

Bankruptcy Update

Expert Analysis

The Bankruptcy Proceedings Of Three Prominent Shoe Stores

'Aerogroup'

On Sept. 15, 2017, global footwear company Aerogroup International Inc. and its affiliates filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware.

The debtors, well known for their Aerosoles shoe brand, operate online, wholesale, royalty and licensing businesses. The debtors attributed their bankruptcy filing to a combination of revenue decline following a rise in retail store investment in 2012 and 2013, unfavorable lease terms and a nationwide retail decline.

At the outset of their bankruptcy cases, the debtors sought to close most of their retail stores and work to restructure their \$72 million debt via a plan process with a new investor or a sale of their remaining business.

On Oct. 16, 2017, following a month of operations relying solely on consensual use of their prepetition lenders' cash collateral, the debtors sought approval of a \$25 million DIP financing facility to be provided by Polk33 Lending. The proposed DIP facility faced initial opposition

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from the debtors' prepetition term loan lender THL Corporate Finance Inc., however, the parties were able to resolve the objection leading to consensual entry of an interim and, subsequently, final DIP order on Nov. 2, 2017.

The debtors attributed their bankruptcy filing to a combination of revenue decline following a rise in retail store investment in 2012 and 2013, unfavorable lease terms and a nationwide retail decline.

On Oct. 25, 2017, the debtors filed their initial version of a plan of reorganization which proposed to transfer ownership of the reorganized debtors to their prepetition term lenders, senior noteholders and subordinated noteholders. Alternatively, the plan provided for

a possible pivot to a sale the debtors' assets and distribution of sale proceeds to creditors according to priority of their claims under the Bankruptcy Code.

On Dec. 4, 2017, the debtors filed an amended plan of reorganization which abandoned the dual track construct and instead provided for the debtors to license their intellectual property to Global Brands Group, who would also purchase the debtors' nonintellectual property assets for approximately \$10 million.

Ultimately, on Jan. 30, 2018, the debtors announced they were abandoning pursuit of confirmation of their amended reorganization plan and sought expedited approval of bidding procedures in connection with a sale of their assets. To that end, on Feb. 13, 2018, the debtors selected Alden Global Capital to act as the stalking horse bidder in connection with the sale of their assets with a bid consisting of \$23 million in cash and assumption of certain liabilities. On Feb. 21, 2018, following an auction, the court entered an order approving the sale to Alden Global Capital for an improved purchase price of \$26.2 million and assumption of certain liabilities.

The sale transaction closed on March 6, 2018. Nevertheless, distribution of the sale proceeds remains subject to

resolution of a dispute between Polk33 Lending and THL Corporate Finance regarding the value of their respective collateral included in the assets sold.

'Nine West Holdings'

On April 6, 2016, women's shoe and apparel company Nine West Holdings, Inc. and its affiliates filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York.

The debtors are owned by an affiliate of Sycamore Partners who purchased the company from The Jones Group in a \$2.2 billion transaction in 2014. The debtors reported that they initiated their bankruptcy proceedings to effectuate a sale of their Nine West and Bandolino brands and restructure around their profitable clothing and jewelry businesses. The debtors have approximately \$1.6 billion in funded debt obligations.

Prior to the commencement of their Chapter 11 case, the debtors reached a restructuring support agreement with 78 percent of their secured term loan lenders and over 89 percent of their unsecured term loan lenders. The restructuring support agreement contemplates repaying creditors under the prepetition secured term loan facility in full in cash and providing holders under the unsecured term loan facility new second lien debt and equity in the reorganized debtors, while treatment of other unsecured claims is undetermined.

To finance operations under Chapter 11, the debtors sought approval of an approximately \$300 million DIP facility with \$50 million in new money to be provided by the RSA commitment parties. Interim access to DIP financing was granted at the first day hearing on

April 9, 2018. Upon its appointment, the official committee of unsecured creditors voiced concerns regarding the cost of the proposed DIP financing and restrictions contained therein and indicated it is committed to exploring alternative financing arrangements.

In the interim, the debtors sought and obtained approval of bidding procedures in connection with the sale of their intellectual property and certain other assets related to the Nine West and Bandolino business lines with Authentic Brands Group acting as a stalking horse bidder with a \$200 million bid. Competing bids are due on June 4, and an auction is scheduled for June 8.

'The Rockport Co.'

On May 14, 2018, comfort footwear maker The Rockport Company LLC and its affiliates filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware.

The debtors are designers, distributors and retailers of comfort footwear across 50 markets worldwide. Once part of the Reebok division of global shoe company adidas AG, the company was spun off as a separate entity in 2015. To facilitate the spin-off, the parties entered into a two year transition agreement that expired in November 2017. The debtors attribute their financial distress to challenges arising in the Adidas separation, underperforming retail stores and disputes with vendors.

The debtors engaged in a prepetition marketing process and entered bankruptcy with a \$150 stalking horse bid from CB Marathon Opco LLC for certain of their assets. The stalking horse bid does not include the debtors' North American retail assets but provides for a 25-day time period during

which the stalking horse bidder may designate stores for inclusion in the sale. To facilitate the sale, the debtors have agreed to delay conducting store closing sales during this time period. A hearing on the debtors' motion for approval of stalking horse bid protections and bidding procedures is scheduled for June 5, 2018. The proposed sale timeline includes a June 29 deadline for submission of competing bids, July 10 auction and July 13 hearing on approval of the sale.

To fund their operations during the sale process, the debtors are seeking approval of an \$80 million DIP financing facility with \$20 million in new money to be provided by their prepetition secured lenders and noteholder. An interim order authorizing the debtor to obtain DIP financing was entered on May 15, and a final hearing with respect to the DIP financing motion is scheduled for June 13.

—*Marianna Udem, partner at ASK LLP, assisted in the preparation of this article.*