

## Sears Bankruptcy Case Confirmed: Choices Ahead for Administrative Creditors and Looming Preference Lawsuits for Trade Creditors

---

October 17, 2019

On October 8, after two days of hearings, the judge overseeing the *Sears Holdings Corp., et al.* bankruptcy cases orally confirmed their joint plan even though he acknowledged that the Sears estates currently do not have enough money to fund it. How does Sears expect to fund its plan and pay its suppliers? By filing approximately 2,000 preference lawsuits to recover some of the estimated \$1.345 billion the Sears debtors paid out prior to filing their bankruptcy petitions. Also, suppliers with unpaid administrative expense claims will be asked to voluntarily reduce those claims in exchange for expedited review of their claims and a greater certainty of recovery.

Thus, many vendors who dealt with the Sears debtors before they filed for bankruptcy can expect to be sued soon to recover a preferential transfer. Note, in bankruptcy court, service of a preference complaint can be accomplished simply by mailing the complaint to a creditor's corporate headquarters, addressed to a corporate officer such as the corporation's president, rather than the usual method of serving a corporation's registered service agent. Corporate mailrooms sometimes miss such mailings, risking entry of default judgments, so creditors are advised to keep watch for these complaints.

In addition, suppliers who have not yet been paid likely will soon receive notice of an "Administrative Expense Claims Consent Program." Holders of administrative expense claims against the Sears debtors can opt into the program, opt out of it, or do nothing. Those opting in will take a 25% discount on their administrative claim in exchange for expedited resolution of their claims and participation in an initial distribution of money to pay down the amount owed on these claims, once that amount is agreed upon. Those who do nothing will receive only a 20% reduction of their claims, but do not participate in the initial distribution. They will receive funds later, from a second distribution, which will not happen until certain conditions are satisfied. A creditor who opts out of the program retains its right to have its claim paid in full on the later of the plan's effective date or the date that the amount of the claim is agreed upon by the debtors and the creditor. The creditor will not receive any funds from the first two distributions, however, and the debtors make no promise as to how long it may take to reach agreement on the amount of such claims. If the debtors' bankruptcy cases do not go as planned, these claims may not receive much or anything. The *Toys R Us* bankruptcy case provides a grim reminder of this possibility.

Miller Canfield has extensive experience in defending preference lawsuits. Should you receive a preference complaint or a ballot for the Administrative Expense Claims Consent Program and require assistance, please feel free to contact us.