie)

12/11/2009 #32144 Notice of Motion and Motion to Approve Order to Allow in Part and Disallow in Part Claim of Beulah Johnson Filed by William J. Barrett on behalf of Kmart Corporation. Hearing scheduled for 12/15/2009 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) Exhibit s A-F# (2) Proposed Order) (Barrett, William)

12/15/2009 #32156 Order Scheduling (RE: 32144 Motion to Approve). Reply due by: 2/28/2010 Responses due by 2/15/2010. Status hearing to be held on 3/3/2010 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 12/15/2009 (Marola, Rosalie) (Entered: 12/22/2009)

02/22/2010 #32176 Reply in Support to (related document(s): 32144 Motion to Approve) Filed by William J. Barrett on behalf of Kmart Corporation (Barrett, William) (Entered: 02/22/2010)

## EXHIBIT B

GLOBAL PROPERTY SERVICES, INC. DOCKET ENTRIES

12/12/2003 #19680 Notice of Motion and Eighteenth Omnibus Objection to Claims Filed by Andrew Goldman on behalf of Kmart Corporation . Hearing scheduled for 1/13/2004 at 10:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) Exhibit # (2) Exhibit # (3) Exhibit # (4) Exhibit # (5) Exhibit # (6) Exhibit # (7) Exhibit # (8) Exhibit) (Green, Josephine)

01/05/2004 #20053 Response of Global Property Services Inc Filed by David A Newby (RE: [19680] Motion Objecting to Claim, ). (Green, Josephine)

01/05/2004 20054 Notice of Filing Filed by David A Newby (RE: [20053] Response). (Green, Josephine)

02/09/2004 #20726 Order Disallowing and Expunging or Otherwise Reducing or Reclassifying Certain Claims Set Forth in the Eighteenth Omnibus Objection. Signed on 2/9/2004 (Attachments: # (1) Exhibit # (2) Exhibit # (3) Exhibit # (4) Exhibit # (5) Exhibit # (6) Exhibit # (7) Exhibit) (Green, Josephine)

02/02/2004 #20650 Notice of Motion and Reorganized Debtors Nineteenth Omnibus Objection to Claims (Certain Claims) Filed by Andrew Goldman on behalf of Kmart Corporation. Hearing scheduled for 3/15/2004 at 10:00 AM at 219 South Dearborn, Courtroom 1725, Chicago, Illinois 60604. (Green, Josephine) Additional attachment(s) added on 2/3/2004 (Green, Josephine). Additional attachment(s) added on 2/4/2004 (Green, Josephine).

03/05/2004 #21577 Response to (related document(s): [20650] Motion Objecting to Claim) Filed by David A Newby on behalf of Global Property Services Inc (Carroll, Dorothy)

03/05/2004 21578 Notice of Filing Filed by David A Newby on behalf of Global Property services Inc (RE: [21577] Response). (Carroll, Dorothy)

03/10/2004 23207 Notice of Filing Re Affidavit of Donald Brock In Support of the Response of Global Property Services Inc Filed by David A Newby (Green, Josephine)

04/01/2004 #23514 Order Disallowing and Expunging or Otherwise Reducing or Reclassifying Certain Claims (RE: [20650] Motion Objecting to Claim, ). Signed on 4/1/2004 (Attachments: # (1) Exhibit # (2) Exhibit # (3) Exhibit # (4) Exhibit # (5) Exhibit # (6) Exhibit # (7) Exhibit # (8) Exhibit # (9) Exhibit # (10) Exhibit # (11) Exhibit # (12) Exhibit # (13) Exhibit # (14) Exhibit # (15) Exhibit # (16) Exhibit # (17) Exhibit # (18) Exhibit # (19) Exhibit # (20) Exhibit # (21) Exhibit) (Green, Josephine)

04/13/2004 23791 Order RE: Amended Order Disallowing and Expunging or Otherwise Reducing or Reclassifying Certain Claims set forth in the Nineteenth Omnibus Objection . Signed on 4/13/2004 (Riddick, Debbie) Additional attachment(s) added on 4/14/2004 (Riddick, Debbie).

03/29/2005 #27977 Motion to Appear Pro Hac Vice Filed by Richard A Samdal on behalf of Global Property Services Inc. (Green, Josephine)

04/19/2005 28221 Amended Order Scheduling . Discovery due by 9/14/2005. Pre-Trial Hearing set for 3/21/2006.at 10:30 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 4/19/2005 (Green, Josephine)

07/11/2005 28780 Order and Stipulation Compelling Discovery. Signed on 7/11/2005 (Green, Josephine)

08/01/2005 #28896 Subpoena to Witness Filed by David A. Newby on behalf of Global Property Services Inc. (Newby, David)

08/08/2005 28909 Change of Name and or Address for David A. Newby To: Johnson & Newby, LLC; 39 S. LaSalle St., Suite 820; Chicago, IL 60603 Filed by David A. Newby on behalf of Global Property Services Inc. (Newby, David)

08/18/2005 28955 Notice of Motion and Motion to Approve Requiring Further Pleadings to Identify Contested Issues Re Claims of Global Property Services, Inc. Filed by William J. Barrett on behalf of Kmart Corporation. Hearing scheduled for 9/20/2005 at 10:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1). Proposed Order) (Barrett, William)

09/23/2005 #29105 Statement Claims of Global Property Services, Inc. Filed by David A. Newby on behalf of Global Property Services Inc. (Attachments: # (1) Exhibit A# (2) Exhibit B# (3) Exhibit C# (4) Exhibit D# (5) Exhibit E# (6) Exhibit F) (Newby, David)

09/23/2005 #29106 Notice of Filing Filed by David A. Newby on behalf of Global Property Services Inc (RE: [29105] Statement). (Newby,David)

10/04/2005 #29141 Order and Stipulation Re Pretrial Procedures for the Hearing on the Objection to the Claims of Global Property Services Inc .Signed on 10/4/2005 (Green, Josephine)

10/07/2005 29146 Response to (related document(s): [29105] Statement) Filed by William J. Barrett on behalf of Kmart Corporation (Barrett, William)

10/07/2005 29147 Notice of Filing Filed by William J. Barrett on behalf of Kmart Corporation (RE: [29146] Response). (Barrett, William)

10/31/2005 #29237 Order and Stipulation Re Pretrial Procedures for the Hearing on the Objection to Claims of Global Property Services, Inc .signed on 10/31/2005 (Riddick, Debbie)

10/31/2005 #29239 Certificate of Service on Creditor Global Property Services Inc Notice of Taking Deposition of Kmart Corp and Notice of Taking Deposition of Bill Ellis Filed by .

(Riddick, Debbie) Additional attachment(s) added on 11/1/2005 (Riddick, Debbie). Modified on 11/1/2005 to correct pdf(Riddick, Debbie).

03/06/2006 #29616 Certificate of Service Second Requests for Admission, Fourth Set of Interrogatories and Third Requests for Production upon George R Mesires Filed by Teresa M Garber on behalf of Global Property Services Inc. (Green, Josephine)

03/07/2006 #29617 Notice of Motion and Motion to Exceed Page Limitation Filed by David A. Newby on behalf of Global Property Services Inc. Hearing scheduled for 3/21/2006 at 10:30 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) Proposed Order) (Newby, David)

03/07/2006 #29619 Notice of Motion and Motion For Sanctions against Kmart Corp. Filed by David A. Newby on behalf of Global Property Services Inc. Hearing scheduled for 3/21/2006 at 10:30 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) Proposed Order # (2) Brief in Support# (3) Exhibit A# (4) Exhibit B# (5) Exhibit C# (6) Exhibit D# (7) Exhibit E# (8) Exhibit F# (9) Exhibit G# (10) Exhibit H# (11) Exhibit I# (12) Exhibit J# (13) Exhibit K# (14) Exhibit L# (15) Exhibit M# (16) Exhibit N# (17) Exhibit O# (18) Exhibit P# (19) Exhibit Q# (20) Exhibit R# (21) Exhibit S# (22) Exhibit T# (23) Exhibit U# (24) Exhibit V# (25) Exhibit W) (Newby, David)

03/14/2006 #29645 Notice of Motion and Motion to Compel Global Property Services, Inc. to to (I) Produce Witnesses for Deposition; (ii) Disclose Information Required by Rule 26(A); (III) Answer Interrogatories Filed by George R Mesires on behalf of Kmart Corporation. Hearing scheduled for 3/21/2006 at 10:30 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) Exhibit 1# (2) Exhibit 2# (3) Exhibit 3# (4) Exhibit 4# (5) Exhibit 5# (6) Exhibit 6# (7) Exhibit 7# (8) Exhibit 8# (9) Exhibit 9# (10) Exhibit 10# (11) Exhibit 11# (12) Exhibit 12# (13) Exhibit 13# (14) Exhibit 14# (15) Exhibit 15# (16) Exhibit 16) (Mesires, George)

03/17/2006 29658 Notice of Motion and Motion to Exceed Page Limitation Filed by George R Mesires on behalf of Kmart Corporation. Hearing scheduled for 3/21/2006 at 10:30 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) Proposed Order) (Mesires, George)

03/17/2006 29659 Response to (related document(s): [29619] Motion for Sanctions) Filed by George R Mesires on behalf of Kmart Corporation (Attachments: # (1) Exhibit 1# (2) Exhibit 2# (3) Exhibit 3) (Mesires, George)

03/17/2006 29660 Notice of Filing Filed by George R Mesires on behalf of Kmart Corporation (RE: [29659] Response). (Mesires, George)

03/20/2006 29662 Response in Opposition to (related document(s): [29645] Motion to Compel) Filed by David A. Newby on behalf of Global Property Services Inc (Attachments: # (1) Exhibit A) (Newby, David)

03/20/2006 29663 Notice of Filing Filed by David A. Newby on behalf of Global Property Services Inc (RE: [29662] Response). (Newby, David)

03/21/2006 29669 Hearing Continued (RE: [29645] Motion to Compel[29619] Motion for Sanctions, , ). Hearing scheduled for 4/12/2006 at 02:00 PM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

03/21/2006 29670 Order Granting Motion For Sanctions (Related Doc # [29619]). Signed on 3/21/2006. (Marola, Rosalie)

03/21/2006 29671 Final Pretrial Trial Order . Pretrial Statement due by: 4/5/2006. Trial date set for 4/12/2006 at 02:00 PM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 3/21/2006 (Marola, Rosalie)

03/21/2006 29672 Order Granting Motion to Exceed Page Limitation (Related Doc #[29617]). Signed on 3/21/2006. (Marola, Rosalie)

