

Circuit City Files for Bankruptcy

Important Information for Creditors and Shareholders

Alert

On November 10, 2008, Circuit City Stores, Inc. and 17 affiliated entities (the "Debtors"), filed voluntary petitions for reorganization under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Virginia in Richmond.¹ The cases have been assigned to Judge Kevin R. Huennekens.

As is typical in most large chapter 11 cases, the Debtors filed an array of "first day" motions with their petitions. Some of these motions are ministerial or of little concern to creditors and interest holders at this time, but two merit more immediate scrutiny.

Proposed Trading Restrictions

To preserve certain tax assets, the Debtors have filed a motion seeking to impose notice and transfer restrictions on the trading of equity securities of Circuit City as well as claims against the Debtors. The Debtors have proposed that any "Substantial Shareholder" – i.e., any person or entity which beneficially owns at least 7,848,226 shares (representing approximately 4.75% of all issued and outstanding shares) of the common stock of Circuit City – or would become a Substantial Shareholder as a result of a proposed purchase of the Debtors' equity securities, must give the Debtors notice and an opportunity to object to any sale or purchase of Circuit City stock.²

Similarly, any holder of claims against the Debtors in an amount that exceeds a certain threshold (which is undetermined at this time) would be required to notify the Debtors of their status as a "Substantial Claimholder." In certain circumstances, Substantial Claimholders might be required to "sell down" a portion of their claim so that the aggregate amount of their claim against the Debtors falls below the threshold amount.

The Bankruptcy Court has not yet scheduled a hearing to consider this motion but is likely to do so within a few days. *We encourage you to contact us as soon as possible if you believe you are or might become a Substantial Shareholder or Substantial Claimholder.*

503(b) (9) Bar Date

Section 503(b) (9) of the Bankruptcy Code provides that claims of vendors for the value of goods sold in the ordinary course of business and received by the debtor within 20 days before the commencement of a case are entitled to be repaid with priority over general unsecured creditors. Section 546(c) of the Bankruptcy Code preserves a vendor's right to reclaim goods sold to the debtor within 45 days before the commencement of a case. And while Section 546(c) requires creditors to make a reclamation demand within 20 days after the filing of a bankruptcy petition, there is no such deadline for submitting claims under Section 503(b) (9).

To facilitate the resolution of claims under these two related sections of the Bankruptcy Code, the Debtors have asked the Bankruptcy Court to establish a bar date for the submission of Section 503(b)(9) claims. The bar date proposed by the Debtors would occur 30 days after service of a notice of the bar date, which notice the Debtors propose to serve no later than five business days after entry of an order approving their request. It is not possible to determine at this time the precise bar date that will be established for claims under Section 503(b)(9), but it could occur as early as December 11.

The Bankruptcy Court has not yet scheduled a hearing to consider this motion, but is likely to do so within a few days. *We encourage you to contact us as soon as possible if you believe that you might have a claim against the Debtors under Section 503(b)(9) of the Bankruptcy Code.*

Endnotes

- ¹ It is expected that one affiliate of the Debtors will commence a proceeding in Canada under The Companies' Creditors Arrangement Act.
- ² The Debtors' chapter 11 petition lists assets that exceed liabilities by more than \$1 billion. Holders of stock in the Debtors – typically out of the money in a large chapter 11 case – should monitor this case closely to determine if they might be entitled to share in the distribution of the Debtors' net assets.

If you would like to discuss either of the motions described in this alert or any other aspect of the Debtors' bankruptcy proceeding, please contact any of the attorneys in our Business Reorganization and Creditors' Rights Group listed below.

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