03/27/2006 29689 Brief In Support of Production of Personnel File Filed by David A. Newby on behalf of Global Property Services Inc. (Attachments: # (1) Exhibit A# (2) Exhibit B# (3)Exhibit C# (4) Exhibit D# (5) Exhibit E# (6) Exhibit F) (Newby, David)

03/27/2006 29690 Notice of Filing Filed by David A. Newby on behalf of Global Property Services Inc (RE: [29689] Brief). (Newby, David)

04/06/2006 29725 Joint Pretrial Statement Filed by George R Mesires on behalf of Kmart Corporation (Mesires, George)

04/07/2006 29728 Reply to (related document(s): [29659] Response) Filed by David A.Newby on behalf of Global Property Services Inc (Attachments: # (1) Exhibit A# (2) Exhibit B# (3) Exhibit C# (4) Exhibit D# (5) Exhibit E# (6) Exhibit F# (7) Exhibit G# (8) ExhibitH) (Newby, auid)

04/07/2006 29729 Notice of Filing Filed by David A. Newby on behalf of Global Property Services Inc (RE: [29728] Reply, ). (Newby, David)

04/13/2006 29786 Hearing Continued . Trial date set (re: motion of Global Property Services fr sanctions against Kmart Corp.) for 4/25/2006 at 01:00 PM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Continued Trial date set for 4/26/2006 at 01:00 PMat 219 South earborn, Courtroom 642, Chicago, Illinois 60604. Continued Trial date set for 4/27/2006 at 01:00 PM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)



04/13/2006 29787 Hearing Continued (RE: [29645] Motion to Compel). Hearing scheduled for 4/25/2006 at 01:00 PM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

04/19/2006 29808 Supplemental Brief in Support to (related document(s): [29689] Brief) Filed by David A. Newby on behalf of Global Property Services Inc (Newby, David)

04/19/2006 29809 Notice of Filing Filed by David A. Newby on behalf of Global Property Services Inc (RE: [29808] Brief). (Newby, David)

04/21/2006 29813 Amended Pretrial Statement Filed by George R Mesires on behalf of Kmart Corporation (RE: [29725] Pretrial Statement). (Mesires, George)

04/24/2006 29814 Notice of Motion and Motion to Bar Expert Testimony Concerning the Motion of Global Property Services for Sanctions and to Compel Discovery. Filed by William J. Barrett on behalf of Kmart Corporation. Hearing scheduled for 4/25/2006 at 01:00 PM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) Exhibit A# (2) Exhibit B) (Barrett, William)

04/24/2006 29820 Response in Opposition to (related document(s): [29808] Brief) Filed by George R Mesires on behalf of Kmart Corporation (Mesires, George)

04/24/2006 29821 Notice of Filing 29820 Filed by George R Mesires on behalf of Kmart Corporation (RE: [29820] Response). (Mesires, George)

04/27/2006 29835 Hearing Continued . Closing arguments re:( motion of Global Property Services for sanctions against Kmart Corp. scheduled for 5/19/2006 at 10:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

04/27/2006 29836 Hearing Continued (RE: [29645] Motion to Compel,). Hearing scheduled for 5/19/2006 at 10:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

04/27/2006 29850 Order Scheduling . Global's Motion for Sanctions for Spoilation Continued Trial date set for 4/25/2006 at 01:00 PM . Continued Trial date set for 4/26/2006 at 01:00 PM . Continued Trial date set for 4/27/2006 at 01:00 PM . Reply due on or before 4/21/2006. Pre-trial Statement due on or before 4/21/2006. (RE: Entry # 26919 ) Signed on 4/27/2006 (Lyon, Peggy) Modified on 5/3/2006 to relate to entry # 26919 (Carroll, Dorothy). (Entered: 05/01/2006)

04/27/2006 29850 Order Scheduling . Global's Motion for Sanctions for Spoilation Continued Trial date set for 4/25/2006 at 01:00 PM . Continued Trial date set for 4/26/2006 at 01:00 PM . Continued Trial date set for 4/27/2006 at 01:00 PM . Reply due on or before 4/21/2006. Pre-trial Statement due on or before 4/21/2006. (RE: Entry # [26919]) Signed on 4/27/2006 (Lyon, Peggy) Modified on 5/3/2006 to relate to entry # [26919] (Carroll, Dorothy).

06/08/2006 29932 Proposed Findings of Fact and Conclusions of Law Filed by David A. Newby on behalf of Global Property Services Inc. (Newby, David)

06/08/2006 29933 Notice of Filing Filing Filed by David A. Newby on behalf of Global Property Services Inc (RE: [29932] Proposed Findings of Fact and Conclusions of Law). (Newby, David)

06/08/2006 29934 Notice of Motion and Motion to Exceed Page Limitation Filed by George R Mesires on behalf of Kmart Corporation. Hearing scheduled for 6/15/2006 at 02:00 PM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) ProposedOrder) (Mesires, George)

06/08/2006 29935 Proposed Findings of Fact and Conclusions of Law Filed by George R Mesires on behalf of Kmart Corporation. (Mesires, George)

06/08/2006 29936 Notice of Filing 29935 Filed by George R Mesires on behalf of Kmart Corporation (RE: [29935] Proposed Findings of Fact and Conclusions of Law). (Mesires, George)

06/09/2006 29937 Hearing Continued . Closing Arguments (re: motion of Global Property Services for sanctions against Kmart) scheduled for 6/15/2006 at 02:00 PM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

06/09/2006 29938 Hearing Continued (RE: [29645] Motion to Compel) Hearing scheduled for 6/15/2006 at 02:00 PM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

06/09/2006 29939 Notice of Motion and Motion to Exceed Page Limitation Filed by David A. Newby on behalf of Global Property Services Inc. Hearing scheduled for 6/15/2006 at 02:00 PM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) Proposed Order) (Newby, David)

06/15/2006 29958 Hearing Continued. Closing Arguments (re:motion of Global Property Services for sanctions against Kmart) (Nelson, Freddie)

06/15/2006 29959 CORRECTIVE ENTRY to reflect correct document number and to reflect date and time of hearing scheduled for 7/7/2006 at 10:00 a.m. 219 South Dearborn, Courtroom 642 (RE: [29937] Closing Arguments (re:motion of Global property Services for sanctions against Kmart) Hearing (Bk Other) (Nelson, Freddie)

06/15/2006 29960 Hearing Continued (RE: [29645] Compel,). Hearing Scheduled for 07/07/2006 at 10:15 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604. (Nelson,Freddie)

06/15/2006 29962 Order Granting Motion to Exceed Page Limitation (Related Doc #[29939]). Signed on 6/15/2006. (Pruitt, Debra)

06/15/2006 29963 Order Granting Motion to Exceed Page Limitation (Related Doc #[29934]). Signed on 6/15/2006. (Lyon, Peggy)

07/07/2006 30007 Hearing Continued . Hearing (re: motion of Global Properties for sanctions against Kmart) scheduled for 7/7/2006 at 10:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

07/07/2006 30061 Order Scheduling (RE: [29645] Motion to Compel). Hearing scheduled for 8/30/2006 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 7/7/2006 (Marola, Rosalie)

07/07/2006 30062 Order Withdrawing as moot Motion To Bar (Related Doc # [29814]). Signed on 7/7/2006. (Marola, Rosalie)

08/01/2006 30106 Notice of Motion and Motion for Entry of Order To Reopen Record to Admit Newly Discovered Evidence Filed by David A. Newby on behalf of Global Property Services Inc. Hearing scheduled for 8/15/2006 at 10:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) Brief in Support of Motion to Reopen Record# (2) Exhibit A# (3) Exhibit B# (4) Exhibit C# (5) Proposed Order) (Newby, David)

08/03/2006 30113 Response in Opposition to (related document(s): [29935] Proposed Findings of Fact and Conclusions of Law) Filed by David A. Newby on behalf of Global Property Services Inc (Attachments: # (1) Volume 2) (Newby, David)

08/03/2006 30114 Notice of Filing Filed by David A. Newby on behalf of Global Property Services Inc (RE: [30113] Response). (Newby, David)

08/03/2006 30115 Response in Opposition to (related document(s): [29932] Proposed Findings of Fact and Conclusions of Law) Filed by George R Mesires on behalf of Kmart Corporation (Mesires, George)

08/03/2006 30116 Notice of Filing 30115 Filed by George R Mesires on behalf of Kmart Corporation. (Mesires, George)

08/14/2006 30129 Notice of Motion and Motion to Strike Creditor Global Property Services, Inc.'s Motion to Reopen the Record to Admit Newly Discovered Evidence (and Supporting Memorandum) Filed by George R Mesires on behalf of Kmart Corporation. Hearing scheduled for 8/15/2006 at 10:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) Exhibit 1# (2) Exhibit 2# (3) Exhibit 3# (4) Exhibit 4# (5) Exhibit 5# (6) Exhibit 6# (7) Exhibit 7# (8) Exhibit 8# (9) Exhibit 9) (Mesires, George)

08/15/2006 30130 Hearing Continued (RE: [30106] Entry,). Hearing Scheduled for 09/14/2006 at 02:00 PM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604. (Beckerman, Steven)

08/15/2006 30131 Hearing Continued (RE: [30129] Strike,). Hearing Scheduled for 09/14/2006 at 02:00 PM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604. (Beckerman,Steven)

08/15/2006 30132 Order Scheduling 1)KMart;s Motion to Strick Filed 08/14/06 Stand as a Response to the Motion. (RE: [30129] Motion to Strike,).Global may Reply to the KMart Response. Reply due by: 8/30/2006. 3)Motion is set for Oral Argument on 09/13/06 at 02:00p.m. Signed on 8/15/2006 (Marola, Rosalie)

08/22/2006 30147 Order and Stipulation Modifying Pretrial Schedule. Signed on 8/22/2006 (Marola, Rosalie)

08/30/2006 30168 Reply in Support to (related document(s): [30106] Motion for Entry of Order) Filed by David A. Newby on behalf of Global Property Services Inc (Attachments: # (1) Exhibit A# (2) Exhibit B# (3) Exhibit C) (Newby, David) 08/30/2006 30169 Notice of Filing Filed by David A. Newby on behalf of Global Property Services Inc (RE: [30168] Reply). (Newby, David)

08/30/2006 30180 Order Scheduling (RE: [29645] Motion to Compel,). Hearing continued on 10/17/2006 at 02:30PM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604.Reply due by: 9/28/2006 Responses due by 9/19/2006. Signed on 8/30/2006 (Marola, Rosalie)

09/05/2006 30183 Notice of Motion and Motion to Compel Global Property Services, Inc. to Produce Electronic Documents in Native, Electronic Format Filed by George R. Mesires on behalf of Kmart Corporation. Hearing scheduled for 10/17/2006 at 02:30 PM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) Proposed Order # (2) Exhibit A# (3) Exhibit B# (4) Exhibit C# (5) Exhibit D# (6) Exhibit E) (Mesires, George)

09/05/2006 30184 Appearance Filed by Beth A. Alcantar on behalf of Global Property Management. (Alcantar, Beth)

09/05/2006 30185 Appearance Filed by Beth A. Alcantar on behalf of Brock Sweeping, Inc. (Alcantar, Beth)

09/05/2006 30186 Appearance Filed by David A. Newby on behalf of Brock Sweeping, Inc. (Newby, David)

09/05/2006 30187 Notice of Motion and Motion to Quash Subpoena Filed by David A. Newby on behalf of Brock Sweeping, Inc.. Hearing scheduled for 10/4/2006 at 10:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) Proposed Order)(Newby, David)

09/05/2006 30188 Appearance Filed by David A. Newby on behalf of Global Property Management. (Newby, David)

09/05/2006 30189 Notice of Motion and Motion to Quash Subpoena Filed by David A. Newby on behalf of Global Property Management. Hearing scheduled for 10/4/2006 at 10:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) Proposed Order) (Newby, David)

09/13/2006 30219 Appearance Filed by Cindy M. Johnson on behalf of Global Property Services Inc. (Johnson, Cindy)

09/19/2006 30228 Response in Opposition to (related document(s): [30183] Motion to Compel, ) Filed by David A. Newby on behalf of Global Property Services Inc (Attachments: # (1) Exhibit A# (2) Exhibit B) (Newby, David)

09/19/2006 30229 Notice of Filing Filed by David A. Newby on behalf of Global Property Services Inc (RE: [30228] Response). (Newby, David)

09/13/2006 30219 Appearance Filed by Cindy M. Johnson on behalf of Global Property Services Inc. (Johnson, Cindy)

09/19/2006 30228 Response in Opposition to (related document(s): [30183] Motion to Compel) Filed by David A. Newby on behalf of Global Property Services Inc (Attachments: # (1) Exhibit A# (2) Exhibit B) (Newby, David)

09/19/2006 30229 Notice of Filing Filed by David A. Newby on behalf of Global Property Services Inc (RE: [30228] Response). (Newby, David)

09/28/2006 30256 Reply to (related document(s): [30228] Response) Filed by George R Mesires on behalf of Kmart Corporation (Attachments: # (1) Exhibit A# (2) Exhibit B) (Mesires, George)

09/26/2006 30258 Order Denying Motion for Entry of Order for reasons stated in open court.(Related Doc # [30106]). Signed on 9/26/2006.(Marola, Rosalie)

10/04/2006 30269 Order Scheduling (RE: [30187] Motion to Quash) Memorandum due by 10/18/2006.Reply due by: 11/8/2006 Responses due by 11/1/2006. Status hearing to be held on 11/21/2006 at 10:30 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604.Signed on 10/4/2006 (Seamann, Pamela)

10/18/2006 30308 Brief In Support of Motions to Quash Subpoenas Filed by Donald A. Snide on behalf of Brock Sweeping, Inc., Global Property Management. (Attachments: # (1) Exhibit 1 Subpoena to GPM# (2) Exhibit 2 Subpoena to Brock Sweeping# (3) Exhibit 3 GPM Motion to Quash# (4) Exhibit 4 Brock Motion to Quash) (Snide, Donald)

10/18/2006 30311 Notice of Filing Filed by Donald A. Snide on behalf of Brock Sweeping, Inc., Global Property Management (RE: [30308] Brief).(Snide, Donald)

08/16/2007 31138 Stipulation and Agreed Order Scheduling (RE: [31070] Motion to Compel). Status hearing to be held on 9/11/2007 at 10:30 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 8/16/2007 (Marola, Rosalie)

09/10/2007 31150 Order and Stipulation on Creditor Global Property Services, Inc.'s Motion for Sanctions for Spoliation and Violations of the Court's July 11, 2005 Order and Motion to Compel Discovery. Signed on 9/10/2007 (Beemster, Greg) Modified on 9/13/2007 to included Agreed (Walker, Valerie):

09/11/2007 31151 Hearing Continued (RE: [29619] Sanctions). Hearing Scheduled for 05/28/2008 at 10:30 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604. (Jacobs,Karen)

09/13/2007 31154 Stipulation and Order Modifying Pretrial Schedule between Global Property Services, Inc and Kmart Corporation. Global shall disclose experts and produce report by 12/31/2007, Kmart shall disclose experts and produce report by 1/31/2008, depositions shall be completed by 2/29/2008, Motions for Summary Judgment must be filed by 3/31/2008, Discovery Cutoff 12/7/2007. Pre-Trial Conference set for 5/28/2008 at 10:30 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Reply due by: 5/23/2008 Responses due by 4/30/2008. Signed on 9/13/2007 (Riddick, Debbie)

09/27/2007 31165 Notice of Motion and Motion for Protective Order Filed by George R Mesires on behalf of Kmart Corporation. Hearing scheduled for 10/3/2007 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) Exhibit A# (2) Proposed Order) (Mesires, George)

10/03/2007 31201 Order Scheduling On Motion of Kmart Corp for Protective Order Docket No [31165]. Reply due by: 11/7/2007 Responses due by 10/24/2007. Status Conference to be held on 11/13/2007 at 10:30 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 10/3/2007 (Marola, Rosalie)

10/24/2007 31237 Response in Opposition to (related document(s): [31165] Motion for Protective Order, ) Filed by Donald A. Snide on behalf of Global Property Management, Global Property Services Inc (Attachments: # (1) Exhibit 1: Memorandum Opinion# (2) Exhibit 2:Kmart's Proposed Findings of Fact# (3) Exhibit 3: April 26 2006 Trial Transcript# (4) Exhibit 4: July 31 2007 Order# (5) Exhibit 5: August 6 2007 Sloane Email# (6) Exhibit 6: Stipulation and Order# (7) Exhibit 7: August 30 2007 Sloane Letter# (8) Exhibit 8: August 31 2007 Samdal Email) (Snide, Donald)

11/09/2007 31292 Reply in Support to (related document(s): [31165] Motion for Protective Order,, [31237] Response,, ) Filed by George R Mesires on behalf of Kmart Corporation (Attachments: # (1) Exhibit A) (Mesires, George)

11/09/2007 31293 Notice of Filing Filed by George R Mesires on behalf of Kmart Corporation (RE: [31292] Reply). (Mesires, George) 11/13/2007 31294 Hearing Continued (RE: [31165] Protective Order). Hearing Scheduled for 12/18/2007 at 10:30 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604. (Jacobs,Karen)

11/13/2007 31295 Order Scheduling (RE: [31165] Motion for Protective Order). SurReply due by: 12/11/2007 Status hearing to be held on 12/18/2007 at 10:30 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 11/13/2007 (Marola, Rosalie)

12/11/2007 31313 Sur Reply to (related document(s): [31165] Motion for Protective Order) Filed by Donald A. Snide on behalf of Global Property Services Inc (Attachments: # (1) Exhibit 1: August 31, 2007, Email) (Snide, Donald)

12/18/2007 31324 Hearing Continued (RE: [31165] Protective Order). Hearing Scheduled for 01/23/2008 at 02:00 PM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604. (Jacobs,Karen)

01/16/2008 31375 Hearing Stricken and reset to 2/13/08 at 2:00 p.m. for oral argument in courtroom 642. (RE: [31165] Motion for Protective Order). (Jacobs, Karen)

01/16/2008 31376 Hearing Continued (RE: [31165] Motion for Protective Order, ) Oral argument scheduled for 2/13/2008 at 02:00 PM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs,Karen)

02/13/2008 31399 Hearing Continued (RE: [31165] Protective Order). Hearing Scheduled for 02/26/2008 at 02:00 PM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604. (Jacobs,Karen)

02/26/2008 31409 Hearing Continued (RE: [31165] Protective Order). Hearing Scheduled for 03/17/2008 at 02:00 PM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604. (Jacobs,Karen)

02/26/2008 31410 Agreed Order Granting Motion For Protective Order (Related Doc #[31165]). Signed on 2/26/2008.

03/18/2008 31469 Hearing Continued (RE: [31165] Motion for Protective Order, ). Hearing scheduled for 4/8/2008 at 02:00 PM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

04/08/2008 31499 Hearing Continued (RE: [31165] Protective Order). Hearing Scheduled for 04/30/2008 at 02:00 PM at Courtroom 642 219 SouthDearborn, Chicago, IL, 60604. (Jacobs,Karen)

04/30/2008 31516 Hearing Continued (RE: [31165] Motion for Protective Order, ) Hearing scheduled for 5/21/2008 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

05/21/2008 31574 Hearing Continued (RE: [31165] Protective Order). Hearing Scheduled for 06/04/2008 at 10:30 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604. (Jacobs,Karen)

06/04/2008 31583 Hearing Continued (RE: [31165] Protective Order). Hearing Scheduled for 07/15/2008 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604. (Jacobs,Karen)

06/04/2008 31584 Hearing Continued (RE: [29619] Sanctions). Hearing Scheduled for 07/15/2008 at 11:00 AM at Courtroom 642 219 South Dearborn,Chicago, IL, 60604. (Jacobs,Karen)

07/15/2008 31636 Hearing Continued (RE: [31165] Motion for Protective Order, ) Hearing scheduled for 8/20/2008 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

08/21/2008 31667 Hearing Continued (RE: [31165] Motion for Protective Order, ) Hearing scheduled for 9/24/2008 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

08/21/2008 31668 Hearing Continued (RE: [29619] Motion for Sanctions) Hearing scheduled for 9/24/2008 at 11:00 AM at 219 South Dearborn,Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

08/20/2008 31693 Order Scheduling:On Creditor Global Property Svcs Inc's Motion for Sanctions for Spoliations and Violation of the Court's 7/11/2005 Order and Motion to Compel Discovery Docket No [29619] . Hearing continued on 9/24/2008 at 11:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 8/20/2008 (Marola, Rosalie)

08/20/2008 31694 Order Scheduling:KMart Corp for Protective Order Docket No [31165] Hearing continued on 9/24/2008 at 11:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 8/20/2008 (Marola, Rosalie)

09/24/2008 31715 Hearing Continued (RE: [31165] Protective Order). Hearing Scheduled for 10/28/2008 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604. (Green,Josephine)

09/24/2008 31716 Hearing Continued (RE: [29619] Sanctions). Hearing Scheduled for 10/28/2008 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604. (Green,Josephine)

09/24/2008 31739 Order Scheduling On Creditor Global Property Services Inc's Motion for Sanctions for Spoliation and Violation of the Court's 7/11/05 Order and Motion to Compel Discovery Docket No [29619]. Status hearing to be held on 10/28/2008 at 11:00 AM at 219



South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 9/24/2008 (Marola, Rosalie)

09/24/2008 31742 Order Scheduling On Motion of KMart Corp for Protective Order Docket No [31165], Continued Status hearing to be held on 10/28/2008 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 9/24/2008 (Marola, Rosalie)

10/28/2008 31766 Hearing Continued (RE: [31165] Protective Order). Hearing Scheduled for 12/17/2008 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604. (Jacobs, Karen)

10/28/2008 31767 Hearing Continued (RE: [29619] Sanctions). Hearing Scheduled for 12/17/2008 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604. (Jacobs, Karen)

10/28/2008 31792 Order Scheduling On Creditor Global Property Svcs Inc's Motion for Sanctions for Spoliation & Violation of the Court's 7/11/05 Order & Motion to Compel Discovery Docket No [29619]. Hearing continued on 12/17/2008 at 11:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 10/28/2008 (Marola, Rosalie)

12/18/2008 31823 Hearing Continued (RE: [31165] Motion for Protective Order. Hearing scheduled for 2/4/2009 at 10:30 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

12/18/2008 31824 Hearing Continued (RE: [29619] Motion for Sanctions) Hearing scheduled for 2/4/2009 at 10:30 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

02/04/2009 31862 Hearing Continued (RE: [31165] Protective Order). Hearing Scheduled for 05/13/2009 at 10:30 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604. (Jacobs, Karen)

02/04/2009 31863 Hearing Continued (RE: [29619] Sanctions). Hearing Scheduled for 5/13/2009 at 10:30 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604. (Jacobs, Karen)

03/19/2009 31921 Notice of Motion and Motion to Approve Order to Shift Electronic Discovery Costs (and Memorandum) Filed by George R Mesires on behalf of Kmart Corporation. Hearing scheduled for 5/13/2009 at 10:30 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # (1) Exhibit A# (2) Exhibit B (Part 1)# (3) Exhibit B (Part 2)# (4) Exhibit B (Part 3)# (5) Exhibit C# (6) Exhibit D# (7) Exhibit E# (8) Exhibit F# (9) Exhibit G# (10) Exhibit H# (11) Exhibit I) (Mesires, George) Modified on 3/20/2009

03/20/2009 31943 Attachment(s) Proposed Order Filed by George R Mesires on behalf of Kmart Corporation (RE: [31921] Motion to Approve). (Mesires, George)

04/16/2009 31945 Response in Opposition to (related document(s): [31921] Motion to Approve) Filed by Donald A. Snide on behalf of Global PropertyServices Inc (Snide, Donald)

05/11/2009 31953 Reply to (related document(s): [31921] Motion to Approve, [31945] Response) Filed by George R Mesires on behalf of Kmart Corporation (Attachments: # (1) Exhibit A (Declaration of Thomas W. Avery) (Mesires, George)

05/13/2009 31955 Hearing Continued (RE: [31921] Motion to Approve). Oral argument scheduled for 6/10/2009 at 01:00 PM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

05/13/2009 31956 Hearing Continued (RE: [31165] Motion for Protective Order).Hearing scheduled for 6/10/2009 at 01:00 PM at 219 South Dearborn,Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

05/13/2009 31957 Hearing Continued (RE: [29619] Motion for Sanctions). Hearing scheduled for 6/10/2009 at 01:00 PM at 219 South Dearborn,Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

06/11/2009 31988 Hearing Continued (RE: [31921] Motion to Approve). Hearing scheduled for 7/15/2009 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

06/11/2009 31989 Hearing Continued (RE: [31165] Motion for Protective Order).Hearing scheduled for 7/15/2009 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

06/11/2009 31990 Hearing Continued (RE: [29619] Motion for Sanctions). Hearing scheduled for 7/15/2009 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

07/15/2009 32043 Hearing Continued (RE: [31921] Approve). Hearing scheduled for 08/12/2009 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604.. Signed on 07/15/2009. (Devine, Tina)

07/15/2009 32044 Hearing Continued (RE: [31165] Protective Order). Hearing scheduled for 08/12/2009 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604 Signed on 07/15/2009. (Devine, Tina)

07/15/2009 32045 Hearing Continued (RE: [29619] Sanctions). Hearing scheduled for 08/12/2009 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604.. Signed on 07/15/2009. (Devine, Tina)

07/24/2009 32048 Order Granting in Part; Continuing Motion to Approve (Related Doc # [31921]). Signed on 7/24/2009. (Riddick, Debbie)

07/27/2009 32049 Notice of Motion and Motion to Withdraw as Attorney Filed by David A. Newby on behalf of Global Property Services Inc. Hearing scheduled for 8/5/2009 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Newby, David)

08/12/2009 32081 Hearing Continued (RE: [31921] Motion to Approve). Hearing scheduled for 9/16/2009 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

08/12/2009 32082 Hearing Continued (RE: [31165] Motion for Protective Order). Hearing scheduled for 9/16/2009 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

08/12/2009 32083 Hearing Continued (RE: [29619] Motion for Sanctions). Hearing scheduled for 9/16/2009 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

09/04/2009 32089 Declaration Filed by George R Mesires on behalf of Kmart Corporation (RE: [31921] Motion to Approve). (Mesires, George)

09/04/2009 32090 Notice of Filing Filed by George R Mesires on behalf of Kmart Corporation (RE: [32089] Declaration). (Mesires, George)

09/17/2009 32095 Hearing Continued (RE: [31921] Motion to Approve). Hearing scheduled for 10/20/2009 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen)

10/20/2009 32119 Hearing Continued (RE: [31921] Approve). hearing scheduled for 11/03/2009 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604.. Signed on 10/20/2009. (Smith, Lester)

10/20/2009 32120 Hearing Continued (RE: [31165] Protective Order). Hearing scheduled for 11/03/2009 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604.. Signed on 10/20/2009. (Smith, Lester)

10/20/2009 32121 Hearing Continued (RE: [29619] Sanctions). hearing scheduled for 11/03/2009 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604.. Signed on 10/20/2009. (Smith, Lester)

11/03/2009 32125 Hearing Continued (RE: [31921] Approve). hearing scheduled for 12/09/2009 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604.. Signed on 11/03/2009. (Jacobs, Karen)

11/03/2009 32126 Hearing Continued (RE: [31165] Protective Order). Hearing scheduled for 12/09/2009 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604.. Signed on 11/03/2009. (Jacobs, Karen)

11/03/2009 32127 Hearing Continued. Status hearing to be held on 12/15/2009 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604..Signed on 11/03/2009. (Jacobs, Karen)

11/03/2009 32128 Hearing Continued (RE: [29619] Sanctions). hearing scheduled for 12/09/2009 at 11:00 AM at Courtroom 642 219 South Dearborn,Chicago, IL, 60604.. Signed on 11/03/2009. (Jacobs, Karen)

12/09/2009 32139 Hearing Continued (RE: [31921] Approve). hearing scheduled for 01/13/2010 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604.. Signed on 12/09/2009. (Jacobs, Karen)

12/09/2009 32140 Hearing Continued (RE: [31165] Protective Order). Hearing scheduled for 01/13/2010 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604.. Signed on 12/09/2009. (Jacobs, Karen)

12/09/2009 32141 Hearing Continued (RE: [29619] Sanctions). hearing scheduled for 01/13/2010 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604.. Signed on 12/09/2009. (Jacobs, Karen)

01/06/2010 32157 Agreed Order and Stipulation extending time for Kmart to Submit an Interim Report Concerning the Sampling of Electronic Documents. Signed on 1/6/2010 (Marola,Rosalie)

01/11/2010 32158 Interim Report Concerning the Sampling of Electronic Documents Filed by William J. Barrett on behalf of Kmart Corporation (Attachments: # (1) Exhibit A# (2) Exhibit B# (3) Exhibit C# (4) Exhibit D# (5) Exhibit E) (Barrett, William)

01/11/2010 32159 Notice of Filing Filed by William J. Barrett on behalf of Kmart Corporation (RE: [32158] Report). (Barrett, William)

01/28/2010 32163 Second Report (Interim) Concerning the Sampling of Electronic Documents Filed by William J. Barrett on behalf of Kmart Corporation. (Attachments: # 1 Exhibit A (Part 1)# 2 Exhibit A (Part 2)# 3 Exhibit A (Part 3)# 4 Exhibit A (Part 4)) (Barrett, William) (Entered: 01/28/2010)

01/28/2010 32164 Notice of Filing Filed by William J. Barrett on behalf of Kmart Corporation (RE: 32163 Report). (Barrett, William) (Entered: 01/28/2010)

Case 02-02474 Doc 32235-1 Filed 07/17/13 Entered 07/17/13 11:41:47 Desc

Case 02-02474 Doc 32231 Filed 09/18/12 Entered 09/18/12 13:02:30 Desc Main

Case 02-02474 Doc 32184 Filed 03/03/10 Entered 03/04/10 15:27:23 Desc Main

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## EXHIBIT C

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

CIT GROUP/COMMERICAL SERVICES DOCKET ENTRIES

05/10/2002 3019 APPEARANCE by Thomas V Askounis for The CIT Group/Equipment Financing Inc [RM] Original NIBS Entry Number: 2994 (Entered: 05/13/2002)

08/01/2002 5390 ASSIGNMENT of Claim of The CIT Group/Commercial Services Inc to National Union Fire Insurance Co of Pittsburg PA c/o American International Underwriters for \$49,964,544.12 [RM] Original NIBS Entry Number: 5364 (Entered: 08/02/2002)

03/08/2004 23069 Response to (related document(s): 20650 Motion Objecting to Claim, ) Filed by David A Wargula on behalf of The CIT Group/Equipment Financing Inc (Green, Josephine) (Entered: 03/22/2004)

12/06/2004 26824 Order Approving Stipulation and Order Regarding Claims Numbered 50856 and 50857 of the CIT Group/Equipment Financing Inc . Signed on 12/6/2004 (Green, Josephine) . (Entered: 12/07/2004)

11/01/2005 29242 Notice of Motion and Motion to Allow Claim(s) # Filed by Allen J Guon on behalf of The CIT Group/Commercial Services, Inc.. Hearing scheduled for 11/15/2005 at 10:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D# 5 Exhibit E# 6 Exhibit F# 7 Proposed Order) (Guon, Allen) (Entered: 11/01/2005)

04/11/2006 29758 Order Scheduling RE: Motion Of The CIT Group/Commercial Services Inc For Recognition Of Interest Of CIT In Claims and Providing For Payment Of Claims [Docket No 29242]. Hearing scheduled for 7/11/2006 at 10:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 4/11/2006 (Marola, Rosalie) (Entered: 04/13/2006)

07/11/2006 30032 Order Scheduling Re:Motion of the CIT Group/Commercial Services Inc For Recognition of Interest of CIT in claims and providing for payment of claims (docket no

29242). Hearing scheduled for 10/17/2006 at 10:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 7/11/2006 (Marola, Rosalie) (Entered: 07/14/2006)

10/17/2006 30316 Order Scheduling RE: Motion of the CIT Group/Commercial Services Inc for Recognition of Interest of CIT in Claims and Approving for Payment of Claims. Hearing continued on 1/17/2007 at 10:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. [Re:Docket No 29242] Signed on 10/17/2006 (Marola, Rosalie) (Entered: 10/18/2006)

05/01/2007 30847 Order Scheduling RE: Motion of the CIT Group/Commercial Services Inc for recognition of interest of CIT in claims and providing for payment of claims docket no 29242. Hearing continued on 6/20/2007 at 11:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 5/1/2007 (Marola, Rosalie) (Entered: 05/03/2007)

05/03/2007 30872 Order Scheduling RE: Motion of the CIT Group/Commercial Services Inc for recognition of interest of CIT in claims and providing payment of claims docket no 29242. Hearing continued on 8/14/2007 at 10:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 5/3/2007 (Marola, Rosalie) (Entered: 05/04/2007)

08/14/2007 31113 Order Scheduling Re: Motion of the CIT Group/Commercial Services Inc for Recognition of Interest of CIT in Claims & Providing for Payment of Claims Docket No 29242. Hearing continued on 10/3/2007 at 11:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 8/14/2007 (Marola, Rosalie) (Entered: 08/15/2007)

10/03/2007 31196 Order Scheduling RE: Motion of the CIT Group/Commercial Services Inc for Recognition of CIT in Claims and providing for payment of claims Docket No 29242. Hearing continued on 11/6/2007 at 10:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 10/3/2007 (Marola, Rosalie) (Entered: 10/04/2007)

11/06/2007 31283 Order Scheduling RE: Motion of the CIT Group/Commercial Services Inc for Recognition of Interest of CIT in Claims and Providing For Payment of Claims Docket No 29242. Hearing continued on 1/9/2008 at 11:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 11/6/2007 (Marola, Rosalie) (Entered: 11/07/2007)

01/09/2008 31361 Order Scheduling RE: Motion of the CIT Group/Commercial Services Inc for Recognition of Interest of CIT in Claims and Providing for Payment of Claims Docket No 29242. Status hearing to be held on 3/11/2008 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 1/9/2008 (Marola, Rosalie) (Entered: 01/11/2008)

03/11/2008 31459 Order Scheduling RE: Motion of the CIT Group/Commercial Services Inc for Recognition of Interest of CIT in Claims & Providing for Payment of Claims Docket# 29242. Continued Status hearing to be held on 5/14/2008 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 3/11/2008 (Marola, Rosalie) (Entered: 03/14/2008)

05/14/2008 31559 Order Scheduling RE: Motion of the CIT Group/Commercial Services Inc For Recognition of Interest of CIT in Claims and Providing for Payment of Claims Docket NO 29242 . Hearing continued on 6/24/2008 at 11:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 5/14/2008 (Marola, Rosalie) (Entered: 05/16/2008)

06/24/2008 31626 Order Scheduling RE: Motion of the CIT Group/Commercial Svc Inc for Recognition of Interest of CIT in claims and providing for payment of claims Docket NO 29242 . Hearing continued on 8/20/2008 at 11:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 6/24/2008 (Marola, Rosalie) (Entered: 06/26/2008)

08/20/2008 31692 Order Scheduling RE: Motion of the CIT Group/Commercial Services Inc for Recognition of Interest of CIT in claims and providing for payment of claims Docket No 29242 . Hearing continued on 9/24/2008 at 11:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 8/20/2008 (Marola, Rosalie) (Entered: 08/22/2008)

09/24/2008 31738 Order Scheduling RE: Motion of the CIT Group/Commercial Services Inc for Recognition of Interest of CIT in Claims and Providing for Payment of Claims Docket NO 29242 . Hearing continued on 10/28/2008 at 11:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 9/24/2008 (Marola, Rosalie) (Entered: 09/25/2008)

10/28/2008 31791 Order Scheduling RE: Motion of the CIT Group/Commercial Svcs Inc for Recognition of Interest of CIT in claims and providing for payments of claims Docket NO 29242 . Hearing continued on 12/17/2008 at 11:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 10/28/2008 (Marola, Rosalie) (Entered: 10/29/2008)

03/18/2009 31918 Order Scheduling RE: Motion of the CIT Group/Commercial Svcs Inc for Recognition of Interest of CIT in Claims and Providing for Payment of Claims Docket NO 29242 . Hearing continued on 6/16/2009 at 11:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 3/18/2009 (Marola, Rosalie) (Entered: 03/19/2009)

08/05/2009 32062 Order Scheduling RE: Motion of the CIT Group/Commercial Services Inc for Recognition of Interest of CIT in Claims and providing for payment of claims (Docket NO 29242 . Hearing continued on 9/22/2009 at 11:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 8/5/2009 (Marola, Rosalie) (Entered: 08/06/2009)

11/03/2009 32134 Order Scheduling Ordered Re: Motion of The CIT Group/Commercial Services Inc for Recognition of Interest of CIT in Claims and Providing for Payment of Claims (Docket No 29242 . Hearing continued on 12/15/2009 at 11:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 11/3/2009 (Marola, Rosalie) (Entered: 11/04/2009)

12/15/2009 32151 Hearing Continued (RE: 29242 Allow Claims). hearing scheduled for 03/03/2010 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604.. Signed on 12/15/2009. (Jacobs, Karen) (Entered: 12/15/2009)



Case 02-02474 Doc 32235-1 Filed 07/17/13 Entered 07/17/13 11:41:47 Desc

Case 02-02474 Doc 32231 Filed 09/18/12 Entered 09/18/12 13:02:30 Desc Main

Case 02-02474 Doc 32184 Filed 03/03/10 Entered 03/04/10 15:27:23 Desc Main  
Document Page 30 of 38

## EXHIBIT D

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

DAVID KERSH DOCKET ENTRIES

06/09/2003 12863 OBJECTION to Debtors fifth omnibus objection to claims and claimants request to remove this case from the Bankruptcy Court arising from the fraud committed by Kmart by Kersh [DR] Original NIBS Entry Number: 12817 (Entered: 06/10/2003)

05/05/2006 29865 Notice of Motion and Motion For Summary Judgment in favor of Kmart Corporation and against David Kersh Filed by William J. Barrett on behalf of Kmart Corporation. Hearing scheduled for 5/24/2006 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Barrett, William) (Entered: 05/05/2006)

05/05/2006 29866 Statement of Material Facts in Support of Motion for Summary Judgment (Claim of David Kersh) Filed by William J. Barrett on behalf of Kmart Corporation (RE: 29865 Motion for Summary Judgment, ). (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D# 5 Exhibit E# 6 Exhibit F# 7 Exhibit G# 8 Exhibit H# 9 Exhibit I# 10 Exhibit J) (Barrett, William) (Entered: 05/05/2006)

05/16/2006 29881 Notice of Motion and Motion to Compel Kmart for Answers to Interrogatories, Notice of Motion and Motion For Sanctions against Kmart Corporation Filed by David Kersh . Hearing scheduled for 5/17/2006 at 10:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Marola, Rosalie) (Entered: 05/16/2006)

05/16/2006 29882 Notice of Motion and Motion to Quash Kmart's Motion For[i]Order Granting Partial Summary Judgment on Claim of David Kersh, Claim No 48076 and[ii]Order Partially Allowing Claim of David Kersh as a Class 7 Claim. Filed by David Kersh . Hearing scheduled for 5/17/2006 at 10:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Marola, Rosalie) (Entered: 05/16/2006)

05/16/2006 29883 Memorandum In Support of Claimants Motion to Quash Kmart's Motion For [i] Order Granting Partial Summary Judgment on Claim of David Kersh, Claim No 48076 and [ii] Order Partially Allowing Claim of David Kersh as a Class 7 Claim. Filed by David Kersh (RE: 29882 Motion to Quash, ). (Marola, Rosalie) (Entered: 05/16/2006)

05/16/2006 29884 Exhibit(s) Filed by David Kersh (RE: 29881 Motion to Compel, Motion for Sanctions, ,, 29882 Motion to Quash, ). (Attachments: # 1 Exhibit) (Marola, Rosalie) (Entered: 05/16/2006)

06/13/2006 29947 Response to (related document(s): 29881 Motion to Compel,, Motion for Sanctions, ) Filed by William J. Barrett on behalf of Kmart Corporation (Barrett, William) (Entered: 06/13/2006)

06/13/2006 29948 Notice of Filing Filed by William J. Barrett on behalf of Kmart Corporation (RE: 29947 Response). (Barrett, William) (Entered: 06/13/2006)

06/13/2006 29949 Response to (related document(s): 29882 Motion to Quash, ) Filed by William J. Barrett on behalf of Kmart Corporation (Attachments: # 1 Exhibit A) (Barrett, William) (Entered: 06/13/2006)

06/13/2006 29950 Notice of Filing Filed by William J. Barrett on behalf of Kmart Corporation (RE: 29949 Response). (Barrett, William) (Entered: 06/13/2006)

03/15/2007 30768 Order Scheduling RE:KMart/David Kersh Matters. Status hearing to be held on 5/1/2007 at 10:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 3/15/2007 (Marola, Rosalie) (Entered: 03/15/2007)

05/01/2007 30825 Hearing Continued (RE: Kmart/David Kersh matters 29865 Motion for Summary Judgment,, 29881 Motion to Compel, , Motion for Sanctions,, 29882 Motion to Quash, ). Hearing scheduled for 6/20/2007 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Beckerman, Steve) (Entered: 05/01/2007)

05/02/2007 30828 Notice of Motion and Motion to Approve Order to Confirm Classification of Claims of David Kersh as Class 6 and Class 11 Claims Filed by William J. Barrett on behalf of Kmart Corporation. Hearing scheduled for 6/20/2007 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Barrett, William) (Entered: 05/02/2007)

06/20/2007 30961 Order Scheduling KMart/David Kersh Matters docket entries [29881 29882 29866 & 30828]. Status hearing to be held on 8/14/2007 at 10:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 6/20/2007 (Marola, Rosalie) (Entered: 06/21/2007)

08/15/2007 31135 Order Scheduling RE:KMart/David Kersh Matters Docket Nos [29881 & 29882]. Status hearing to be held on 10/3/2007 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 8/15/2007 (Marola, Rosalie) (Entered: 08/16/2007)

10/03/2007 31197 Order Scheduling RE:KMart/David Kersh Matters. Re: Docket Nos [29881, 29882, 29883 & 29884]. Hearing continued on 11/6/2007 at 10:00AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 10/3/2007 (Marola, Rosalie) (Entered: 10/04/2007)

11/06/2007 31284 Order Scheduling RE:KMart/David Kersh Matters. Status hearing to be held on 1/9/2008 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604.

Signed on 11/6/2007 (Marola, Rosalie) Modified on 11/8/2007 to create related document # 29881 & 29882 (Walker, Valerie). (Entered: 11/07/2007)

01/09/2008 31362 Order Scheduling RE:KMart/David Kersh Matters. Docket Nos [29881 & 29882] Claim No 48076. Status hearing to be held on 3/11/2008 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 1/9/2008 (Marola, Rosalie) (Entered: 01/11/2008)

03/11/2008 31460 Order Scheduling RE:Kmart/David Kersh Matters Docket#[29881 & 29882]. Status hearing to be held on 5/14/2008 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 3/11/2008 (Marola, Rosalie) (Entered: 03/14/2008)

05/14/2008 31560 Order Scheduling RE:KMart/David Kersh Matters Docket Nos [29881 & 29882]. Status hearing to be held on 6/24/2008 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 5/14/2008 (Marola, Rosalie) (Entered: 05/16/2008)

06/24/2008 31630 Order Scheduling RE:KMart/David Kersh Matters.(Docket NOs)[29881,29882,29883 & 29884] Status hearing to be held on 8/20/2008 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 6/24/2008 (Marola, Rosalie) (Entered: 06/26/2008)

08/20/2008 31691 Order Scheduling RE:KMart/David Kersh Matters (Docket No[29881&29882] Status hearing to be held on 9/24/2008 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 8/20/2008 (Marola, Rosalie) (Entered: 08/22/2008)

09/24/2008 31741 Order Scheduling RE:KMart/David Kersh Matters. Status hearing to be held on 10/28/2008 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 9/24/2008 (Marola, Rosalie) Modified on 9/25/2008 to relate to document 29881 (Seamann, Pamela). (Entered: 09/25/2008)

10/28/2008 31793 Order Scheduling RE:KMart/David Kersh Matters. Status hearing to be held on 12/17/2008 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 10/28/2008 (Marola, Rosalie) (Entered: 10/29/2008)

03/18/2009 31919 Order Scheduling RE:KMart/David Kersh Matters. Status hearing to be held on 6/16/2009 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 3/18/2009 (Marola, Rosalie) (Entered: 03/19/2009)

08/05/2009 32063 Order Scheduling RE:Kmart/David Kersh Matters. (Docket No [29881 & 29882] Status hearing to be held on 9/22/2009 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 8/5/2009 (Marola, Rosalie) (Entered: 08/06/2009)

09/03/2009 32087 Motion For Summary Judgment in favor of David Kersh and against Kmart for \$96119.00 Filed by David Kersh . (Marola, Rosalie) (Entered: 09/04/2009)

09/03/2009 32088 Brief In Support of Motion for Summary Judgement. RE: Docket Entry # 32087 Filed by David Kersh . (Marola, Rosalie) (Entered: 09/04/2009)

09/08/2009 32091 Reply to (related document(s): 32087 Motion for Summary Judgment) Filed by William J. Barrett on behalf of Kmart Corporation (Attachments: # 1 Exhibit A) (Barrett, William) (Entered: 09/08/2009)

09/08/2009 32092 Notice of Filing Filed by William J. Barrett on behalf of Kmart Corporation (RE: 32091 Reply). (Barrett, William) (Entered: 09/08/2009)

09/25/2009 32112 Order Scheduling RE: David Kersh Matters (Docket NOs 29881, 29882 and 29883). Status hearing to be held on 12/15/2009 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 9/25/2009 (Marola, Rosalie) (Entered: 09/28/2009)

09/25/2009 32113 Order Scheduling David Kersh's Motion for Summary Judgement (Docket No 32087 . Reply due by: 11/23/2009 Status hearing to be held on 12/15/2009 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. Signed on 9/25/2009 (Marola, Rosalie) (Entered: 09/28/2009)

12/15/2009 32149 Hearing Continued (RE: 29881 Compel). hearing scheduled for 03/03/2010 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604.. Signed on 12/15/2009. (Jacobs, Karen) (Entered: 12/15/2009)

12/15/2009 32150 Hearing Continued (RE: 29882 Quash). hearing scheduled for 03/03/2010 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604.. Signed on 12/15/2009. (Jacobs, Karen) (Entered: 12/15/2009)

12/15/2009 32151 Hearing Continued (RE: 29242 Allow Claims). hearing scheduled for 03/03/2010 at 11:00 AM at Courtroom 642 219 South Dearborn, Chicago, IL, 60604.. Signed on 12/15/2009. (Jacobs, Karen) (Entered: 12/15/2009)

12/15/2009 32152 Hearing Continued (RE: 32087 Motion for Summary Judgment). Hearing scheduled for 3/3/2010 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Jacobs, Karen) (Entered: 12/15/2009)

02/03/2010 32170 Notice of Motion and Motion to Abstention, Notice of Motion and Motion to Approve Order Lifting Plan Injunction re: Claims of David Kersh Filed by William J. Barrett on behalf of Kmart Corporation. Hearing scheduled for 3/3/2010 at 11:00 AM at 219 South Dearborn, Courtroom 642, Chicago, Illinois 60604. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Proposed Order) (Barrett, William) (Entered: 02/03/2010)

## EXHIBIT E

Exhibit E

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS

In re

KMART CORPORATION, *et al*,

Debtor.

Chapter 11

Case No. 02 B 02474  
(Jointly Administered)

Hon. Susan Pierson Sonderby

NOTICE TO PARTY WITH UNRESOLVED PERSONAL INJURY CLAIM IN THE  
KMART CORPORATION BANKRUPTCY CASE

To:

You have filed a proof of claim in the Kmart Corporation bankruptcy case for personal injuries that you allegedly suffered. You are hereby notified that the Bankruptcy Court has terminated any order, stay, and injunctions that prevented you from litigating the amount of your claim in an appropriate non-bankruptcy court.

Please be aware that although you may litigate your claim in a non-bankruptcy court to a determination of the amount of your claim, any payment on your claim will remain subject to Kmart's Plan of Reorganization. Under the Plan of Reorganization, claims based on events that occurred prior to January 22, 2002 will be paid 6.25 cents on the dollar if the claim is determined, by a court ruling or settlement, to be for less than \$30,000. Claims based on events that occurred prior to January 22, 2002 that are determined to be an amount greater than \$30,000 will be paid approximately 10.1 cents on the dollar.

This Notice may cause the resumption of a statute of limitations period or period by which action to prosecute a previously filed lawsuit must be taken. If you are not a lawyer, you should consult with one to make sure that your rights are not lost.

Dated: \_\_\_\_\_, 2010

KMART CORPORATION

/s/ William J. Barrett

William J. Barrett (ARDC No. 6206424)

BARACK FERRAZZANO KIRSCHBAUM &  
NAGELBERG LLP

200 West Madison St., Suite 3900

Chicago, IL 60606

(312) 629-5170 (Telephone)

[William.barrett@bfkn.com](mailto:William.barrett@bfkn.com)

Counsel for Kmart Corporation

## EXHIBIT F



Exhibit F

Re: In re Kmart Corp., et al., Chapter 11 Bankruptcy Case No. 02-B-02474  
Deadline for Claimants to Take Action with Respect to Unclaimed Stock  
Distributions – Valuable rights may be lost if action is not taken in time

Dear CLAIMANT\_NAME:

According to our records, you were entitled to receive stock in Sears Holding Corp. (the "Stock") on account of your allowed claim against Kmart Corporation. Computershare Ltd. (f/k/a EquiServe Trust Company, N.A., "Computershare") has previously mailed you a notice bearing the heading "Transaction Advice" (the "Transaction Advice") which set forth the number of shares distributed to you. The Transaction Advice also contained information on how you may receive the Stock that was distributed to you and which is being held by Computershare.

According to our records, the Stock distributed to you is presently in an account with Computershare and awaits your further action. You have one of two options: (i) you can request that Computershare sell the shares on your behalf and send you the proceeds; or (ii) you can request that your personal stock broker transfer the Stock to your personal brokerage account.

If you still have the Transaction Advice and/or you know your account number (which appears on the Transaction Advice) you may contact Computershare at 1-800-732-7780 in order to provide them with further direction as to what action you would like to take with respect to the Stock. If you know your account number and you wish to transfer the Stock to your personal brokerage account, you should contact your personal broker directly and provide your broker with the information on the Transaction Advice. Your personal broker will then be able to transfer the Stock from the account at Computershare to your personal account.

If you do not have your Transaction Advice or do not know your account number, you may contact Computershare at the number listed above and identify the name on the account and provide them with further direction on what action you wish to take. If Computershare is unable to locate your account, you should send a email to [kmart hotline@bfpkn.com](mailto:kmart hotline@bfpkn.com) or leave a message on the Kmart Bankruptcy Hotline at (312) 629-7400. If you wish to transfer the Stock to your personal account, you should request that Computershare mail you another copy of the Transaction Advice(s) that was or that were sent to you so that you may provide the information on such notices to your personal broker, as explained above.

Please be advised that if you fail to contact Computershare to claim your Stock as set forth above by the 45<sup>th</sup> day after the date of this letter, the Stock will revert to Kmart and you will have no further right to the Stock or a distribution from the Kmart bankruptcy case.

Should you have any questions related to this matter, please feel free to contact the undersigned.

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS

In re

KMART CORPORATION, *et al*,

Debtor.

Chapter 11

Case No. 02 B 02474  
(Jointly Administered)

Hon. Susan Pierson Sonderby

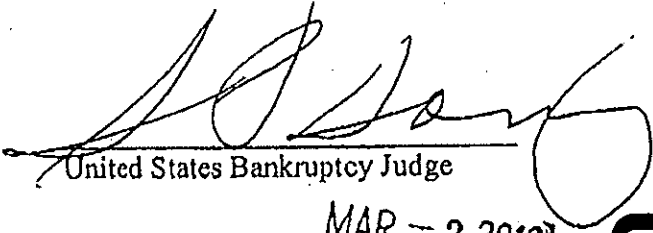
ORDER DISCHARGING CLAIMS AGENT

The Court having entered a Final Decree in this case, and it therefore being appropriate to discharge the BMC Group, Inc. as the appointed claims and noticing agent in this case (the "Agent"), IT IS HEREBY ORDERED THAT:

1. Upon entry of this Order, the Agent (or Kmart to the extent its direction or assistance is necessary to accomplish any of the items below) shall, in accordance with directions received from the Clerk of the Court (the "Clerk"), do the following:

- (i) prepare and forward to the Clerk a final claim register for this case;
- (ii) direct the shipment of hard copies of proofs of claims to an address designated by the Clerk; and
- (iii) maintain for six months following the entry of this Order the web based on-line service through which the public may access claim information.

2. Upon completion of all of foregoing, the Clerk shall advise the Agent that the Agent has completed its duties in this case. Thereupon, the Agent shall be discharged as the claims and noticing agent in this case.

  
United States Bankruptcy Judge

MAR - 3 2010

PLAINTIFF'S  
EXHIBIT

2

PDT/mo 02-26 # 20075

10/7/10

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

ROSE MONTGOMERY

Plaintiff,

vs.

No. 04 L 001736

KMART CORPORATION OF ILLINOIS, INC.  
d/b/a KMART and KMART CORPORATION  
d/b/a KMART

Defendant.

AFFIDAVIT OF ROSE MONTGOMERY

I, ROSE MONTGOMERY, having first been duly sworn and placed under oath, state  
as follows:

1. I am the plaintiff in the above-referenced lawsuit which arises out of an  
incident that occurred at a K-Mart store in Willowbrook, Illinois on February 18, 2002 in  
which I suffered certain personal injuries.

2. Despite completing and signing a "K-Mart Customer Incident Information"  
form at the time of the subject incident and despite my attorney sending an attorney lien  
letter to K-Mart on May 3, 2002 and subsequently filing a Complaint at Law against K-Mart  
on February 13, 2004, I have never received "Proof of Claim" form from K-Mart or any  
correspondence for that matter from K-Mart advising me of the need to complete such a  
form in order to preserve my legal rights.

3. At the time of the subject incident, I was residing at 143 Indian Wood Lane  
in Indian Head Park, Illinois and I have continued to reside there up until the present time.

PLAINTIFF'S  
EXHIBIT

3

4. All the facts contained in this affidavit are true and accurate.

Further affiant sayeth not.

Rose Montgomery  
Rose Montgomery

SUBSCRIBED and SWORN to  
before me this 31 day of  
October, 2010.

Mary O'Heir  
Notary Public



PDT/mo 02-26 # 20075

10/7/10

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

ROSE MONTGOMERY

Plaintiff,

vs.

No. 04 L 001736

KMART CORPORATION OF ILLINOIS, INC.  
d/b/a KMART and KMART CORPORATION  
d/b/a KMART

Defendant.

AFFIDAVIT OF PETER D. TARPEY

I, PETER D. TARPEY, having first been duly sworn and placed under oath, state  
as follows:

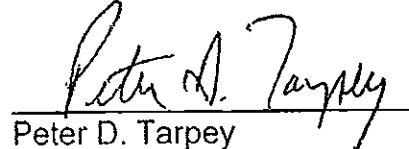
1. I am the attorney representing the plaintiff Rose Montgomery in the above-referenced lawsuit.

2. In addition to Rose Montgomery completing and signing a K-Mart Incident Report at the time of the subject incident, I sent an attorney lien letter to K-Mart on May 3, 2002 and subsequently filed the subject personal injury lawsuit on February 13, 2004.

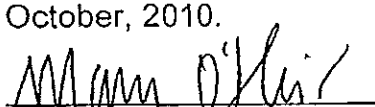
3. Despite notifying K-Mart of Rose Montgomery's personal injury claim at three different points in time and in three different forms, neither my client nor myself have ever received a "Proof of Claim" form from K-Mart.

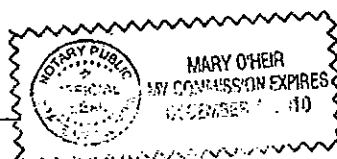
3. All the facts contained in this affidavit are true and accurate.

Further affiant sayeth not.

  
Peter D. Tarpey

SUBSCRIBED and SWORN to  
before me this 7<sup>th</sup> day of  
October, 2010.

  
Notary Public



PLAINTIFF'S  
EXHIBIT

4



## Kmart Customer Incident Information

Store Stamp

Dear Kmart Customer,

We want you to have a positive experience every time you visit our store. If you have experienced an accident or loss of any kind while visiting us, please provide the information requested below. This information will help us meet our goal of continuous improvement in the operation of our store. It will also help us in contacting you to make sure we are providing the service you expect.

Please take the white copy of this document for your records. If after leaving the store you wish to provide further information or have any questions about your incident, please call our Store Team Manager.

We are sorry you had an unpleasant experience while our guest. We look forward to serving you better in the future.

Sincerely,

Your Kmart Store Management

Store Phone Number: 630 325-9725

### TO BE COMPLETED BY CUSTOMER:

Customer name: Rose Montgomery Customer's Street Address: 143 Indian Wood Lane

City: Indian Head Park State: IL Zip: 60525 Phone: 708 246-7782

Customer's employer: Roseann Montgomery Customer's sex: F

Customer's Date of Birth: 11-1-33 Customer's Social Security Number: 360 36 7255

If injury to a child: Child's name: \_\_\_\_\_ Child's age: \_\_\_\_\_ Parent's name: \_\_\_\_\_

### Customer's Description of Incident:

Date of incident: 1-18-02 Location of incident: Pantry

Time of incident: 1:50 What happened? Turned and Fall over Pallet

Do you wish to be contacted? Yes Date reported: 2-18-02 Signature of Customer: Rose Montgomery

White copy - for Customer

PLAINTIFF'S  
EXHIBIT

5

*Law Offices*

PAUL B. EPISCOPE, LTD.

PAUL B. EPISCOPE  
MICHAEL T. MULLEN  
MICHAEL B. BOLAN  
ANTHONY J. MASCIOPINTO  
PETER D. TARPEY  
MICHELLE M. DEMPSEY

JOHN C. ERB  
OF COUNSEL

SUITE 300  
77 WEST WASHINGTON STREET  
CHICAGO, ILLINOIS 60602

(312) 782-6636  
FAX (312) 782-1114

May 3, 2002

K-Mart  
840 Plainfield  
Willowbrook, IL 60521

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Re: Our Client: Rose Montgomery  
D/A: February 18, 2002  
Our File No: 02-26

To Whom It May Concern:

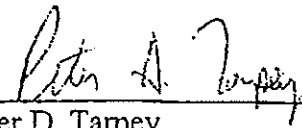
The purpose of this letter is to advise you that we have been retained as attorneys to represent the above-named person in connection with a legal claim for damages arising out of injuries sustained on the above date.

In the event that you are insured for liability in connection with this type of occurrence, please forward this letter and the enclosed lien directly to your insurance company in order that we may commence discussions which will hopefully enable us to amicably resolve our controversy.

Very truly yours,

PAUL B. EPISCOPE

By:

  
Peter D. Tarpey

DT/jlb

losure

PLAINTIFF'S  
EXHIBIT

*Law Offices*

PAUL B. EPISCOPE, LTD.

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May 3, 2002

K-Mart  
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Willowbrook, IL 60521

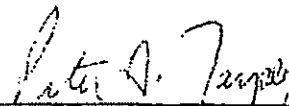
Re: Montgomery v. K-Mart  
Our File No: 02-26

To Whom It May Concern:

PLEASE TAKE notice that Rose Montgomery (hereinafter referred to as the claimant) has placed in my hands for collection a certain suit, claim, demand or cause of action against you for injuries received by the claimant on, to-wit, the 18<sup>th</sup> day of February, 2002 through your negligence.

You are hereby notified that the claimant entered into a contract with me to pay me as compensation for services rendered and to be rendered in and about the prosecution of said suit, claim, demand, or cause of action a sum equal to one-third of any amount recovered by way of settlement or otherwise, prior to the actual trial of said cause in court, and one-third of any amount recovered after suit is started and the trial of said cause is begun.

You are further notified that by virtue of the Attorney's Lien Law of 1909, as amended, I claim a lien to the extent of my interest, as set forth above as said claim, demand, cause of action and suit at law, which said lien, by virtue of said law, attaches to any verdict or judgment entered or to be entered in such suit or to any money or property which may be recovered by the claimant on account of such claim, suit, demand or cause of action from and after the service of this notice.

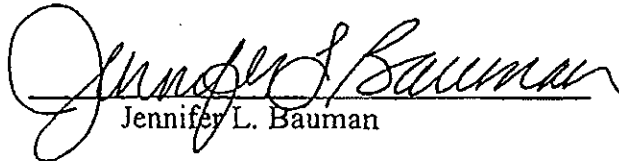


Paul B. Episcopo, Ltd.  
Attorneys for Claimant

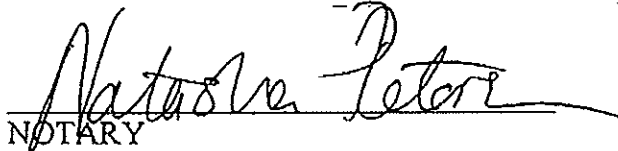
PDT/jlb

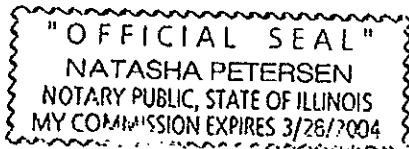


The undersigned, being first duly sworn on oath, deposes and says that on the 3rd day of May, 2002, she served the foregoing claim of lien upon the above named by certified U.S. mail; that she deposited the original thereof enclosed in an envelope addressed to the said above named at the above address in the U.S. Mail chute at 77 W. Washington, Chicago, IL marked "Certified Mail" and "Return Receipt Requested", and with proper postage affixed.

  
Jennifer L. Bauman

SUBSCRIBED and SWORN to before me this 3 day of May, 2002.

  
NOTARY

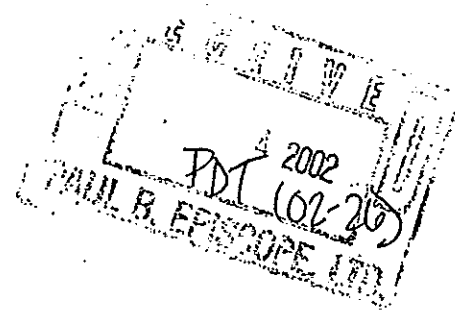




Kmart Customer Incident Center  
Sedgwick Claims Management Services, Inc.  
P.O. Box 5058, Troy, MI 48007-5058  
Phone: (248) 463-7577  
Fax: (248) 463-6637

May 21, 2002

Attn: Paul B. Episcopo  
Law Offices of Paul B. Episcopo, Ltd.  
77 W. Washington Street, Ste. 300  
Chicago, IL 60602



Re: Name: Rose Montgomery  
Date of Incident: 2-18-02  
Our File#: 20020215087  
Location: Kmart #4459- Willowbrook, IL

Dear Mr. Episcopo:

This letter is in response to a letter received from your office, dated May 3, 2002, and will acknowledge your representation of Rose Montgomery. I will be handling the file regarding this alleged incident on February 18, 2002. Any future correspondence should be directed to my attention.

Please note that Kmart Corporation does not have a Med-Pay policy and, thus, we are unable to offer any payment on medical bills or pre-authorization for medical treatment. Please forward copies of any bills and/or treatment notes, or medical records that you may have in your possession that will help in successfully evaluating your client's claim.

Your cooperation will be appreciated.

Respectfully yours,

Cynthia Cooper  
Claims Examiner  
248-463-7566

aa/aa  
Enc.

PLAINTIFF'S  
EXHIBIT

7

Order

Document Page 77 of 84

(2/24/05) CCG 0002

## IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Montgomery

v.

K-Mart

No.

11 L 8975

~~04 L 1736~~

## ORDER

This cause coming to be heard upon Defendants' Motion to Dismiss, due notice having been given and the Court being fully advised in the premises;  
 IT IS HEREBY ORDERED  
 That this matter is voluntarily dismissed without prejudice and with leave to re-file.

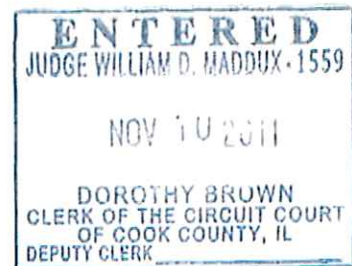
Atty. No.: 20075Name: PBE, LLCAtty. for: PlaintiffAddress: 77 W. Washington #300City/State/Zip: Chicago, IL 60602Telephone: (312) 782-6636

ENTERED:

Dated: \_\_\_\_\_

Judge

Judge's No.



DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PDT/mo 02-26 # 20075

10/7/10

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

ROSE MONTGOMERY

Plaintiff,

vs.

No. 04 L 001736

KMART CORPORATION OF ILLINOIS, INC.  
d/b/a KMART and KMART CORPORATION  
d/b/a KMART

Defendant.

AFFIDAVIT OF ROSE MONTGOMERY

I, ROSE MONTGOMERY, having first been duly sworn and placed under oath, state  
as follows:

1. I was the plaintiff in the above-referenced lawsuit which arose out of an  
incident that occurred at a K-Mart store in Willowbrook, Illinois on February 18, 2002 in  
which I suffered certain personal injuries.

2. Despite completing and signing a "K-Mart Customer Incident Information"  
form at the time of the subject incident and despite my attorney sending an attorney lien  
letter to K-Mart on May 3, 2002 and subsequently filing a Complaint at Law against K-Mart  
on February 13, 2004, I have never received "Proof of Claim" form from K-Mart or any  
correspondence for that matter from K-Mart advising me of the need to complete such a  
form in order to preserve my legal rights.

3. At the time of the subject incident, I was residing at 143 Indian Wood Lane  
in Indian Head Park, Illinois and I have continued to reside there up until the present time.



TOTAL P.03

4. All the facts contained in this affidavit are true and accurate.

Further affiant sayeth not.

  
Rose Montgomery

SUBSCRIBED and SWORN to  
before me this \_\_\_\_ day of  
\_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public



PDT/mo 02-26 # 20075

10/7/10

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

ROSE MONTGOMERY

Plaintiff,

vs.

No. 04 L 001736

KMART CORPORATION OF ILLINOIS, INC.  
d/b/a KMART and KMART CORPORATION  
d/b/a KMART

Defendant.

AFFIDAVIT OF PETER D. TARPEY

I, PETER D. TARPEY, having first been duly sworn and placed under oath, state  
as follows:

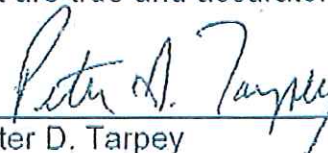
1. I am the attorney representing the plaintiff Rose Montgomery in the above-  
referenced lawsuit.

2. In addition to Rose Montgomery completing and signing a K-Mart Incident  
Report at the time of the subject incident, I sent an attorney lien letter to K-Mart on May 3,  
2002 and subsequently filed the subject personal injury lawsuit on February 13, 2004.

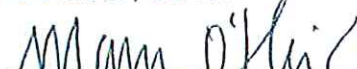
3. Despite notifying K-Mart of Rose Montgomery's personal injury claim at three  
different points in time and in three different forms, neither my client nor myself have ever  
received a "Proof of Claim" form from K-Mart.

3. All the facts contained in this affidavit are true and accurate.

Further affiant sayeth not.

  
Peter D. Tarpey

SUBSCRIBED and SWORN to  
before me this 3<sup>rd</sup> day of  
October, 2010.

  
Notary Public





## Kmart Customer Incident Information

Store Stamp

Dear Kmart Customer,

We want you to have a positive experience every time you visit our store. If you have experienced an accident or loss of any kind while visiting us, please provide the information requested below. This information will help us meet our goal of continuous improvement in the operation of our store. It will also help us in contacting you to make sure we are providing the service you expect.

Please take the white copy of this document for your records. If after leaving the store you wish to provide further information or have any questions about your incident, please call our Store Team Manager.

We are sorry you had an unpleasant experience while our guest. We look forward to serving you better in the future.

Sincerely,

Your Kmart Store Management

Store Phone Number: 630 325-972

### TO BE COMPLETED BY CUSTOMER:

Customer name: Rose Montgomery Customer's Street Address: 143 Indian Wood Lane  
City: Indian Head Park State: IL Zip: 60525 Phone: 708 246-7782  
Customer's employer: Roseann Montgomery Customer's sex: F  
Customer's Date of Birth: 11-1-33 Customer's Social Security Number: 360 26 7255  
If injury to a child: Child's name: \_\_\_\_\_ Child's age: \_\_\_\_\_ Parent's name: \_\_\_\_\_

### Customer's Description of Incident:

Date of incident: 1-18-02 Location of incident: Pantry  
Time of incident: 1:50 What happened? Turned and Fall over Pallet

Do you wish to be contacted? Yes

Date reported: 2-18-02

Signature of Customer: [Signature]

White copy - for Customer

PLAINTIFF'S  
EXHIBIT

11



PAUL B. EPISCOPE, LTD.

PAUL B. EPISCOPE  
MICHAEL T. MULLEN  
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JOHN C. ERB  
OF COUNSEL

SUITE 300  
77 WEST WASHINGTON STREET  
CHICAGO, ILLINOIS 60602

(312) 782-6636  
FAX (312) 782-1114

May 3, 2002

K-Mart  
840 Plainfield  
Willowbrook, IL 60521

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Re: Our Client: Rose Montgomery  
D/A: February 18, 2002  
Our File No: 02-26

To Whom It May Concern:

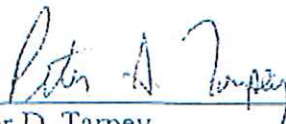
The purpose of this letter is to advise you that we have been retained as attorneys to represent the above-named person in connection with a legal claim for damages arising out of injuries sustained on the above date.

In the event that you are insured for liability in connection with this type of occurrence, please forward this letter and the enclosed lien directly to your insurance company in order that we may commence discussions which will hopefully enable us to amicably resolve our controversy.

Very truly yours,

PAUL B. EPISCOPE

By:

  
Peter D. Tarpey

DT/jlb

closure

PLAINTIFF'S  
EXHIBIT

12



*Law Offices*

PAUL B. EPISCOPE, LTD.

PAUL B. EPISCOPE  
MICHAEL T. MULLEN  
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May 3, 2002

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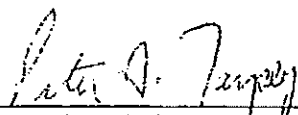
Re: Montgomery v. K-Mart  
Our File No: 02-26

To Whom It May Concern:

PLEASE TAKE notice that Rose Montgomery (hereinafter referred to as the claimant) has placed in my hands for collection a certain suit, claim, demand or cause of action against you for injuries received by the claimant on, to-wit, the 18<sup>th</sup> day of February, 2002 through your negligence.

You are hereby notified that the claimant entered into a contract with me to pay me as compensation for services rendered and to be rendered in and about the prosecution of said suit, claim, demand, or cause of action a sum equal to one-third of any amount recovered by way of settlement or otherwise, prior to the actual trial of said cause in court, and one-third of any amount recovered after suit is started and the trial of said cause is begun.

You are further notified that by virtue of the Attorney's Lien Law of 1909, as amended, I claim a lien to the extent of my interest, as set forth above as said claim, demand, cause of action and suit at law, which said lien, by virtue of said law, attaches to any verdict or judgment entered or to be entered in such suit or to any money or property which may be recovered by the claimant on account of such claim, suit, demand or cause of action from and after the service of this notice.



Paul B. Episcopo, Ltd.  
Attorneys for Claimant

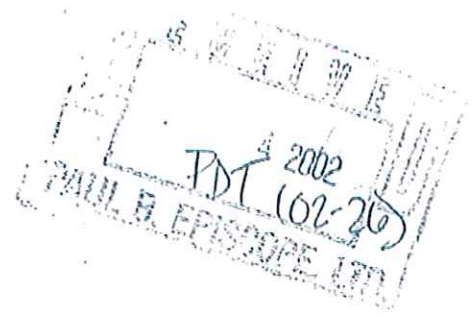
PDT/jlb



Kmart Customer Incident Center  
Sedgwick Claims Management Services,  
P.O. Box 5058, Troy, MI 48007-5058  
Phone: (248) 463-7577  
Fax: (248) 463-6637

May 21, 2002

Attn: Paul B. Episcopo  
Law Offices of Paul B. Episcopo, Ltd.  
77 W. Washington Street, Ste. 300  
Chicago, IL 60602



Re: Name: Rose Montgomery  
Date of Incident: 2-18-02  
Our File#: 20020215087  
Location: Kmart #4459- Willowbrook, IL

Dear Mr. Episcopo:

This letter is in response to a letter received from your office, dated May 3, 2002, and will acknowledge your representation of Rose Montgomery. I will be handling the file regarding this alleged incident on February 18, 2002. Any future correspondence should be directed to my attention.

Please note that Kmart Corporation does not have a Med-Pay policy and, thus, we are unable to offer any payment on medical bills or pre-authorization for medical treatment. Please forward copies of any bills and/or treatment notes, or medical records that you may have in your possession that will help in successfully evaluating you client's claim.

Your cooperation will be appreciated.

Respectfully yours,

Cynthia Cooper  
Claims Examiner  
248-463-7566

aa/aa  
Enc.

